

**MINISTRY OF COMMERCE AND INDUSTRY**

**Department of Commerce**

(DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES)

**NOTIFICATION**

Dated 7th April, 2015

**FINAL FINDINGS**

**Subject : Anti-dumping investigation concerning imports of 'Purified Terephthalic Acid' (PTA), originating in or exported from China PR, European Union, Korea RP and Thailand.**

**No.14/7/2013-DGAD:** - Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the Rules) thereof;

2. Whereas M/s. MCC PTA India Corp. Pvt. Ltd (MCPI), and M/s Reliance Industries Limited (RIL) (hereinafter also referred to as the applicants or domestic industry) jointly filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules, for initiation of anti- dumping investigation concerning imports of Purified Terephthalic Acid (hereinafter also referred to as the subject goods or PTA), originating in or exported from China PR, European Union, Korea RP and Thailand, alleging dumping and consequent injury and requested for levy of anti-dumping duties on the imports of the subject goods, originating in or exported from the said countries.
3. And whereas, the Authority on the basis of sufficient evidence, submitted by the applicant issued a public notice vide Notification No.14/7/2013-DGAD dated 8<sup>th</sup> October, 2013, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the sub Rule 5 of the Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
4. And whereas, the Designated Authority having regard to the Act and the Rules, issued the preliminary findings vide Notification No.14/7/2013-DGAD dated 19<sup>th</sup> June 2014, recommending imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from the China PR, European Union, Korea RP and Thailand. Accordingly, the Central Government vide Notification No.36/2014-Customs dated 25<sup>th</sup> July, 2014 imposed provisional anti-dumping duties on imports of the subject goods, originating in or exported from the China PR, European Union, Korea RP and Thailand.

## A. PROCEDURE

5. The procedure described herein below has been followed by the Authority with regard to the subject investigation:

- i. The Authority notified the Embassies/Representatives of China PR, European Union, Korea RP and Thailand in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
- ii. In addition to the provisions of Sub-Rule (5) of Rule 5 supra, the Government of Korea RP was informed through its Embassy in India about the receipt of the subject application as per provisions of Article 2.14 of Comprehensive Economic Partnership Agreement (CEPA) between India and Korea RP.
- iii. The Authority sent a copy of the initiation notification dated 8<sup>th</sup> October, 2013 to the Embassies of China PR, European Union, Korea RP and Thailand in India, known producers/exporters from China PR, European Union, Korea RP and Thailand, known importers/users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies/Representatives of China PR, European Union, Korea RP and Thailand in India in accordance with Rule 6(3) of the Rules supra.
- v. The Embassies/Representatives of China PR, European Union, Korea RP and Thailand in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the Rules with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from China PR, European Union, Korea RP and Thailand.
- vi. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in China PR, European Union, Korea RP and Thailand in accordance with Rule 6(4) of the Rules:
  - a. BP Zhuhai Chemical Co. Ltd, China PR
  - b. Xianglu Petrochemicals Co., Ltd, China PR
  - c. Jiaxing Petrochemical Co., Ltd., China PR
  - d. Zhejiang Yisheng Petrochemical Co., Ltd., China PR
  - e. Zhejiang Yuandong Petrochemical, China PR
  - f. Yisheng Dahua Petrochemical Co., Ltd. , China PR
  - g. Hengli Petrochemical, China PR
  - h. Jinan Shijitongda Chemical Co., Ltd., China PR

- i. Samsung Total Petrochemical Company Ltd., Korea RP
- j. Samsung Petrochemical Company Ltd., Korea RP
- k. Hyosung Petrochemical, Korea RP
- l. Hyosung Corporation, Korea RP
- m. Taekwang Industrial Co., Ltd., Korea RP
- n. Honam Petrochemical Corporation, Korea RP
- o. Samyang Corporation, Korea RP
- p. Samnam Petrochemical Co.,Ltd, Korea RP
- q. SK Petrochemical, Korea RP
- r. Lotte Chemical, Korea RP.
- s. Indorama Petrochem Limited, Thailand
- t. TPT Petrochemicals PCL.,Thailand
- u. Siam Mitsui PTA Co., Ltd., Thailand
- v. BP Chembel N.V., Belgium
- w. Cepsa Quimica S.A, Spain
- x. Lotte Chemical UK Ltd, United Kingdom
- y. BP Chemicals Limited, United Kingdom
- z. Artlant PTA,  
Portugal
- aa. PKN  
Orlen SA, Poland

vii. The following producers/exporters from China PR, European Union, Korea RP and Thailand filed exporters questionnaire response in the prescribed format:

- a. Indorama Petrochem Ltd., Thailand
- b. TPT Petrochemicals Public Limited, Thailand
- c. Samsung C&T Corporation, Korea RP
- d. Samsung Petrochemical Co. Ltd., Korea RP now known as Samsung General Chemicals Co Ltd.
- e. SK Petrochemical Inc, Korea RP (producer) along with Mitsubishi Corporation, Japan (exporter)
- f. Taekwang Industrial Co Ltd, Korea RP
- g. Hyosung Corporation, Korea RP
- h. Zhejiang Yisheng Petrochemical Co., Ltd, China PR
- i. Ningbo Hengyi Trading Co Limited, China PR

viii. The following producers/exporters from China filed Market Economy Treatment questionnaire response:

- a. Zhejiang Yisheng Petrochemical Co. Ltd.
- b. Ningbo Hengyi Trading Co. Ltd.
- c. Yisheng Dahua Petrochemical Co. Ltd.
- d. Hainan Yeshing Petrochemical Co. Ltd.

ix. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:

- a. Wellknown Polyester Ltd., Mumbai
  - b. JBF Industries Ltd., Mumbai
  - c. Alok Industries Ltd., Mumbai
  - d. Indo Rama Synthetics (India) Ltd., Gurgaon, Haryana
  - e. The Bombay Dyeing & Mfg. Compnay Ltd., Mumbai
  - f. Dhunseri Petrochem & Tea Ltd., Kolkata
  - g. Garden Silk Mills Ltd., Mumbai
  - h. Filatex India Ltd., New Delhi
  - i. Jindal Poly Films Ltd., New Delhi
  - j. Nakoda Ltd., Mumbai
  - k. Sumeet Industries Ltd., Surat
  - l. Raj Rayon Industries Ltd, Mumbai
  - m. Association of Synthetic Fiber Industry (ASFI), New Delhi.
  - n. PTA Users Association of India, New Delhi.
- x. The following importers/users filed importer's questionnaire response in the prescribed format:
- a. Dhunseri Petrochem & Tea Ltd.
  - b. Alok Industries Ltd.
  - c. The Bombay Dyeing & Manufacturing Co. Ltd.
  - d. Jindal Poly Films Ltd.
  - e. JBF Industries Ltd.
  - f. Wellknown Polyesters Ltd.
  - g. Indo-Rama Synthetics (India) Ltd.
  - h. Sumeet Industries Ltd.
- xi. Post-initiation, submissions have also been made by the domestic industry and the following other interested parties:
- a) Dhunseri Petrochem & Tea Limited
  - b) Filatex India Ltd.
  - c) Indo Rama Synthetics (India) Ltd.
  - d) The Bombay Dyeing & Mfg Co Ltd.
  - e) JBF Industries Ltd.
  - f) Garden Silk Mills Ltd.
  - g) Sumeet Industries Ltd.
  - h) Alok Industries Ltd.
  - i) Raj Rayon Industries Ltd.
  - j) Jindal Polyfilms Ltd.
  - k) Samsung Petrochemical Co., Ltd.
  - l) Hyosung Corporation
  - m) SK Petrochemical Co., Ltd.
  - n) Taekwang Industrial Co., Ltd.
  - o) Indorama Petrochem Ltd
  - p) TPT Petrochemicals Public Limited Company.
  - q) BP Chembel NV, EU
  - r) BP Aromatics, EU.
  - s) BP Zuhai Chemical Co Ltd, China PR
  - t) Polyester Film industries Association

- u) PTA Users Association
  - v) The Southern India Mill's Association (SIMA)
  - w) Association of Synthetic Fibre Industry.
  - x) Chemicals & Petrochemicals Manufacturers Association
- xii. 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.
- xiii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI & S) to provide details of imports of subject goods for the past three years, including the period of investigation. The Authority has relied upon DGCI & S data in this final finding.
- xiv. The petitioner had submitted the petition alleging dumping of the subject goods from China PR, European Union, Korea RP and Thailand relying upon imports data sourced from the DGCI & S. The Authority had relied upon the data provided by the petitioner while initiating the present investigation. Post initiation, the Authority also obtained transaction-wise imports data from the DGCI & S and issued the preliminary findings.
- xv. Post preliminary findings, certain interested parties contended that export of subject goods from the European Union and China PR during the POI is less than 3% of the total imports of PTA into India and therefore, European Union and China PR should be excluded from the purview of the subject countries. Consequently, the transaction wise DGCI & S data was reanalyzed and cross verified with the DG Systems data and it was noted that during POI the imports of the subject goods from European Union and China PR were found to be de minimis. In view of the above position and in terms of the provisions laid down under Rule 14 of Anti-dumping Rules, the Authority terminates the investigation in respect of imports of subject goods from China PR and European Union and continues the investigation in respect of the imports of the subject goods, originating in or exported from Korea RP and Thailand (hereinafter also referred to as the subject countries).
- xvi. Without prejudice to the Authority's right to file SLP before the Hon'ble Supreme Court against the Judgment of the Hon'ble Delhi High Court dated 18.3.2015 in WP(C) No.744/2015 in the matter of San Disk International Ltd. Vs. The Designated Authority & Others, the non-confidential version of transaction-wise details of imports of the subject goods obtained from DGCI & S and relied upon in this final finding have been placed in the public file for inspection by the interested parties.
- xvii. The Non-injurious Price based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- xviii. Information provided by the domestic industry and the cooperating producers/exporters were verified by the Authority to the extent considered necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this final finding.
- xix. The Period of Investigation for the purpose of the present investigation is from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2013 (12 Months). The injury investigation period has however, been considered as the period from 1<sup>st</sup> April 2009 to the end of the POI, i.e., 2009-10, 2010-11, 2011-12 and POI.
- xx. In accordance with Rule 6(6) of the Anti Dumping Rules, the Authority also provided opportunity to all the known interested parties to present their views orally in a public hearing held on 19<sup>th</sup> November, 2014. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were advised to file written submission and rejoinder submission.
- xxi. The submissions made by the domestic industry and other interested parties during the course of the investigation and considered relevant have been examined and addressed by the Authority in this final finding.
- xxii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded these disclosures on the basis of the facts available.
- xxiii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xxiv. In accordance with Rule 16 of Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 28<sup>th</sup> March, 2015 and comments received thereon, considered relevant by the Authority, have been addressed in this final finding.
- xxv. \*\*\* in this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxvi. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs. 54.65.
- xxvii. The Central Government in the Department of Revenue, Ministry of Finance extended the time limit for completion of the investigation and issue of final findings till 7<sup>th</sup> April, 2015 vide their Office Memorandum No. 354/95/2014-TRU dated 7<sup>th</sup>

October, 2014.

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

6. The Product under Consideration (PUC) in the present investigation is Purified Terephthalic Acid (PTA), including its variants - Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA). Purified Terephthalic Acid (PTA) is a white, free flowing crystalline powder, free from any visual contamination. Terephthalic Acid is an organic compound whose chemical formula is  $C_6H_4(COOH)_2$ . It sublimates at  $402^\circ C$  and is poorly soluble in water and alcohol. PTA is the primary raw material for the manufacturing of polyester chips which in turn is used in a number of applications in textiles, packaging, furnishings, consumer goods, resins and coatings. Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well. As claimed by the applicants, Di-Methyl Terephthalate (DMT) is chemically a different product and therefore not covered in the scope of the product under consideration. The product under consideration is classified under subheading 29173600 of the Customs Tariff Act. However, the customs classification is indicative only and in no way it is binding on the scope of the present investigation.

**Submissions made by the Domestic Industry**

7. The submissions made by the domestic industry and considered relevant by the Authority with regard to product under consideration and like articles are as follows:
- i) The product under consideration in the present petition is Purified Terephthalic Acid, including its variants Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA) (hereinafter referred to as “the product under consideration” or “PTA”). PTA is a white, free-flowing crystalline powder free from any visual contamination. It is classified under subheading 29173600 of the Customs Tariff Act. Terephthalic acid is an organic compound whose chemical formula is  $C_6H_4(COOH)_2$ . It sublimates at  $402^\circ C$  and is poorly soluble in water and alcohols. PTA is a primary raw material in the manufacture of polyester chips which in turn has number of applications in textiles, packaging, furnishings, consumer goods, resins and coatings. MTA and QTA are chemically the same as PTA. The only difference between PTA, MTA and QTA is in the level of impurities present in the QTA and MTA. PTA, MTA & QTA are produced using the same production technology, plant & equipment, manufacturing process, raw materials. The three perform the same function. These fall under same customs classifications. The only difference in the three products is in the level of impurities. In fact, producer such as SK Chemical produces MTA, but literature states PTA.
  - ii) Di-Methyl Terephthalate (DMT) is chemically different product than PTA. The production technology, manufacturing process, plant & equipment, raw materials, technical specifications of DMT and PTA are different. However, DMT and PTA are interchangeably used in some applications. However, DMT cannot replace/substitute PTA in all the applications. There is no production of DMT in India, nor there import of

DMT in India. The present petition is for anti dumping duty on PTA (including its variants, MTA and QTA) and the petition has been filed by producers of PTA in India. DMT is in fact a product being phased out and PTA has substituted DMT. The product scope does not cover DMT, there being no imports into India and no production in India. Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well.

**Submissions made by Exporters, Importers, Users and other Interested Parties**

8. No submissions have been made by the exporters, importers, users and other interested parties with regard to product under consideration and like article.

**Examination of the Authority**

9. The submissions made by the interested parties with regard to the scope of product under consideration and considered relevant by the Authority are examined and addressed as follows:

- i. The product under consideration in the present investigation, as defined by the Authority in the initiation notification is Purified Terephthalic Acid (PTA), including its variants - Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA). The PUC is a white, free flowing crystalline powder, free from any visual contamination. Terephthalic Acid is an organic compound whose chemical formula is  $C_6H_4(COOH)_2$ . It sublimates at  $402^\circ C$  and is poorly soluble in water and alcohol. PTA is primary raw material in the manufacture of polyester chips which in turn is used in a number of applications in textile, packaging, furnishings, consumer goods, resins and coatings. Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well. The product under consideration is classified under subheading 29173600 of the Customs Tariff Act. However, the customs classification is indicative only and in no way it is binding on the scope of the present investigation.
- ii. As claimed by the applicants, Di-Methyl Terephthalate (DMT) is chemically a different product and therefore not covered in the scope of the product under consideration.
- iii. With regard to like article, Rule 2(d) of the AD Rules provides as under: -

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

- iv. The Authority notes that the subject goods produced by the domestic industry and that imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. The consumers importing the product under consideration have also purchased the same from the domestic industry. In view of the same, the subject goods produced by the domestic industry are being treated as domestic like article to the product

under consideration imported from subject countries in terms of the Rules.

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

#### **Submissions made by Exporters, Importers, Users and other Interested Parties**

10. The submissions made by the producers/exporters/importers/other interested parties during the course of the investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. IOCL, which is selling the subject goods at a price cheaper than the two applicant domestic producers and profitably operating its PTA plants at over 100% capacity utilization, has neither joined nor supported the petition. The present investigation should therefore be terminated forthwith.
- ii. MCC PTA India Corp. Private Limited (MCPI) is not qualified to be treated as part of the domestic industry under Rule 2(b), as by virtue of their share holdings, they are related to Mitsubishi Corporation, Japan, Mitsubishi Corporation India Pvt. Ltd., Marubeni Corporation, Japan, Samyang Corporation, Korea RP and Sam Nam Petrochemical Co. Ltd. Korea RP.
- iii. MCC PTA India Corp. Private Limited (MCPI) is a 100% subsidiary of Mitsubishi Corporation, Japan (MC). Mitsubishi Corporation is engaged in exporting subject goods to India by procuring from the subject countries in the injury period. Mitsubishi Corporation India Pvt. Ltd. (MCPIL) imported these and sold them in India. Mitsubishi Corporation India Pvt. Ltd. (MCPIL) was also acting as a sales agent of MCC PTA India Corp. Private Limited (MCPI) in India.
- iv. Exporter (Mitsubishi Corporation-MC), importer (Mitsubishi Corporation India Pvt Ltd- MCPIL) and petitioner (MCC PTA India Corp. Private Limited-MCPI) are controlled by the Mitsubishi group and so MCPI is related to an exporter and importer of the subject goods.
- v. MC is a significant shareholder of MCC PTA India Corp. Private Limited (MCPI) and is forcing MCPI to appoint its wholly owned subsidiary, MCPIL, as its sales agent in order to earn profits.
- vi. Marubeni Corporation is a sale agent of MCPIL, shareholder of MCPIL and an importer of subject goods. A substantial quantity of the goods was imported/exported by Marubeni and MC. Therefore, MCPI is to be

disqualified as domestic industry.

- vii. Sam Nam Petrochemical Co. Ltd., Korea is controlled by Mitsubishi Chemical Corporation, Japan (MCC) and Samyang Corporation, Korea as they together hold 80% of the shares of Sam Nam. MCC Japan is the largest shareholder (40%) in Sam Nam Petrochemical Co. Ltd and refers to it as a subsidiary. Therefore, MCC PTA India Corp. Private Limited (MCPI) and Samyang are related.
- viii. Mitsubishi Chemical Corporation holds 66% share in MCC PTA and 40% shares in Sam Nam Petrochemicals, Korea. The share held by MCC also signifies a significant control over MCC PTA and Sam Nam Petrochemical's operations and its executive decisions. Sam Nam Petrochemicals is one of the named exporters in the investigation, therefore, as per sub-clause (i)(b) of explanation to rule 2(b), the relationship between MCC PTA, MCC and Sam Nam Petrochemicals, Korea would clearly exclude MCC PTA from the definition of domestic industry.
- ix. Sam Nam Petrochemicals Co. Ltd is an exporter of the subject product from Korea RP. In Sam Nam, Mitsubishi Chemical Corporation, Japan and Samyang Corporation, Korea hold 40% share each, and the remaining 20% share is held by GS Caltex Korea. Since Mitsubishi Chemical Corporation, Japan is controlling both MCPL (domestic producer in India) and Sam Nam (exporter of the subject product from Korea RP), MCPL should be disqualified from being a constituent of the domestic industry.
- x. Mitsubishi Corporation, Japan and Marubeni Corporation, Japan, the related parties of MCC PTA India Corp. Private Limited, buy the subject product from Korea RP at low prices and export the same to India, creating a situation of positive injury margin for POI.
- xi. Mitsubishi Corporation, Japan and Samsung, Korea entered into a contract on 1<sup>st</sup> November, 2012 to purchase/sell 4000-5000 MT of PTA every month, all of which was destined to the Indian market. Thus, declaration made by MCC PTA India Corp. Private Limited that none of its related/affiliated companies have exported the subject goods to India, is false and misleading.
- xii. Imports from Malaysia have increased over the injury period. Reliance industries have acquired 100% stake in BP Chemicals (Malaysia) SdnBhd (BPCM). The raw material of PTA was sent by Reliance to Malaysia, converted to PTA and re-imported and sold in India.

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

11. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. The fact that IOCL has not supported the present petition does not prevent the

Authority from proceeding with the investigation. As per the AD Rules, the Designated Authority is only to examine whether (a) domestic producers expressly supporting the application account for more than twenty five percent of the total production of the like article by the domestic industry; and (b) the application is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. There is no legal requirement which prescribes that the Designated Authority should proceed with the initiation and investigations only if IOCL supports the present petition.

- ii. There is no basis for the argument that IOCL prices are cheaper than prices offered by constituents of the domestic industry. It is without basis that IOCL performance is not impacted by rising prices. IOCL prices are also governed by the import prices.
- iii. The shareholding pattern of MCC PTA Corp. India Pvt. Ltd (MCPI) is as given below:

| SN | Shareholder                              | Shareholding |
|----|--|--------------|
| 1  | Mitsubishi Chemical Corpn., Japan        | 66%          |
| 2  | Mitsubishi Corporation                   | 10%          |
| 3  | Sojitz Corporation                       | 8%           |
| 4  | Marubeni Corporation                     | 6%           |
| 5  | Toyota Tsusho                            | 5%           |
| 6  | West Bengal Industrial Development Corp. | 5%           |

- iv. One of the producers in Korea namely Sam Nam Petrochemical Co. Ltd. is a joint venture company in Korea whose shareholding is given below:

| SN | Shareholder                       | Shareholding |
|----|-----------------------------------|--------------|
| 1  | Samyang Corpn, Korea              | 40%          |
| 2  | G S Caltex, Korea                 | 20%          |
| 3  | Mitsubishi Chemical Corpn., Japan | 40%          |

- v. Mitsubishi Chemical Corporation, Japan holds 66% share in MCC PTA Corp. Pvt. Ltd. India and 40% share in M/s. Sam Nam Petrochemical Co. Ltd., Korea. Thus, MCC PTA Corp. Pvt. Ltd. India has no direct or indirect relationship with Samyang or GS Caltex. These are Korean companies.
- vi. Sam Nam Petrochemical Co. Ltd. has \*\*\* Directors, out of whom \*\*\* each are nominated by \*\*\* and \*\*\*. One director is nominated by \*\*\*. Mitsubishi Chemical Corporation, Japan does not control Sam Nam Petrochemical Co. Ltd, Korea. The company, however, controls MCC PTA Corp. Pvt. Ltd. India. Mitsubishi Chemical Corporation is not in a position to give direction or otherwise control Sam Nam Petrochemical Co. Ltd., as it lacks majority shareholding.
- vii. Sam Nam Petrochemical Co. Ltd. has sold \*\*\* MT PTA to one of the consumers in India during the period of investigation. Barring this, there is no export made by Sam Nam Petrochemical Co. Ltd. to India over the injury period. Sam Nam Petrochemical Co. Ltd. has given this material to \*\*\* as a trial product. \*\*\* is setting up a plant for production of \*\*\*MT per year \*\*\* (\*\*\*) in \*\*\* which is due for commercial production shortly. \*\*\*explored the possibility of buying PTA from Sam Nam Petrochemical Co. Ltd. for this

new plant. Therefore, the company purchased this material for testing the product produced by Sam Nam Petrochemical Co. Ltd. Thus, this export by Sam Nam Petrochemical Co. Ltd. was an exceptional transaction for technical consideration and not in the nature of regular exports by Sam Nam Petrochemical Co. Ltd.

- viii. It is settled legal position that the Designated Authority has discretion under Rule 2(b) of the Anti-dumping Rules. In any case, facts of the case clearly establish that both the petitioner companies should be considered eligible domestic industry within the meaning of Rule 2(b).
- ix. There is no legal entity as Mitsubishi Group. Therefore, there is no question of any of the companies listed above being controlled by Mitsubishi Group. Further, MCPI is not controlled by Mitsubishi Corporation, nor MCPI controls Mitsubishi Corporation, nor MCPI and Mitsubishi Corporation are controlled by a third party. It cannot be said that MCPI and Mitsubishi Corporation are related party under the rules
- x. As regards the arguments of opposing interested parties that Marubeni Corporation is a sale agent of MCPIL, shareholder of MCPIL and an importer of subject goods, the following Shareholding pattern of Marubeni is relevant for consideration:

| Shareholding Pattern                      |      |
|---|------|
| Financial Institutions                    | ***% |
| Individual                                | ***% |
| Domestic Entities                         | ***% |
| Non-Domestic Entities                     | ***% |
| Others                                    | ***% |
| Major Shareholders                        |      |
| The Master Trust Bank of Japan Ltd.       | ***% |
| Japan Trustee Services Bank Ltd.          | ***% |
| Sompo Japan Insurance Inc.                | ***% |
| JP Morgan Chase Bank                      | ***% |
| Japan Trustee Services Bank               | ***% |
| Meiji Yasuda Life Insurance Company       | ***% |
| Tokio Marine & Nichido Fire Ins. Co. Ltd. | ***% |
| Mizuho Bank                               | ***% |
| Barclays Securities Japan Ltd.            | ***% |
| Nippon Life Insurance Company             | ***% |

- xi. Thus, MCPI is not controlled by Marubeni Corporation, nor MCPI controls Marubeni Corporation, nor MCPI and Marubeni Corporation are controlled by a third party. It cannot be said that MCPI and Marubeni Corporation are related party under the rules.
- xii. MCPI is not related to any importer or exporter of the product under consideration within the meaning of the Anti-dumping Rules as none of them directly or indirectly controls the other; neither MCPI nor exporters/importers are directly or indirectly controlled by a third person; nor MCPI & exporters/importers together directly or indirectly control a third person. Further, there are no grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

- xiii. With respect to the argument that Mitsubishi Corporation and Samsung entered into a contract on 1<sup>st</sup> November, 2012 to purchase/sell 4000-5000 MT of PTA every month, all of which was destined to the Indian market, Mitsubishi Corporation is not related to the MCPI and therefore none of the petitioners have any control over decisions of Mitsubishi Corporation to dump the product in India.
- xiv. With respect to the argument that MCPI did not disclose its affiliation or explain why Mitsubishi Corporation exported substantially on a regular basis, MCPI is not related to the Mitsubishi Corporation and therefore it is not in a position to prevent Mitsubishi Corporation from selling the product in India.
- xv. Imports from Malaysia are de-minimis and therefore, the issue of possible relationship of one of the petitioner company with one of the Malaysian producer becomes entirely irrelevant.
- xvi. Petitioners have not imported the product under consideration in India from subject countries. They are not an importer of the product under consideration within the meaning of Rule 2(b). Petitioners are not related to an importer of the product under consideration in India. While MCC PTA Corp. Pvt. Ltd. India is not related to a producer/exporter in exporting countries, even if it is considered that the company is related to one of the producers in Korea i.e. M/s. Sam Nam Petrochemical Co. Ltd., M/s. Sam Nam Petrochemical Co. Ltd. is not a regular exporter of the product under consideration in Indian market. Therefore, both the petitioner companies should be considered eligible domestic industry within the meaning of Rule 2(b).
- xvii. It is an established position of law that the Authority may, in its discretion, include a producer who is either related to the producer/exporter of the subject goods or imported the subject goods, within the scope of domestic industry. Therefore, even if it is considered that MCPI is related to the exporters of the product under consideration, the Designated Authority may exercise its discretion to consider MCPI as eligible domestic industry. The exports made by the company constitutes insignificant share in relation to total imports of the product under consideration, Indian production and consumption of the product under consideration in India. Therefore, in any case, these exports should not disentitle the company from being treated as domestic industry.
- xviii. The argument that Mitsubishi Corporation Japan (MC) and Marubeni Corporation Japan are buying at low prices from Korea RP and exporting the same to Mitsubishi Corporation India Pvt Ltd and Marubeni India Pvt Ltd respectively, declaring a very low landed price, is baseless. Mitsubishi Corporation India Pvt Ltd and Marubeni India Pvt Ltd are not related to the domestic industry. Hence the domestic industry cannot be denied remedy due to any activities carried out by unrelated parties. It is also not established that export price to India is materially lower than the procurement price.
- xix. On the one hand, PTA Users Association has pointed out at the non-participation of IOCL. On the other hand, the association has questioned why MCPI has participated as domestic industry, as RIL alone constitutes domestic industry. Any company who has suffered injury due to dumping of the product can approach Designated Authority for remedy.
- xx. There is no legal basis to argue as to why MCPI is a part of domestic industry, unless positive evidence is shown to prove ineligibility of the company. MCPI's production alone

constitutes a major share in Indian production and the Designated Authority may consider MCPI alone as the domestic industry under the Rules.

- xxi. Petitioners constitute domestic industry under the Rules. Further, standing is governed by Rule 5(3) of AD Rules and the petitioners satisfy the same in the present case.

### **Examination of the Authority**

12. The various submissions made by the interested parties with regard to the scope of domestic industry & standing and considered relevant by the Authority are examined as follows:

- i) The Application has been filed by M/s MCC PTA India Corp. Pvt. Ltd (MCPI) and M/s Reliance Industries Limited (RIL) on behalf of the domestic industry. Apart from these two domestic producers, there is one more producer of PTA in India, namely Indian Oil Corporation Limited (IOCL). However, the said domestic producer of PTA has neither supported nor opposed the application. As per the information furnished in the application, the production of M/s MCC PTA India Corp. Pvt. Ltd and M/s Reliance Industries Limited accounts for more than 50% of Indian production of the like article. The applicants have declared that they have neither imported the product under consideration, nor any of their related parties in India have imported the product. It has been further declared that the applicants are not related to any of the importers of the subject goods in India or exporters of the subject goods from the subject countries. As per the Anti-dumping Rules, the Authority is required to examine whether (a) domestic producers expressly supporting the application account for more than twenty five percent of the total production of the like article by the domestic industry; and (b) the application is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. Thus, absence of support by IOCL is immaterial for the present investigation. The submissions made by the

opposing interested parties that IOCL is selling the subject goods at a price cheaper than the domestic industry and profitably operating its PTA plants at over 100% capacity utilization, have not been substantiated.

- ii) As regards the submission of the interested parties that MCPI is not qualified to be treated as part of the domestic industry due to their relationship with exporters and/or importers, Authority notes that Rule 2(b) provides as follows

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

- iii) On the basis of information available in the Wikipedia, the Authority notes that the Mitsubishi Group is a group of autonomous Japanese multinational companies covering a range of businesses which share the Mitsubishi brand, trademark, and legacy. Thus, question of relationship of MCPI with “Mitsubishi Group” directly or indirectly does not arise.
- iv) Further, the Authority on the basis of information available in the website mitsubishi.com notes that "Mitsubishi" is a community that consists of a multitude of independent companies. The names of most - but not all - of those companies contain the word "Mitsubishi." And many of the companies use the three- diamond Mitsubishi mark. But none calls itself simply "Mitsubishi." Further, the same web based information states that such companies conduct their business activities independently and even compete with each other in many fields. But as they share the same founding management philosophy, they cooperate in areas of common interest, such as sporting, cultural events and public-interest activities. The companies established a Mitsubishi portal on the Internet, "mitsubishi.com", to provide a broad perspective on "Mitsubishi." But, as the said web based information conveys, such companies do not have a decision- making body that determines overall policy for the companies.
- v) On the basis of the information furnished by the interested parties including domestic industry, Authority notes that the shareholding pattern of various parties with whom relationship of MCPI has been alleged are as follows –

a. Shareholding pattern of MCC PTA India Pvt. Ltd (MCPI):

| Name   | Shareholding (%) |
|--|------------------|
| Mitsubishi Chemical Corporation                | 66               |
| Mitsubishi Corporation                         | 10               |
| Sojitz Corporation                             | 8                |
| Marubeni Corporation                           | 6                |
| Toyota Tsusho Corporation                      | 5                |
| West Bengal Industrial Development Corporation | 5                |

b. Shareholding pattern of Mitsubishi Corporation India Pvt. Ltd:

| Name                   | Shareholding (%) |
|------------------------|------------------|
| Mitsubishi Corporation | 100%             |

c. Shareholding pattern of Mitsubishi Chemical Corporation:

| Name   | Shareholding (%) |
|--|------------------|
| The Master Trust Bank of Japan, Ltd. (Trust account) | ***              |
| Meiji Yasuda Life Insurance Company                  | ***              |
| Japan Trustee Services Bank, Ltd. (Trust account)    | ***              |
| Nippon Life Insurance Company                        | ***              |

|  |     |
|--|-----|
| The Bank of Tokyo-Mitsubishi UFJ, Ltd.             | *** |
| Takeda Pharmaceutical Company Limited              | *** |
| Tokio Marine & Nichido Fire Insurance Co., Ltd.    | *** |
| The Bank of New York, Treaty JASDEC Account        | *** |
| Taiyo Life Insurance Company                       | *** |
| Japan Trustee Services Bank, Ltd. (Trust account ) | *** |

d. Shareholding pattern of Mitsubishi Corporation, Japan:

| Name                   | Shareholding (%) |
|------------------------|------------------|
| Financial Institutions | ***              |
| Foreign Companies      | ***              |
| Individuals            | ***              |
| Other Companies        | ***              |

e. Shareholding pattern of Marubeni Corporation, Japan:

| Shareholding Pattern                                 | %                |
|--|------------------|
| Financial Institutions                               | ***              |
| Individual   | ***              |
| Domestic Entities                                    | ***              |
| Non domestic entities                                | ***              |
| Others   | ***              |
| Major Shareholders                                   |                  |
| Name   | Shareholding (%) |
| The Master Trust Bank of Japan, Ltd. (Trust Account) | ***              |
| Japan Trustee Services Bank, Ltd. (Trust Account)    | ***              |
| Sompo Japan Insurance Inc.                           | ***              |
| JP Morgan Chase Bank 380055                          | ***              |
| Japan Trustee Services Bank, Ltd. (Trust Account 9)  | ***              |
| Meiji Yasuda Life Insurance Company                  | ***              |
| Tokio Marine and Nichido Fire Insurance Co., Ltd     | ***              |
| Mizuho Bank, Ltd.                                    | ***              |
| Barclays Securities Japan Ltd.                       | ***              |
| Nippon Life Insurance Company                        | ***              |

f. Shareholding pattern of Sam Nam Petrochemical Co. Ltd, Korea RP.

| SN | Shareholder                       | Shareholding |
|----|-----------------------------------|--------------|
| 1  | Samyang Corpn, Korea              | 40%          |
| 2  | G S Caltex, Korea                 | 20%          |
| 3  | Mitsubishi Chemical Corpn., Japan | 40%          |

vi) Authority further notes that related party under the Rules has been defined as follows –

- (i) producers shall be deemed to be related to exporters or importers only if,-
- one of them directly or indirectly controls the other; or
  - both of them are directly or indirectly controlled by a third person; or

*c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.*

*(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.*

vii) Authority thus notes that two entities can be treated as related entities only if one of the above conditions is satisfied. The Authority notes that MCPI is related to Mitsubishi Chemical Corporation, Japan by virtue of the latter company holding majority share. However, Japan not being a subject country in the present investigation, such relationship has no relevance.

viii) The Authority further notes that Sam Nam Petrochemical Co. Ltd, Korea, in which Mitsubishi Chemical Corporation, Japan is having significant share, has exported \*\*\* MT of subject goods to India during the POI. However, as submitted by the applicant, SamNam's export of subject goods to India during the POI is an exception and not a regular trading activity. Moreover, as stated by the applicant, the shareholding of Mitsubishi Chemical Corporation, Japan in SamNam Korea, cannot be considered as having controlling effect on the commercial activities of SamNam Korea without having majority representation in the board of directors.

ix) The Authority notes that the exports made by SamNam Korea RP to India during the relevant period constitute merely \*\*\*% of the total imports from the subject countries and \*\*\*% of the total imports from Korea RP during the POI. Moreover, Korea RP is a subject country in the present investigation and the exports that may be made by SamNam Korea, despite being related party to the MCPI, will also be subjected to the anti-dumping measures. Therefore, no undue benefit will accrue to MCPI out of such relationship in case definitive anti-dumping measures are imposed.

x) The Authority notes that Marubeni Corporation has insignificant shareholding in MCPI. Marubeni Corporation has a wholly owned subsidiary in India namely Marubeni India Pvt Ltd who have imported the product under consideration to India. However, the insignificant shareholding held by Marubeni Corporation in MCPI cannot be construed as having any material effect in the decision making process of MCPI.

xi) As regards the contention that Mitsubishi Corporation, Japan and Marubeni Corporation, Japan are buying subject goods from Korea RP and selling in India through their related entities at low prices, the Authority notes that first of all these contentions are unsubstantiated. Moreover, Japan is a non-subject country in the present investigation.

xii) As regards the contention that Mitsubishi Corporation, Japan and Samsung, Korea entered into a contract to purchase/sell 4000-5000 MT of PTA every month, all of which was destined to the Indian market, the Authority notes that the said contract, if any, is between two independent entities and such commercial arrangement has nothing to do with the status of the domestic industry in the present investigation.

xiii) As regards the contention that Reliance is engaged in converting raw material in its acquired Malaysian plant i.e. BP Chemicals (Malaysia) SdnBhd (BPCM) and re-importing the same to India, the Authority notes that Malaysia is not a subject country in the present investigation and therefore such imports have no relevance. Moreover, imports from Malaysia are de-minimis.

13. In view of the above position, the Authority notes that there is no justification for treating MCPI as an ineligible domestic industry. There are no grounds for believing or suspecting that the effect of the relationship of MCPI with an exporter or importer was such as to cause the company to behave differently from non-related producers. Principal business of MCPI is production and not import/trading. Moreover, had there been any undue benefit accruing to MCPI out of any such relationship then Reliance Industry Ltd, who is the joint applicant, would not have opted to collaborate with MCPI in the present investigation. In view of the above, the Authority considers M/s MCC PTA India Corp. Pvt. Ltd as an eligible domestic producer constituting domestic industry in terms of Rule 2(b) of the Anti-dumping Rules.

14. After detailed examination the Authority holds that M/s MCC PTA India Corp. Pvt. Ltd and M/s Reliance Industries Ltd account for a major proportion of the total domestic production of the subject goods during the POI and constitute domestic industry within the meaning of the Rule 2 (b) and satisfies the criteria of standing in terms of Rule 5 (3) of the Anti- dumping Rules.

#### **D. CONFIDENTIALITY**

##### **Submissions made by Exporters, Importers, Users and other Interested Parties**

15. The submissions made by the producers/exporters/importers/other interested parties with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:

- i. The Applicants have claimed excessive confidentiality, especially for information pertaining to the details of directors of Sam Nam. The claim of confidentiality by the Applicants for the details of the directors of Sam Nam is excessive and required to be struck down.
- ii. Authority has also allowed excessive confidentiality especially with reference to price related information, inventory etc.
- iii. Transaction-wise import data has also not been made available in the public file.

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

16. The submissions made by the domestic industry with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:

- i. The petitioner has claimed only such information as confidential, confidentiality of which has been permitted under the rules and as per consistent practice of the Authority.
- ii. The petitioner has provided sufficient non confidential version of the application. No interested party has been able to point out any specific instance of information which has been claimed confidential and confidentiality of which is not justified under the rules.

- iii. With respect to the claim of confidentiality for the directors of Sam Nam, the fact that there is no control does not mean that the relevant information can be disclosed.
- iv. Information such as gross volume of exports to India, gross volume of sales in domestic market, production, sales, average price for exports to India have been claimed confidential by the respondent exporters. Indeed nothing is commercially sensitive in this information.
- v. Most of the exporters have not even provided indexed information even when information is capable of being summarized in an indexed form.
- vi. The interested parties have resorted to excessive confidentiality in the questionnaire response filed by them.
  
- vii. The non-confidential transaction-wise DGCI&S import data furnished to the Authority can be placed in the public file.

## **EXAMINATION BY THE AUTHORITY**

17. Submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:

- i. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:-

*Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule(2),(3)(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that there quest for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.*

- ii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority notes that any information which is available in the public domain cannot be treated as confidential.
  
- iii. Without prejudice to the Authority's right to file SLP before the Hon'ble Supreme Court against the Judgment of the Hon'ble Delhi High Court dated 18.3.2015 in WP(C) No.744/2015 in the matter of San Disk International Ltd. Vs The Designated Authority & Others, the non-confidential version of transaction-wise details of imports of the subject goods obtained from DGCI & S and relied upon in this final finding have been placed in the public file for inspection by the interested parties.

#### **E. MISCELLANEOUS SUB MISSIONS**

##### **Submissions made by Exporters, Importers, Users and other Interested Parties**

18. The submissions made by the producers/exporters/importers/other interested parties with regard to miscellaneous issues during the course of the investigation and considered relevant by the Authority are as follows:
- i. The initiation of subject investigation and the preliminary findings are bad in law due to grave deficiencies in the eligibility of the applicants, absence of price or profit injury to the applicants and the lack of a causal link between the subject imports and injury.
  
  - ii. In the preliminary findings DGAD did not examine whether provisional duty is required to prevent injury during the course of the investigation. Without such a determination, DGAD should not have recommended imposition of provisional anti-dumping duty.
  
  - iii. There is a huge demand supply gap in India. As against the total demand of 2179204 MT, domestic producers could supply only 1531245 MT. The entire PTA produced in the country is absorbed by the user industry, and only the shortfall in supply is met through imports. Since import of PTA is inevitable, imposition of anti-dumping duty is unwarranted.

- iv. PTA is the basic raw material for Polyester Filament, Staple Fibre, Polyester Film, etc which in turn are used in textiles, packing materials and PET Bottles. Imposition of Anti Dumping Duty on imports of PTA will lead to increase in the prices of PTA in the domestic market and also have adverse effect on the cost of production and marketability of downstream products. Imposition of anti-dumping duty on PTA would curb the production and export of downstream products and cause unemployment. After anti-dumping duty has been imposed, the whole textile industry is suffering due to more imports, less capacity utilisation and more unemployment.
- v. Imposition of antidumping duty on PTA and no antidumping duty on the final products would encourage the domestic buyers to import the final products instead of buying the same from India. As a result, it will not only drain the much required foreign exchange, but also the domestic producers of these import substitutable final products will suffer.
- vi. Since imports of Paraxylene are allowed at zero customs duty, no further protection should be provided to the PTA manufacturers in India. Otherwise, imposition of ADD on PTA would create an inverted duty structure in polyester sector. After imposition of ADD on PTA, the duty has gone up to 10% to 16% whereas the end products attract only 5% import duty. Due to such inverted duty structure, domestic textile industry has suffered in terms of more imports, increased costs of domestic produce, less capacity utilisation and unemployment.
- vii. After Anti-dumping Duty has been imposed on PTA, the capacity utilization of down-stream industries has come down by 10% due to increase of import of Polyester Staple fibre (PSF), Polyester Filament Yarns( PFY) and Polyester Chips and textiles exports from India has decreased.
- viii. RIL is an integrated refinery and chemical company producing PTA from crude oils. The imposition of anti-dumping duty would disadvantage other PET manufacturers and not RIL which has a captive PTA manufacturing facility.
- ix. However, MCCPI is producing PTA from purchased PX. In addition, PX price was significantly high due to supply shortage but PTA price hit the bottom. Accordingly, there should be significant cost difference between RIL and MCCPI and simple cumulation of COP will distort the result of price suppression analysis.
- x. The petitioners stated during the course of oral hearing that the imports of PTA increased after the initiation of the investigation particularly in April – June 2014. It is submitted that PTA users had no option but to increase imports to meet their requirement due to inability of domestic producers to supply. Further, IOCL's plant was completely shut down due to major breakdown for 45 days or more.

- xi. If the Applicants are claiming losses on sale of PTA, then the DGAD may seek information from the jurisdictional Central Excise Commissionerate regarding such losses which may have been reported by the applicants to them. But, the same does not seem to have been done. The non- consideration of this submission has violated the principles of natural justice.
- xii. With the imposition of provisional anti-dumping duty on PTA, all the domestic producers, except RIL, have increased the price of PTA. The downstream polyester industry has been severely and unjustly impacted as the raw material cost (both domestic and imports) has increased by the amount of anti-dumping duty for all polyester producers except RIL. Thus, the imposition of anti- dumping duty to protect the alleged injury to PTA manufacturers has resulted in grave injury to the downstream polyester industry.
- xiii. RIL enjoys preeminent position in domestic fibre intermediate market with 51% share in PTA market. RIL enjoys a dominant position in the downstream products as well. They also have embarked upon capacity expansion in PTA production. Imposition of ADD on imports of PTA will give RIL a monopolistic position in PTA and downstream products. Reliance has increased the PTA prices but not the prices of downstream products and thus engaged in predatory pricing.
- xiv. The demand of subject product, fresh PTA, would have increased at a faster pace if certain users of PTA had not shifted to the use of recyclable material, such as PET bottles, which is a substitute for fresh PTA. Designated Authority is required to analyse how the demand may have grown if certain users of PTA had not shifted to the use of recyclable material.
- xv. Subsequent to the imposition of provisional anti-dumping duty, imports of Polyester Filament Yarn (PFY) and Polyester Staple Fiber (PSF) have started increasing and cost of raw material for them increase, therefore, the user industry which was already working on suboptimal capacity of around 65% to 70% has further cut down their capacities by 10% in both Polyester Filament Yarn & Staple Fiber. Such reduction in capacity utilisation reduced the off take of PTA, which may have resulted in inventory, though not so admitted by the Respondents.
- xvi. Analysis of post-POI data for determination of injury is completely unwarranted in the present investigation.
- xvii. Merely because China has imposed anti-dumping duties on the imports of PTA from Korea and Thailand, it does not mean that exports are being shifted to India. The imposition of anti-dumping duty by another country cannot substitute the investigation which is to be undertaken by the DA. Mere existence of surplus capacities in these countries does not mean that the subject product would be

dumped into other countries.

- xviii. Retrospective imposition of anti-dumping duty is not sustainable under the law as the Designated Authority has already issued the PF. There is no history of dumping on the part of the exporters of the subject product, nor are the users aware of any dumping by the exporter concerned. The Applicant Domestic Industry is suffering injury due to its own intrinsic problems and not due to imports of the subject product. Praying for imposition of Anti-dumping Duty on the subject product with retrospective effect is only a tactic resorted by the Applicant Domestic Industry to mislead the Designated Authority and enjoy undue gain out of this.
- xix. The Designated Authority is required to provide to the interested parties the basis on which raw imports data from DGCI&S is sought, the methodology followed to refine the transaction wise import data; the refined import data and its summary for the meaningful analysis and submission on such import data. The DA is requested to make available the information relied upon. The Authority is also requested to grant a hearing after the requested information is made available.
- xx. The DA is requested to disclose the basis and evidences used to make adjustments in assessable value to reach the ex-factory export price for non-cooperating exporters.
- xxi. The DA may also disclose all essential facts in the disclosure statement and grant an opportunity of hearing thereafter.

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

19. The miscellaneous submissions made by the domestic industry during the course of the investigation and considered relevant by the Authority are as follows:

- i. None of the responding exporters have fully replied to the question with regard to valuation of Paraxylene. Further, only Samsung Petrochemicals and SK Petrochemicals have affiliated companies who are producing Paraxylene and supplying to these companies.
- ii. Questionnaire responses are grossly deficient; the authority should reject the same at least for the purpose of preliminary findings.
- iii. Questionnaire responses by the exporters does not make it clear how the producer concerned has produced and supplied the goods to a trading company who has eventually supplied the goods to India.
- iv. With respect to the argument that PX supply shortage and low capacity utilisation of its downstream industry will give RIL an advantage, the purpose of anti-dumping duties is to allow healthy competition.
- v. The contention that initiation of investigation is bad in law due to lack of standing of

the Applicants and also absence of injury and a causal link, is baseless. The applicants have standing under the rules. The petition contains sufficient evidence of dumping causing injury to the domestic industry to justify initiation of investigations.

- vi. The entire current market situation is because of significant unutilized capacities in subject countries and significant capacity additions in China. With the massive fresh capacity additions in China in last 2-3 years, the current demand/consumption of PTA globally is far less than the current global capacities, thus resulting in significant surplus capacities with the producers in Korea and Thailand. The Korean and Thai producers have capacities for PTA production far in excess of their domestic market demand. The surplus production was earlier being exported largely to China. However, imposition of anti-dumping duty by China on one hand and massive capacity additions in China on the other hand have led to significant loss of market for the Korean and Thai producers. Faced with significant market loss, the producers in these countries are now looking for other market opportunities to utilize their capacities.
- vii. The movements in the prices of PTA closely follow those in the cost of the major raw material, para- xylene. The price difference between PX and PTA (known as “delta” in the business) should at the least be US\$ 150 per MT as the bare minimum. However, global producers have been experiencing shrinking margins of PX and PTA and consequently, PTA producers globally are suffering huge financial losses.
- viii. The Indian industry is in the process of enhancing capacities in view of the demand-supply gap in the Country. This involved significant capital expenditure by the company.
- ix. Petitioners are not against imports per se. In a situation where the imports are inevitable, it wouldn't be prudent for any business entity to aggressively sell at cheap price, when it is a very well known fact that the goods can be sold at reasonable prices in the market as the demand is more than the capacity with the domestic producers.
- x. Thus, when the imports are inevitable; there is no reason for the foreign producers to depress the prices for the product in the Indian market, that too discriminately for the Indian market. The only plausible explanation is the surplus capacities with the foreign producers. The surplus unutilized capacities with the foreign producers are forcing them to sell their product aggressively in the Indian market. China has imposed anti-dumping duties on imports of PTA from Korea and Thailand. As a result, exporters from Korea and Thailand have started diverting exports of PTA to the Indian market. During the last two years, the domestic industry has suffered losses to the extent of Rs. 5 Crore per day.

- xi. After imposition of the provisional ADD, PTA user industry is maliciously misrepresenting the facts about the impact of the ADD on the downstream industries. The exports of manmade fibre and textiles have gone up contrary to the contention of the opposite interested parties.
- xii. There has been a continuous fall in the prices of filament yarn which has helped in growth of manmade fabrics production and exports. PSF is also sold at very low prices in India. It is therefore wrong to say that ADD on PTA has affected the industries manufacturing yarn and fabric. Instead, the surge in imports of PSF and PFY from China PR is affecting the Indian downstream industries of manmade fibre. In order to stop China from ruining the PSF and PFY Industry, the Customs Duty on these products should be increased from 5% to 10%.
- xiii. Since the imposition of anti dumping duties the price of PTA and other raw material are falling. The prices of downstream fibre, yarn or fabric are not affected by imposition of anti dumping duties. In fact the Indian domestic PTA and MEG prices, the basic raw materials for polyesters, have moved in tandem with the international prices, unaffected by the ADD.
- xiv. Polyester filament yarn is 3/4th of the total polyester consumed in the country by downstream yarn and weaving industry and Indian Producers are selling Filament yarn at below the landed prices of china with negative EBITDA.
- xv. The imports of manmade fibre from china is impacting the downstream yarn and fabric industry as India impose duty on these tariff lines while China impose 18% custom duty.
- xvi. The PTA user association is misrepresenting the facts that imposition of anti dumping duties has affected thousands of downstream yarn and fibre units. Polyester fibre is used only in 30-35 spinning mills for making polyester Yarn. There are 105 spinning mills in India using polyester to blend with other fibres in making Polyester Cotton and polyester Viscose yarn. Therefore only 150 downstream mills are using polyester.
- xvii. There are around 300 mills located in India producing polyester fabric in fragmented section. These mills are affected by cheaper imports from china. Thus claim of PTA user association to mention thousands of downstream units is incorrect.
- xviii. There is massive dumping in a relatively short period and injury to the domestic industry is aggravating. Designated Authority should consider retrospective imposition of anti dumping duty.
- xix. The opposing interested parties argued that since all polyester producers purchase PTA at international market prices, imposing anti-dumping duty will create a price disadvantage to the Indian polyester industry. The argument is without any basis and irrelevant for the present purpose. The significance and purpose of anti-dumping

duty is to provide a level-playing field to the domestic industry by preventing dumping, while allowing for healthy competition. If PTA is purchased at international market price and still is at dumped levels, it would mean that the foreign producers are dumping the product. If such dumping is causing injury, anti dumping duty is required to be imposed.

- xx. In fact, while developed economies such as USA and developing countries such as China are imposing anti dumping duty upto the margin of dumping, the Indian law restricts it to injury margin and India has now invented the least duty rule by introducing the concept of NIP. In fact, while both major countries, Korea and Thailand Govt. considers that dumping should be condemned by imposing anti dumping duty upto the margin of dumping, the exporters wish that the Govt. of India does not impose anti dumping duty even upto the margin of injury!
- xxi. Further, it is not established how imposition of anti dumping duty will create a price disadvantage to the Indian polyester industry. Since the anti-dumping duties are imposed on non-discriminatory basis, it would have no discriminatory impact on any particular producer of polyester. As far as competitiveness of Indian polyester producers in global market is concerned, anti-dumping duty in any case will not apply for imports under duty exemption Scheme.
- xxii. The contention that Designated Authority should carry out individual as well as combined examination of applicants has no legal basis. There is no legal requirement for such analysis either in AD Act or Rules or no such practice is adopted by the Designated Authority or any investigation authorities in other countries.
- xxiii. The fact that there is absence of control does not imply that there is no sensitivity in the information. For instance, a person/party holding 5% shareholding in a company is not clearly able to control the company. It, however, does not imply that the person cannot seek some information from the company concerned which is otherwise not public domain information.
- xxiv. It has been argued by the opposing interested parties that Designated Authority has violated Article 7 of WTO ADA as he has not examined the issue whether provisional duty is required to prevent injury during the course of the investigation; the petitioners submit that the preliminary findings at para 105 clearly demonstrate need for imposition of provisional duty.
- xxv. It has been argued by the opposing interested parties that imposition of anti-dumping duty will result in an unduly high burden on the Indian users and various downstream industries which depend on the subject product as a raw material. They have further argued that imports of PSF and PFY have increased by approx 80%-130% in last 6 months. In this regard, the domestic industry submits that it has been amply demonstrated that injury has been caused by dumping of the product under consideration from subject countries. The Indian manufacturers of product under consideration cannot be allowed to suffer because of some apprehensions of the

interested parties without any document corroborating their claims. Further, the association has extensively contended that the injury margin in the present case is quite low. Such being the case, petitioners fail to understand and appreciate how the anti dumping duty would cause unduly high burden. In fact, anti dumping duty has taken away unfair advantages gained by the consumers due to access to dumped imports. However, the consumers cannot demand access to material at dumped prices particularly when the same is causing injury to the domestic industry.

- xxvi. It has been argued by opposing interested parties that the entire product of PTA in India is absorbed and only the shortfall in supply is met through imports. They have further argued that due to the imposition of ADD the importers are forced to increase the cost in a market where there is already a shortage of PTA. The petitioners submit that they had inventory close to \*\*\* MT in October, 2014. In a situation when the domestic industry is unable to dispose off their inventories, the statement of the importers that they are importing because of non-availability of the material in India does not hold good and is factually incorrect. The fact that the consumption in India is higher than the capacities with the Indian producers may justify imports per se. The same however does not justify dumping. There is no reason/occasion for the foreign suppliers to resort to dumping to meet Indian demand.
- xxvii. As regards the contention that there is significant demand supply gap and even if the domestic industry work at 100% capacity utilization, it cannot meet the demand. Imports are inevitable, domestic industry submits that if the foreign producers wish to meet the requirements of Indian customers for the product under consideration, they can very well do so by selling the product at fair prices and not at dumped prices. Dumping does not justify meeting the requirement of the domestic industry.
- xxviii. The imports from China and Europe are not de-minimis. It is possible that some material was exported by exporters in Korea, Thailand or some other countries to China and Europe and the material was however not cleared in China and Europe and the same was transshipped to India. In such a situation, these imports should be considered as Chinese or European imports.
- xxix. Even if the volume of imports from China and European Union in the POI is considered as de- minimis, the same does not imply that the investigation must be terminated in respect of China as well as European Union. In such a situation, Rule 14 provides consideration of both actual and potential imports. If actual import is de-minimis, the Authority should consider potential import.

#### **EXAMINATION BY THE AUTHORITY**

- 20. Various submissions made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined as follows:
  - i. The contention of the opposing interested parties that the initiation of investigation is bad in law due to lack of standing of the Applicants and also absence of injury and

causal link is without any basis. The present final finding is self explanatory in this regard.

- ii. As regards the argument by the opposing interested parties that Authority has not examined the issue whether provisional duty is required to prevent injury during the course of the investigation, the Authority notes that the preliminary findings at para 105 establishes the need for imposition of provisional duty.
- iii. As regards the contention that there is huge demand supply gap in India and since import of PTA is inevitable, imposition of anti-dumping duty is unwarranted, the Authority notes that there is no legal provision mandating the domestic industry to meet the entire demand in the country. Further, given a situation of fair play, the domestic industry would be in position to meet the entire demand in the country within its capacity. Moreover, the domestic industry is in the process of expanding its capacity commensurate with the demand in India. Once that is achieved and fair play is ensured through imposition of anti-dumping duty, the domestic industry would be in a position to meet the entire domestic demand.
- iv. As regards the contention that PTA is the basic raw material for many downstream products and imposition of anti-dumping duty on imports of PTA will escalate the cost of production of such products, having adverse effect on their marketability and viability, the Authority notes that the object of imposing anti-dumping measure to is to rectify unfair trade practices and to redress its injurious effect by providing level playing field to domestic industry. The concern of the opposing interested parties that imposition of anti-dumping duty on the imports of PTA would adversely affect production of downstream industries is farfetched and premature. The imposition of provisional ADD ranging from 2% to 11% may have a cost push effect of about 2 – 3% on the cost of production of PFY and PSF.

Thus, considering the quantum of the provisional antidumping duties imposed, the impact on the cost of production of the products of the downstream industries is not much. The end users of PTA, who have been benefitting out of dumping, would now have to pay for the raw materials at undumped/fair prices. Moreover imposition of anti-dumping measures does not prevent imports.

- v. As regards the contention that imposition of antidumping duty on PTA and no antidumping duty on the final products would lead the domestic buyers to import the final products and consequently drain the foreign exchange reserves of the country, the Authority notes that the objective of imposing anti- dumping measures is to create a level playing field for the domestic industry against the unfair trade practices of dumping.
- vi. As regards the contention that since import of Paraxylene, the main raw material for PTA, is allowed at zero customs duty, no further protection should be provided to the PTA manufacturers in India, the Authority notes that imposition of anti-dumping duties are intended to protect domestic industry against dumping. Factoring duty free raw materials, if any, has no relevance in the determination of anti-dumping measures.

- vii. As regards the contention that imposition of ADD on PTA would create an inverted duty structure, the Authority notes that the Basic Customs Duty (BCD) on PTA as well as downstream products is the same i.e. 5% before as well as after the imposition of AD duty on PTA. Since imposition of ADD is to offset the unfair advantage gained by the importers of PTA, it cannot be considered as part of BCD. Therefore, the contention of opposing interested parties that imposition of ADD on PTA would create an inverted duty structure is not correct.
- viii. The contention that imposition of anti-dumping duty would disadvantage other PET manufacturers and not RIL which has a captive PTA manufacturing facility, the Authority notes that the final finding concerning injury to the domestic industry on account of dumping of the subject goods from the subject countries is self explanatory. However, it is obvious that the industries having backward integration will have certain cost advantage vis-a-vis others not having such facilities. The Authority further notes that injury to the domestic industry is required to be analysed for domestic industry as a whole and not in a segmental manner.
- ix. As regards the contention that DGAD may seek information from the jurisdictional Central Excise Commissionerate regarding losses claimed by domestic industry on sales of PTA, the Authority notes that the injury analysis has been done on the basis of verified data.
- x. As regards the contention that imposition of anti-dumping duty on imports of PTA would give RIL a monopolistic position and enable RIL to engage in predatory pricing to the detriment of other similar producers, the Authority notes that such a situation is hypothetical. Imposition of anti-dumping duty does not bar imports. The objective of imposing anti-dumping measures is to create a level playing field for the domestic industry against the unfair trade practices of dumping. However, in the event of such a situation, the affected parties can approach the Competition Commission.
- xi. The Authority further notes that the argument that imposition of anti-dumping duty on the imports of the subject goods would accrue undue advantage to domestic Industry is presumptuous. Anti-dumping investigations are based on facts and the law mandates analysis and assessment of magnitude of dumping and consequent injurious effect on the domestic industry. The Authority further notes that the antidumping rules provide for imposition of suitable and adequate anti-dumping measure to provide a fair and level playing field to the domestic industry vis-à-vis dumping.
- xii. As regards the contention that the demand of PTA would have increased at a faster pace if certain users of PTA had not shifted to the use of recyclable material, such as PET bottles, the Authority notes that the contention has no relevance to the determination of dumping, injury and causal link.
- xiii. The contention of the opposing interested parties that imposition of anti-dumping

duty on the imports of PTA has resulted in more imports, less capacity utilisation and more unemployment in textile sector, the Authority notes that the opposing interested parties have not furnished any substantiated evidence to support their contention that the textile industry has been affected only due to imposition of antidumping duty on PTA.

- xiv. The contention of the opposing interested parties that mere existence of surplus capacities in subject countries does not mean that the subject product would be dumped into other countries, the Authority notes that facts and analysis of the instant investigation in this final finding is self-explanatory. The favourable market situation in India coupled with global surplus production is a major attraction for the producers of PTA in the subject countries suffering from surplus capacities.
- xv. As regards the contention of the opposite interested parties that the DA is required to make available the transaction-wise imports data obtained from the DGCI&S including the refined data and its summary, the Authority notes that without prejudice to the rights of Designated Authority to file SLP before the Hon'ble Supreme Court challenging the judgment dated 18.03.2015 of the Hon'ble High Court of Delhi pronounced in the matter of SanDisk International vs. Designated Authority, the Authority has placed the non-confidential version of the transaction-wise DGCI&S import statistics of subject goods in the public file. As regards the contention of the opposite interested parties to have access to the refined data and its summary, the Authority notes that the interested parties can examine the DGCI&S import data placed by the Designated Authority in the public file and file necessary submissions.
- xvi. As regards the contention of the opposite interested parties that hearings should be granted by the Authority at the stage of providing transaction-wise imports data as well as post-disclosure, the Authority notes that an opportunity of oral hearing has already been provided to the interested parties on 19th November, 2014 and the written submissions including rejoinders made by the interested parties post oral hearing as well as the submissions made during the course of this investigation by the interested parties, including submissions made post-disclosure statement, and considered relevant have been examined and addressed in this final finding.
- xvii. The domestic industry has argued that the imports from China PR and European Union (EU) are not de-minimis as per the import data obtained by them from the DGCI&S. In this regard, the Authority notes that at the time of issuing the preliminary finding the transaction-wise imports data obtained by the Authority from DGCI&S was relied upon. While analysing the said data at the stage of preliminary finding, the Authority had considered the country code given in the DGCI&S data under the field name "cntry\_org" as Country of Origin and accordingly determined the volume of imports during POI for the subject countries. Accordingly, the volume of imports from China PR and EU during POI was determined as 22160 MT and 27896 MT respectively, which was considered to be above de minimis level.

Subsequent to the issue of the preliminary finding, some of the interested parties argued that the volume of imports from China PR and EU was below de-minimis as per the import data available in the website of the Department of Commerce. The

Authority, therefore, sought clarifications from DGCI&S about the mismatch in the data provided by them to the domestic industry as well as the data hosted on the website of Department of Commerce.

The DGCI&S has informed on 26<sup>th</sup> March, 2015 that the transaction wise import data provided to the domestic industry during July, 2013 was provisional in nature as at that point of time, the complete data for 2012-13 was not available. DGCI&S further informed that due to some software glitches, the country of consignment, IEC No., etc., had been erroneously posted for some of the bills of entries and the same were rectified subsequently. As a result, there were major changes in the country-wise distribution of commodities imported in the year 2011-12 and 2012-13. Thereafter, the revised data was hosted on the website of Department of Commerce.

Further clarification was sought from DGCI&S on 26<sup>th</sup> March, 2015 on the exact reasons why there was discrepancy in the November 2103 data of 2012-13, and the recent clarification of DGCI&S as stated above.

DGCI&S, vide their communication dated 27.3.2015 informed that the country codes appearing under the field name (cntry\_org) contains unvalidated data and does not represent Country of Origin. It has further informed that the data appearing under the field name "cntry\_code" provides validated data which should be used for generating country-wise imports. The clarification given by DGCI&S in this regard is as follows:

*"It seems while generating the data relating to total imports from China and EU, DGAD had considered the country codes appearing under the field name "cntry\_org". Since this field contains un-validated data, the data appearing under the field name "cntry\_code" (which provides the validated country codes) was to be used for generating the country-wise totals. The variation (discrepancy) in the 2 sets of figures is only because of selecting the un-validated field (cntry\_org) in place of the validated field (cntry\_code). Had the appropriate field (cntry\_code) been selected there would not have been any variation (discrepancy) in the total quantity numbers for China and EU as forwarded in November 2013 and clarified in March 2015.*

*It may also be mentioned that DGCI&S does not receive any data from Customs relating to imports by country of origin. This was also clarified in the mail dated 18.03.15 from DGCI&S.*

*The reasons for discrepancy between the data provided to the domestic industry in July 2013 and that provided to DGAD had been briefly indicated in our mail dated 26.03.15. We may further clarify that the EDI data received from ICEGATE (Customs) comes in two parts. For each Bill of Entry (for import) there is a master record containing information like Country of consignment, IEC (importer exporter code), gross weight etc., and one or more item records containing information on item imported, quantity, value etc.*

*At the first stage of processing the item and master records are merged. If for one BE (Bill of Entry) there are 4 item records and one master record there will be four merged records with the master information repeated in all the four.*

*For this merging process, the item and master records are matched by the BE no. and BE date. The BE no., which were of 6-digits earlier increased to 7-digits. Since the DGCIS database had provisions for 6-digit BE number, the 7-digit nos. got truncated by 1-digit resulting in the same BE no. for two or more otherwise distinct 7-digit BE nos. For example two BEs with no. 1234567 and 1234568 got truncated to the same BE no. 123456. This affected the matching process and the master information which contains country of consignment code, IEC code, gross weight etc. had been erroneously posted for those BEs in which the first 6-digits are the same (as in the example above).*

*Since there was no provision in the software for generation of error message on account of such exceptions, it took quite some time for DGCIS to locate the errors. However the software was rectified as soon as the error was detected. As a result import data for 2011-12 and 2012-13 had been revised as far as master information is concerned. This affected the country wise numbers.*

*The data that was forwarded to DGAD in November 2013 was generated from the revised dataset.”*

Therefore, in the interest of justice, fair play and correct analysis, it is incumbent upon the Authority to amend the volume of imports from China PR and EU as mentioned in the preliminary findings and reflect the correct position in the final findings. A mistake apparent on record has to be corrected in the interest of justice. The Authority, therefore, concludes that the volume of imports from China PR and EU considered in this final finding, is below de minimis level.

- xviii. The domestic industry has argued that even if volume of imports from China in the POI is considered as de-minimis, the Authority shall not terminate the investigation and rather should consider the potential imports. In this regard, the Authority notes that the potential position is a subject of review investigations to analyse and establish the likelihood of dumping and injury and not for fresh Anti- dumping investigations. As per Annexure II of the Anti-dumping rules, while determining the injury in a fresh anti-dumping investigation, the Designated Authority is required to conduct an objective analysis of the volume of imports of subject goods from the subject country during the POI and their impact on the domestic industry to examine causal link. Rule 14 of the Anti-dumping Rules inter alia provides that the investigation shall be terminated if the volume of dumped imports, actual or potential, from a particular country accounts for less than 3% of the imports of the like product. The reading of the Rules makes it clear that the investigation should be terminated when either the actual imports or the potential imports account for less than 3% of total imports and

therefore the argument of the domestic industry that when the actual dumped imports are de minimis, the potential imports should also be considered before taking a decision for terminating the investigation is not correct. Further, the arguments of the domestic industry that it is possible that some material was exported by exporters in Korea, Thailand or some other countries to China and Europe and the same might have been transhipped to India is mere conjecture and unsubstantiated.

**F. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN Submissions made by Exporters, Importers, Users and other**

**Interested Parties**

21. Various submissions made by the interested parties with regard to Normal value, export price and dumping margin and considered relevant by the Authority are examined and addressed as follows:

- i. Due to fluctuation of raw material and PTA prices, the ordinary course of trade (viability/COP) test (80:20) and dumping margin/injury margin, if applied based on average cost for the POI, would be totally erroneous and illogical. For proper comparison between cost and price, viability test is to be applied on a monthly basis and dumping margin calculated for every month. Adopting one cost based on average for the POI for applying viability test (80:20) will lead to skewed results.
- ii. PTA is traded and sold to different categories of customers (end users and distributors). If sales are made to distributor, exporter incurs less distribution cost.
- iii. The subject goods are exported as packed and as bulk. Cost of different types of packing should be neutralized both in cost of production and domestic sales while applying the viability test.
- iv. PTA prices are determined by international market prices which are announced by chemical market price information websites. RIL having predominant market share determines its sales price according to international market price plus import duty and import related expenses. MCPI and IOC follow RIL's prices. Korean producers also determine export price on the basis of international price. Since ICIS announces prices on a weekly basis, monthly average weekly price can be calculated only after month-end closing of the shipment. Therefore, Korean producers apply tentative price and make a settlement on a monthly basis. Import price from Korea is almost the same as average monthly price issued by ICIS, PLATTS and PCI after considering ocean freight and payment term differentials. Domestic market price in Korea is also determined based on international market price. Therefore, dumping by Korea is incorrect.
- v. Hyosung Trading PG is not a separate company, but only a division of Hyosung Corporation. The Trading PG purchased the subject product from other producers

like S.K. Petrochemical, Samnam Petrochemical and Lotte Petrochemical and exported to India during the POI. Hyosung Corporation procures the subject product from other producers since more than half of consumed internally and the balance is not sufficient to meet the global demand.

- vi. Hyosung Corporation's production of subject product is essentially of higher purity. The Trading PG mainly purchases and sells the MTA (Medium Quality Terephthalic Acid) to meet the specified demand of the Indian Customers.
- vii. S.K. Petrochemical is not a related party of Hyosung Corporation. Due to huge capacity expansion in China, S.K. Petrochemical could not compete and therefore closed down. Hence S.K. Petrochemical will not further participate in the investigation.
- viii. Article 6.10 of the WTO Anti-Dumping Agreement places an obligation upon the investigating authority to determine an individual margin of dumping for each known exporter or producer.  
  
DGAD should determine a separate margin of dumping and recommend a separate rate of duty for Indorama Petrochem Limited, Thailand and TPT Petrochemicals Public Limited Company, Thailand.
- ix. Rejection of the exports data furnished by Zhejiang Yisheng Petrochemical Co Ltd on the ground of insignificant volume is illegal and erroneous.
- x. The volume of the imports from China PR being miniscule could not have caused injury to the domestic industry.
- xi. Denial of market economy treatment to Zhejiang Yisheng Petrochemical Co Ltd and its related associates is erroneous as they have furnished sufficient evidence that they operate under market economy condition.

#### **Submissions made by the Domestic Industry**

22. Submissions made by the domestic industry with regard to Normal value, export price and dumping margin during the course of the investigation and considered relevant by the Authority are as follows:

- i. With respect to the claim that market prices of crude oil, naphtha, PX and PTA are determined based on international market price and global economy and demand/supply condition are the main factors for price fluctuation, it is submitted that the present investigation is against imports of PTA and therefore the price fluctuations of Paraxylene, being the major raw material and PTA itself are relevant for the present investigation and not other cited factors.
- ii. With respect to the claim that RIL has the predominant market share and the other producers follow its price, in fact sales volumes of RIL do not constitute predominant position. The responding party concedes that MCPI prices are linked to import prices and not RIL prices. Even RIL prices are linked to import prices.

- iii. The claim that import price from Korea is almost the same as average monthly price issued by ICIS, PLATTS and PCI, after considering ocean freight and payment term differentials, shows that the Korean producers have followed international prices in exports to India and have not considered their domestic prices and cost of production. Thus if domestic prices are higher and such domestic prices are profitable, it establishes dumping by the Korean producers/exporters.
- iv. The claim that the domestic market price in Korea is also determined based on international market price does not prove that the exporters are not selling the product in India at dumped prices. If domestic market price in Korea is also the same as the international market price, it implies that the Korean producers are suffering financial losses, considering the prevailing PX prices during the relevant period.
- v. Questionnaire responses do not make it clear how the producer concerned has produced and supplied the goods to a trading company who has eventually supplied the goods to India. Whether the sales channels declared in the EQ responses are complete or there are still more, should be got clarified from the respondent exporters.
- vi. The dumping margin determined by the Authority in the preliminary findings is grossly low.
- vii. Any price which does not represent comparable price in the ordinary course of trade for the like article when meant for consumption in the exporting country cannot be taken for determination of normal value. Considering Paraxylene (PX) price and conversion costs, all producers in the subject countries are suffering losses. The selling price of the product in the domestic market of subject countries are not in the ordinary course of trade for the reason that the said price does not permit recovery of cost of production in the domestic market. Therefore, the prices prevailing in subject countries cannot be adopted for determination of Normal Value.
- viii. PX price paid by MCPI and Korean companies cannot be materially different. There could be three sources of Paraxylene for the responding producers - (a) own production; (b) procurement from related party; (c) procurement from unaffiliated parties. In case the procurement is from an unaffiliated party, the procurement price must be comparable to the prevailing prices in the international market. In case a producer has purchased Paraxylene from affiliated supplier, then also the purchase price must confirm to the price prevailing in the international market.
- ix. The foreign producer is required to provide the following information in case any material is purchased from related supplier or captively produced:
  - a. the basis of pricing of the material considered
  - b. how exporter considers that the pricing considered is reflective and representative of a fair market price
  - c. provide purchase prices from independent parties for an identical or comparable input product.
  - d. provide cost of production of the item procured captively or from an affiliated supplier.

- x. Designated Authority is required to consider whether the procurement prices from an affiliated supplier is representative of market values.
- xi. None of the foreign producers of PTA for whom the Designated Authority has determined individual dumping margin and ADD are having their own Paraxylene production. Such being the case, the consumption price reported by them should conform to the international prices as reported in the trade journals. The authority should examine the same by corroborating the consumption/purchase price with the prices reported in the trade journals.
- xii. Normal value determination cannot be restricted to producer concerned. In a situation where about majority of the market is being supplied by imported goods and further in a situation where the domestic producer is selling about 80-90% of its domestic sales to an affiliated company and remaining 10-20% (which forms hardly 3-5% of total sales of the product under consideration), and further in a situation where the domestic producer is selling the product at a price which is 30-40% below the market price, moot question that arises for consideration is why the producer is selling the product at such a low prices. It is evident that such sales transactions do not represent comparable prices in the ordinary course of trade.
- xiii. Designated Authority is not bound to adopt the cost of production of the exporter without satisfaction whether the same reasonably reflect the cost associated with production and sale of the product under consideration. For conducting a fair and proper comparison, the Authority is requested to modify the cost of production in respect of PX prices.
- xiv. Injury to the domestic industry has continued even after imposition of anti dumping duty because of low quantum of anti dumping duty which is not sufficient to counteract dumping.
- xv. Petitioners are not against imports per se. In a situation where the imports are inevitable, it wouldn't be prudent for any business entity to aggressively sell at cheap price, when it is a very well known fact that the goods can be sold at reasonable prices in the market as the demand is more than the capacity with the domestic producers.
- xvi. Thus, when the imports are inevitable; there is no reason for the foreign producers to depress the prices for the product in the Indian market, that too discriminately for the Indian market. The only plausible explanation is the surplus capacities with the foreign producers. The surplus unutilized capacities with the foreign producers are forcing them to sell their product aggressively in the Indian market.
- xvii. There is massive dumping in a relatively short period and injury to the domestic industry is aggravating. Designated Authority should consider retrospective imposition of anti dumping duty.
- xviii. None of the WTO Member countries have granted market economy status to Chinese producers on the basis of the latest detailed evaluation of relevant criteria, which

includes the criteria specified in sub paragraph 8(3). Therefore, none of the Chinese companies should be granted MET and normal value for China should be constructed in terms of Rule 7 of the AD Rules.

- xix. As regards the issue concerning insignificant volume of exports made by Zhejiang Yisheng and its associates, it is submitted that the exporter must establish how its prices are representative of the prevailing prices. For instance, a party cannot claim individual dumping margin based on sample sales.
- xx. As regards the contention that the volumes of the imports from China PR are miniscule and could not have caused injury to the domestic industry, it is submitted that the volume of imports from China PR is above de minimis and is sufficient to cause injury to the domestic industry.

### **Examination of the Authority**

23. Since in this investigation, China PR and EU have been excluded from the purview of the subject countries for the reasons explained in Para 19(xvii) above, the Authority does not consider it relevant to examine the issues concerning these countries. However, the submissions made by the interested parties with regard to normal value, export price and dumping margin in respect of the subject countries in this investigation (Korea and Thailand) are addressed by the Authority as follows:

- i. As regards the contention that due to fluctuation of raw material and PTA prices, the ordinary course of trade test and determination of dumping margin/injury margin should be made on a monthly basis, the Authority has done month wise analysis.
- ii. As regards the contention that when sales are made to distributors, exporter incurs less distribution cost and the same should be taken in to account while determining export price, the Authority notes that the export price in respect of cooperating exporters has been determined in terms of verified data and relevant rules.
- iii. As regards the contention that the subject goods are exported in packed and bulk forms and therefore cost of different types of packing should be neutralized both in cost of production and domestic sales while applying the viability test, the Authority notes that the normal value and the non-injurious price are determined in terms of the laid down rules and as per prevailing practice in the DGAD.
- iv. As regards the contention that since market prices of crude oil, naphtha, PX and PTA are determined based on international market price, global economy and demand/supply condition are the main factors for price fluctuation, the Authority notes that the present investigation is against imports of PTA and therefore the price fluctuations of Paraxylene, being the major raw material and PTA are relevant for the present investigation and not other cited factors.
- v. The opposite interested parties have contended that dumping by Korea is factually incorrect as Korean producers determine sales price on the basis of international prices so as RIL as well as MCPI and IOC, the Authority notes that as per the Anti-dumping Law, actual dumping margin is calculated as the differential between the Normal Value of the subject goods and the actual

export prices of the subject goods at ex-factory level. If the normal value is more than the export price, dumping margin is positive irrespective of the fact that export price has been determined by the exporter on the basis of international price.

#### **G. Determination of Normal Value**

##### **Determination of Normal Value for producers and exporters in Korea RP and Thailand** **Determination of Normal Value for producers and exporters in Korea RP**

24. Under section 9A (1) (c), the normal value in relation to an article means:

- (i) *The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
- (ii) *When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*
  - (a) *Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
  - (b) *The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section(6):*

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of exporter there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

#### **Korea RP**

25. The following producers/exporters from Korea RP have filed exporter's questionnaire response:

- a. SK Petrochemical Inc, Korea RP (producer) along with Mitsubishi Corporation, Japan (exporter)
- b. Hyosung Corporation, Korea RP

- c. Samsung Petrochemical Co. Ltd., Korea RP now known as Samsung General Chemicals Co Ltd (producer) and Samsung C&T Corporation, Korea RP (exporter).
- d. Taekwang Industrial Co Ltd, Korea RP (producer/exporter)

**SK Petrochemical Inc, Korea RP.**

26. In the present investigation, SK Petrochemical Inc, Korea RP (producer) had filed exporter's questionnaire response along with Mitsubishi Corporation, Japan (exporter). In the exporter's questionnaire response, SK Petrochemical Inc declared that they have only one channel of domestic sale and sold the subject goods in the domestic market directly to the customers in the POI. It has been further declared that the Company sold the product concerned in the domestic market to both end-users and distributors; however, there is no difference in sales process depending on the class of the customer. From the exporters questionnaire response the Authority notes that the Company has exported substantial volume of the subject goods to India during the POI through two other companies namely Mitsubishi Corporation, Japan and Hyosung Corporation, Korea RP, another respondent Company in the present investigation. The Company exported \*\*\* MT of subject goods through Mitsubishi Corporation, Japan and \*\*\* MT of subject goods through Hyosung Corporation, Korea RP. Subsequent to the filing of exporter's questionnaire response, SK Petrochemical Inc. Korea RP informed that they have stopped production of the subject goods and opted out of the present investigation. Since, SK Petrochemical Inc. Korea RP opted out of the present investigation; the Authority does not consider it necessary to determine normal value for the Company.

**M/s Hyosung Corporation, Korea RP**

27. In the exporters questionnaire response the Company declared that during the POI they had two channels of sales in domestic market viz; sales made directly to unrelated domestic end-users and sales made to distributors. From the exporters questionnaire response the Authority notes that the Company has made exports to India during the POI through three channels -:
- a. Direct exports of self produced subject goods,
  - b. Exports of self produced subject goods through unrelated traders namely Mitsui & Co, Korea RP.
  - c. Exports of subject goods produced by other producers namely SK Petrochemical, Lotte Chemical and Samnam Petrochemical.
28. The data/information furnished by the Company was verified by the Authority. The Authority notes that during the POI, the Company made \*\*\* domestic transactions of subject goods to non-affiliated parties for a total quantity of \*\*\*MT for a total value of KRW \*\*\*.
29. As regards exports of subject goods to India during the POI, Hyosung Corporation has 3 channels – direct exports, exports through unrelated trading companies and export of subject goods produced by other Korean producers. During the POI, the Company directly exported to India \*\*\* MT of subject goods for a total value of KRW \*\*\* (USD \*\*\*). During the POI, the Company also exported \*\*\* MT of subject goods to India for a total value of KRW \*\*\* (USD \*\*\*) through Mitsui Corporation, an unrelated trading company, which has not filed exporter's questionnaire response in the present investigation. Further, during the POI, the Company exported \*\*\* MT of subject goods worth of KRW \*\*\* (USD \*\*\*) produced by other Korean producers namely S.K. Petrochemicals, Sam Nam and Lotte. While S.K. Petrochemicals opted out of the present investigation, Sam Nam and Lotte have not filed exporter's questionnaire response in the present investigation. The Authority notes that out of the total

export of \*\*\* MT of subject goods made to India during the POI, about \*\*\*% of the exports are not a part of the verified data before the Authority. Consequently, in the absence of the complete value chain in respect of substantial volume of exports of subject goods made by Hyosung Corporation, Korea RP, the Authority is not in a position to determine and grant individual margins to the respondent Company. Under the above stated circumstances, determination of normal value concerning Hyosung Corporation, Korea RP is not considered to be relevant and therefore, the Authority does not determine individual normal value for Hyosung Corporation, Korea RP.

### **Samsung Petrochemical Co. Ltd., Korea RP now known as Samsung General Chemicals Co Ltd**

30. Post initiation, vide letter dated 20<sup>th</sup> May, 2014 M/s Samsung Petrochemical Co. Ltd., Korea RP informed that the company has been merged with Samsung General Chemical Co Ltd, Korea RP and consequent upon the merger, Samsung General Chemical Co Ltd Korea RP became the producer of the subject goods. The data/information furnished by the Company was verified by the Authority. During verification, it was informed by the Company that its major shareholders entered into Stock Purchase Agreement with \*\*\* Group. The Authority notes that during the POI the company sold \*\*\* MT of subject goods to unaffiliated parties amounting to KRW \*\*\*. During the POI, the Company sold the subject goods in the domestic market directly to the customers. Only \*\*\* MT of subject goods were sold to \*\*\*, a related party. The Authority has made month-wise analysis of the transactions and applied Ordinary course of Test. The Authority also notes that in some of the months, almost entire sales were below the cost of sales and in such months the Authority has determined the normal value based on the data made available by the cooperating exporter and adding 5% towards profit. In respect of other months, the Authority has considered the profit making domestic sales after due adjustments claimed by the Company for the POI. Thus, the Authority has determined the normal value for the Company as US\$ \*\*\*per MT.

### **Taekwang Industrial Co Ltd, Korea RP**

31. In the exporters questionnaire response the Company declared that during the POI they had three channels of sales in domestic market viz; direct sales to unrelated end user, direct sales to related end user and indirect sales through unrelated domestic trader. The Company made export sales to India during the POI directly as well as through unrelated foreign traders. The data/information furnished by the Company was verified by the Authority. The Authority notes that during the POI, the Company made \*\*\* domestic transactions for a total quantity of \*\*\* MT for a total value of KRW \*\*\*. Out of the total domestic sales, \*\*\*MT (\*\*\*) % for a value of KRW \*\*\* was sold to related parties and the Authority notes that such sales were made at arm's length basis. The Authority has made month-wise analysis of the transactions and applied Ordinary course of Test. The Authority also notes that in some of the months, almost entire sales were below the cost of sales and in such months the Authority has determined the normal value based on the data made available by the cooperating exporter and adding 5% towards profit. In respect of other months, the Authority has considered the profit making domestic sales after due adjustments claimed by the Company for the POI. Accordingly, the normal value determined works out to \*\*\*US\$ per MT.

### **Normal Value for Non Cooperative exporters**

32. The Authority notes that no other exporter/producer from Korea RP has responded to the Authority in the present investigation. For all the non-cooperative exporters/producers in Korea RP, the Authority has determined the normal value on the basis of best available information as \*\*\*US\$/MT.

### **Determination of Normal Value for producers and exporters in Thailand**

33. The following related producers/exporters from Thailand have filed exporter's questionnaire response.

- a. Indorama Petrochem Ltd, Thailand
- b. TPT Petrochemicals Public Limited, Thailand

#### **Indorama Petrochem Ltd, Thailand**

34. The data/information furnished by the Company was verified by the Authority. During the POI, the Company sold

\*\*\*MT of subject goods in the domestic market for Thai Baht \*\*\*. Out of the total domestic sales made by the Company, \*\*\*MT valuing Thai Baht \*\*\* was made to related parties at an average price of \*\*\*Thai Baht/MT. The average sales price to the unrelated parties was \*\*\*Thai Baht/MT. The Authority has made month-wise analysis of the transactions and applied Ordinary course of Test. The Authority also notes that in some of the months, almost entire sales were below the cost of sales and in such months the Authority has determined the normal value based on the data made available by the cooperating exporter and adding 5% towards profit. In respect of other months, the Authority has considered the profit making domestic sales after due adjustments claimed by the Company for the POI. Thus the Authority has determined the normal value for the Company as US\$ \*\*\*per MT.

#### **TPT Petrochemicals Public Limited, Thailand**

35. The data/information furnished by the Company was verified by the Authority. During the POI, the Company made

\*\*\*MT of domestic sales valued at Thai Baht \*\*\*. Out of the total domestic sales made by the Company, \*\*\*MT worth of Thai Baht \*\*\* was made to related parties at an average price of \*\*\*Thai Baht/MT. The average sales price to the unrelated parties was \*\*\*Thai Baht/MT. The Authority has made month-wise analysis of the transactions and applied Ordinary course of Test. The Authority also notes that in some of the months, almost entire sales were below the cost of sales and in such months the Authority has determined the normal value based on the data made available by the cooperating exporter and adding 5% towards profit. In respect of other months, the Authority has considered the profit making domestic sales after due adjustments claimed by the Company for the POI. Thus, the Authority has determined the normal value for the Company as US\$ \*\*\*per MT.

### **Normal Value for Non Cooperative exporters**

36. The Authority notes that no other exporter/producer from Thailand has responded to the Authority in present investigation. For all the non-cooperative exporters/ producers in Thailand, the Authority has determined the normal value on the basis of best available information as US\$\*\*\*per MT.

## **EXPORT PRICE**

### **Korea RP**

#### **SK Petrochemical Inc, Korea RP.**

37. From the exporters questionnaire response the Authority notes that the Company has exported substantial volume of the subject goods to India during the POI through two other companies namely Mitsubishi Corporation, Japan and Hyosung Corporation, Korea RP, another respondent Company in the present investigation. The Company exported \*\*\* MT of subject goods through Mitsubishi Corporation, Japan and \*\*\* MT of subject goods through Hyosung Corporation, Korea RP. Subsequent to filing of Exporter's questionnaire response, SK Petrochemical Inc. Korea RP informed that they have stopped production of the subject goods and opted out of the present investigation. Since, SK Petrochemical Inc. Korea RP opted out of the present investigation, the Authority does not determine individual export price for the Company.

#### **M/s Hyosung Corporation, Korea RP**

38. The data/information furnished by the Company was verified by the Authority. During the verification it was acknowledged by the Company that Hyosung Trading PG is merely a trading division of the Company and the exports by Hyosung Corporation cannot be separated from the exports made by its trading division. During the POI, Hyosung Corporation has 3 channels of exports to India – direct exports, exports through unrelated trading companies and export of subject goods produced by other Korean producers. During the POI, the Company directly exported to India \*\*\*MT of subject goods for a total value of KRW \*\*\* (USD \*\*\*). During the POI, the Company also exported \*\*\* MT of subject goods to India for a total value of KRW \*\*\* (USD \*\*\*) through Mitsui Corporation, an unrelated trading company, which has not filed exporter's questionnaire response in the present investigation. Further, during the POI, the Company exported \*\*\* MT of subject goods worth of KRW \*\*\* (USD \*\*\*) produced by other Korean producers namely S.K. Petrochemicals, Sam Nam and Lotte. While S.K. Petrochemicals opted out of the present investigation, Sam Nam and Lotte have not filed exporter's questionnaire response in the present investigation. The Authority notes that out of the total export of \*\*\* MT of subject goods made to India during the POI, about \*\*\*% of the exports are not a part of the verified data before the Authority. Consequently, in the absence of the complete value chain in respect of substantial volume of exports of subject goods made by Hyosung Corporation, Korea RP, the Authority is not in a position to determine and grant individual margins to the respondent Company. In view of the above position, the Authority does not determine individual export price and margins for Hyosung Corporation, Korea RP.

#### **Samsung Petrochemical Co. Ltd., Korea RP now known as Samsung General Chemicals Co. Ltd. (producer) and Samsung C&T, Korea RP (exporter)**

39. In the present investigation, exporters questionnaire response was filed by M/s Samsung Petrochemical Co. Ltd., Korea RP (renamed as Samsung General Chemical Co. Ltd.) as the producer of subject goods along with its related exporter namely M/s Samsung C&T, Korea RP. The data/information furnished by the producer and the exporter was verified by the Authority.

During the POI, Samsung General Chemical Co. Ltd. made \*\*\* transactions of exports of subject goods to India for the total quantity of \*\*\*MT and value of US\$ \*\*. Out of the total exports to India during the POI, Samsung General Chemical Co Ltd exported \*\*\*MT of subject goods to India during the POI through Samsung C&T, Korea RP at an average price of US\$ \*\*\*per Mt. A small volume of \*\*\* MT of subject goods was also exported by Samsung General Chemical Co. Ltd. through Mitsubishi Corporation, Japan, an unrelated company, which has not filed exporter's questionnaire response in the present investigation. Considering the insignificant (about \*\*\*% of its exports to India) volume of exports made through Mitsubishi Corporation, Japan, the Authority has determined the net export price for Samsung General Chemicals Co. Ltd. (producer) and Samsung C&T, Korea RP (exporter) excluding the exports made through Mitsubishi Corporation, Japan. The Authority has made adjustments (inland freight, handling charges, customs and brokerage, ocean freight, insurance, credit expenses, packing expenses, bank charges, duty drawback) as claimed by the producer and the exporter in their questionnaire responses and as verified in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Samsung General Chemicals Co. Ltd. (producer) and Samsung C&T, Korea RP (exporter) has been determined by the Authority as US\$ \*\*\*per MT.

#### **Taekwang Industrial Co. Ltd., Korea RP**

40. In the present investigation, exporter's questionnaire response was filed by Taekwang Industrial Co. Ltd., Korea RP as the producer/exporter of subject goods to India. The data/information furnished by the producer and the exporter was verified by the Authority. During the POI, the Company made \*\*\*Transactions of exports to India for the total volume of \*\*\*MT for a total value of USD \*\* directly including exports of \*\*\*MT through an unrelated trader namely Mitsui Corporation. Since the volume of exports through unrelated trader is insignificant, the Authority determined the net export price for the Company by excluding the same exports. The Authority made adjustments (inland freight, ocean freight, credit expenses, bank charges, handling expenses, packing expenses, customs broker fees) as claimed by the exporter and as verified with the exception of duty drawback in order to arrive at the net export price at ex-factory level. During the verification, it was explained by the Company that the duty drawback claimed by the Company against its exports to India was calculated based on the total amount claimed for the entire exports and divided by the quantity of entire exports made and multiplied by the quantity of exports to India. The company was requested to provide a statement showing the details of import duty paid on the raw materials used in the manufacture of PTA and the amount of drawback claimed on exports to India and exports to other countries and the amount actually received from Korean Customs Authority along with relevant documents. However, the Company has not provided the details along with supporting documents for the drawback claimed for the exports to India and the basis for such claim. Accordingly, the net export price at ex-factory level for Taekwang Industrial Co. Ltd., Korea RP has been determined by the Authority as US\$ \*\*\*per MT after excluding the claim on duty drawback.

### **Non-cooperative Exporters From Korea RP**

41. In respect of all other exporters from Korea RP who are treated to be non-cooperative, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules as US\$ \*\*\*per MT.

### **Thailand**

42. The following related producers/exporters from Thailand have filed exporter's questionnaire response in the present investigation:

- c. Indorama Petrochem Ltd, Thailand
- d. TPT Petrochemicals Public Limited, Thailand

### **Indorama Petrochem Ltd, Thailand**

43. In the exporters questionnaire response the Company declared that during the POI they had made only direct exports to India to their related Indian Company namely M/s Indo Rama Synthetics (I) Ltd. The data/information furnished by the producer and the exporter was verified by the Authority. During the POI, Indorama Petrochem Ltd, Thailand exported totally \*\*\* MT of subject goods to India valued at Thai Baht \*\*\*. Out of the total exports, \*\*\*MT of subject goods valuing Thai Baht \*\*\*were exported to M/s Indo Rama Synthetics (I) Ltd, a related party in India at the average price of Thai Baht \*\*\*per MT. The balance \*\*\*MT of subject goods were exported to other unrelated parties at an average price of \*\*\*per MT. Apart from other adjustments, IRPL claimed deduction towards export incentive. As per the information furnished by the Company, during the POI, Government of Thailand provided export incentives on the exports of PTA. The Authority notes that such export incentives granted by the Governments of exporting countries and claimed by the exporters do not constitute part of the expenses incurred by the exporter while exporting the subject goods. In view of this position, the Authority made due adjustments (ocean freight, inland freight, THC charges, customs clearance charges, packing cot, credit cost, bank charges) with the exception of export incentive claimed by the exporter and as verified in order to arrive at the net export price at ex- factory level and determined the same at \*\*\*US\$ per Mt.

### **TPT Petrochemicals Public Limited, Thailand**

44. In the exporters questionnaire response the Company declared that during the POI they had made only direct exports to India to their related Indian Company namely M/s Indo Rama Synthetics (I) Ltd. The data/information furnished by the Company was verified by the Authority. During the POI, the Company exported \*\*\* MT of subject goods to India during POI at an average price of \*\*\*US\$ per Mt. Apart from other adjustments, TPT claimed deduction towards export incentive. As per the information furnished by the Company, during the POI, Government of Thailand provided export incentives on the exports of PTA. The Authority notes that such export

incentives provided by the Government of exporting countries and claimed by the exporters do not constitute part of the expenses/income incurred by the exporter while exporting the subject goods. The Authority made due adjustments (ocean freight, inland freight, THC charges, customs clearance charges, packing cot, credit cost, bank charges) with the exception of export incentive as claimed by the Company and as verified in order to arrive at the net export price at ex-factory level and determined the same at \*\*\*US\$ per Mt.

### **Non-cooperative Exporters From Thailand**

45. In respect of all other exporters from Thailand who are treated to be non-cooperative, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules as US\$ \*\*\*per MT.

### **DUMPING MARGIN**

46. Considering the Normal Values and Net Export Prices determined above, the Dumping Margins are calculated as below:

| S. No.          | Channel of Export | Name of producer                  | Exporter                          | Normal value US/MT | Net Export price US\$/MT | Dumping margin US\$/MT | Dumping margin % | Dumping margin Range % |
|-----------------|-------------------|-----------------------------------|-----------------------------------|--------------------|--------------------------|------------------------|------------------|------------------------|
| <b>Korea RP</b> |                   |                                   |                                   |                    |                          |                        |                  |                        |
| 1               | Korea RP-India    | Samsung General Chemical Co. Ltd. | Samsung C&T                       | ***                | ***                      | ***                    | **<br>*          | 0 - 10                 |
| 2               | Korea RP-India    | Taekwang Industrial Co. Ltd.      | Taekwang Industrial Co. Ltd.,     | ***                | ***                      | ***                    | **<br>*          | 0 - 10                 |
| 3               | Any               | All Other Producers               | All Other Exporters               | ***                | ***                      | ***                    | **<br>*          | 5 - 15                 |
| <b>Thailand</b> |                   |                                   |                                   |                    |                          |                        |                  |                        |
| 4               | Thailand - India  | Indorama Petrochem Ltd.           | Indorama Petrochem Ltd.           | ***                | ***                      | ***                    | **<br>*          | 0 - 10                 |
| 5               | Thailand - India  | TPT Petrochemicals Public Limited | TPT Petrochemicals Public Limited | ***                | ***                      | ***                    | **<br>*          | 0 - 10                 |
| 6               | Any               | All Other producers               | All Other Exporters               | ***                | ***                      | ***                    | **<br>*          | 5 - 15                 |

## **H. INJURY AND CAUSAL LINK**

### **Submissions made by Exporters, Importers, Users and other Interested Parties**

47. The following submissions with regard to injury and causal link have been made by the opposite interested parties and considered relevant by the Authority:

- i. The price of IOCL, one of the domestic producers of the subject goods which have not supported the petition, is lower than the other domestic producers by 4-10%. But, IOCL has not claimed decline in profits due to imports in its annual report. While IOCL has stayed out of the investigation as they are making profits, Mitsubishi and Reliance claim that they are making losses on account of dumped imports of subject goods from the subject countries.
- ii. RIL is expanding its PTA capacity by more than 100% which reinforces the fact that PTA business is doing extremely well and is profitable. The capacity utilization of both Reliance and Indian Oil Corporation Ltd. (IOCL) was more than 100%. IOC has neither participated nor supported the petition.
- iii. RIL in Annual Report admitted the petrochemical sector realized 11.2% and 8.2% of operating profit which were significantly above company-wide profit.
- iv. Due to the PX PTA delta (difference between PTA price and cost of PX) decreasing, MCPI incurred losses but RIL and IOC achieved profits. The petitioners claim that the PX-PTA delta should be at least \$150/MT for foreign producers to survive. However, MCPI's PX-PTA delta (unit PTA production cost-unit PX cost) is 253-279 \$/MT. This shows MCPI cannot compete with foreign producers unless it reduces its costs.
- v. RIL made significant profit in PX division but losses in PTA division. RIL treats PX production as a separate profit centre and transfers cost of PX to PTA at cost plus or market price basis. This results in inflating the actual cost of PTA.
- vi. RIL has been enjoying more than 100% capacity utilization, and IOCL has also been achieving consistently high rates of capacity utilization in the period of injury and POI. The only domestic producer who is struggling is MCPL, and the reason behind its low rate of capacity utilization is the sudden capacity expansion undertaken by MCPL, and the technical problems experienced in its Plant 2/Phase 2. In such a situation, DGAD should not grant protection to the domestic industry when only one domestic producer (MCPL) has a low rate of capacity utilization and that too because of its capacity expansion and problems in its production facilities.
- vii. The domestic industry has not established potential decline in various factors.
- viii. The allegation that there is an absolute increase in volume of imports as compared to 2009-10 is erroneous. 2009-10 was a time of global recession and any analysis with the same as base year, is inaccurate.

- ix. The volume of imports has decreased over 2010-11, 2011-12 and the POI. The percentage of imports in relation to production as well as consumption has undergone a sharp decline over the years.
- x. The domestic industry cannot claim injury due to volume effect because it is inevitable that there will be imports when the domestic industry is operating at maximum capacity but still cannot fulfill the demands of the market.
- xi. The landed value of imports has exhibited a consistent and substantial increase.
- xii. The sales and production of the domestic industry have undergone a substantial increase.
- xiii. MCPI has claimed technical problems in their plant in the letter to the Ministry of Environment, as a result of which, the plant couldn't operate properly. Because of this, they got benefit of reduced export obligation. The applicant cannot make different claims before different statutory authorities to reap benefits. RIL and IOC operated PTA facility at full capacity but MCPI could not normalize its production because of technology problem.
- xiv. Operational inefficiency and not imports the root cause of MCPL's sub-par performance. MCPL, though not qualified to be eligible to join the Domestic Industry for this petition being related to an exporter of PTA, was included to prove material injury though it has been operating below full capacity suffering for reasons other than alleged dumped imports.
- xv. MCPL's 2<sup>nd</sup> plant had been suffering from technical defect. MCPL may have suffered from losses, low capacity utilization, low return of capital etc. The said under performance by MCPL cannot be attributed to the imports of PTA from China PR and the Authority ought to have segregated the alleged injury caused due to technical problems faced by MCPL at the time of conducting the injury analysis. The real cause of injury to MCPL is problems to their plant due to technical snags.
- xvi. From 2010-11 onwards, the market share of imports has declined substantially.
- xvii. Increase in sales from 2011-12 to POI is more than the increase in production for the same period. In which case, the fact that inventories have increased is contradictory to the same.
- xviii. There is no adverse impact on productivity. Employment has undergone an increase. The slight decrease is due to the MCPI plant having technical problems. Wages paid have also increased.

- xix. Fixation of prices by domestic producers of PTA is based on reference price which is CFR CMP reported by ICIS or CFR China reported by Platts and is independent of imports.
- xx. MCPL is suffering due to shortage of PX. And that cannot be attributed to imports. Price of PX has increased but that of Naphtha did not increase at the same rate. However, the increase in price of Naphtha was commensurate with increase in price of PTA. Two of the three domestic producers produces PX from Naphtha and consume it to produce PTA. Therefore actual cost of production should be taken for PX and not any notional price for determination of cost of production, NIP, profits/loss, and return.
- xxi. MCCPI started incurring losses from the year it expanded its capacities. MCCPI enhanced its capacities by almost three times during 2010, which resulted in decline in their capacity utilisation and in turn resulted into losses. This clearly establishes that MCCPI has been facing start up problems and has not stabilised its production. This aspect must be examined by the DGAD in detail.
- xxii. Exchange rate considered by Domestic industry is 54 whereas as per RBI current exchange rate is 62.88. If prevailing exchange rate is considered, the level of price undercutting and price underselling would be eliminated.
- xxiii. Annex II (iv) of Anti-Dumping Rules requires 'separate identification' of specific injury related data since there are only three domestic producers and each producer has a different production process.
- xxiv. 66% of RIL's PTA production is captively consumed and does not compete with imports.
- xxv. All economic parameters (including price undercutting, underselling, depression and suppression) should be examined on monthly basis due to wide fluctuation in price and cost.
- xxvi. In the context of price suppression/depression, there is a significant difference between the costs of RIL and MCPI and simple cumulation of COP will distort the analysis.
- xxvii. None of the economic parameters show injury except facility utilization, profitability and inventory build-up.
- xxviii. MCPI increased actual production by more than 100% during the POI as compared with the base year.
- xxix. RIL has provided complete volume information with regard to captive consumption. RIL has not provided information for each market segment – merchant and captive.

- xxx. Paraxylene (PX) is the main feedstock for manufacture of PTA, there has been significant addition in PTA capacity. During the period 2009-10 to 2012-13, the capacity addition in PX production has trailed. The lack of capacity addition and supply of PX has driven the prices of PX which in turn have raised the cost of production of PTA. The pressure on the sales price of PTA is on account of oversupply of PTA, therefore, creating pressures on margin of the manufacturers.
- xxxii. If DGAD takes into account the incremental production cost factors incurred by MCPI's technical problems and internal profit realized by RIL, there would be no significant injury margin. Further, RIL producing the subject goods from basic stage adopts transfer price at various stages of the products. To arrive at the real cost, profit added at each stage of process should be excluded and the actual cost worked out accordingly.
- xxxiii. The capacity of the Applicants estimated by DGAD in the preliminary findings is incorrect. The capacity of the Applicants is 3240000 MT and not 3420000MT and capacity utilization of the Applicants during the POI is 90% and not 86% as estimated by the DGAD in the preliminary findings.
- xxxiiii. There is no adverse price effect of the subject imports on the Applicants due to marginal price undercutting and underselling effect. When price undercutting and underselling are almost the same, then it is inferred that both NIP and NSR are almost the same as well. In a situation where the domestic industry is able to sell at a price almost equal to NIP, it is impossible to imagine that the industry is suffering injury at the same time.
- xxxv. Import price of the PTA is higher than the selling prices of domestic producer of India. Claim of Price undercutting is not justified. Thus there is no adverse price effect. Production and sales of the domestic producers have not suffered an injury. In the absence of the adverse price effect and volume effect there is no casual link.
- xxxvi. RIL's claim that it made operating losses from PTA domestic sales is because it used internal intra-company transfer price of PX, which presumably was valued at international market price, to calculate COP and profitability of PTA in the Petition. Consequently, PX plant had internal profit but PTA had internal losses.
- xxxvii. 22% return on capital employed, allowed by DGAD, is not reasonable.
- xxxviii. The injury analysis should be of trends for both merchant as well as captive supply separately and then cumulatively. However, the Designated Authority has carried out injury analysis ignoring the captive consumption by RIL.
- xxxix. When imports increased to its peak in 2010-11, the Applicant generated maximum profits. Designated Authority has estimated negative price undercutting for 2009-10 and 2010-11 and in the 0-10% range for POI.

Therefore, there was no reason for Applicant Domestic Producer to incur losses during 2011-12.

- xxxix. Without prejudice to the above submissions, it is also contended that by comparing the duties imposed and landed value of the subject product, it is apparent that price underselling/injury margin is negligible, i.e. less than 4% in almost all the cases. This further indicates that price undercutting would be in the range of less than 2-3%.
- xl. For determining NIP, profit, return on capital employed and cash flow must also be determined after excluding extraordinary expenses and costs and adopting best utilisation method.
- xli. The price of PX increased substantially during 2011-12 and 2012-13 while the price of naphtha did not increase at the rate in which prices of PX increased. However, the increase in prices of Naphtha was commensurate with increase in prices of PTA. Therefore, RIL cannot report loss and negative return on capital during 2011-12 and 2012-13.
- xlii. MCPL has no firm contract for coal supply, which has an adverse effect on its cost of production, causing injury.
- xliii. MCPL has established its plant far away from the users and transportation cost incurred by it on the subject goods make it uncompetitive. Therefore, freight as a factor of injury must be investigated and considered by the Designated Authority in its attribution analysis.
- xliv. The market share of the Domestic Industry has remained static in spite of increase in demand. There is no connection between Domestic Industry's static market share in demand and the import from subject countries.
- xlv. MCPL procured PX (raw material) at substantially high prices from the related party. Designated Authority should reject such price shown by MCPL and adopt the low price at which the exporters procured PX for constructing NIP.
- xlvi. The adjustments relating to credit cost and freight cost for the computation of NIP requested by the Applicants cannot be granted as it is against the methodology statutorily provided under Annexure III to the AD Rules. Clause 4(vii)(b) of Annexure III to the AD Rules also affirms that NIP is at the ex-factory level, and post manufacturing expenses such as commission, discount, freight outward etc shall not be considered while assessing the NIP. Applicants' claim is inadmissible.
- xlvii. The claim of the Domestic Industry that freight cost should be adjusted in the non-injurious price is inappropriate. Designated Authority makes a comparison of Non-injurious Price with landed value. In order to make comparison at same level, Non-injurious Price at ex-factory level is worked out and landed value is worked out at port level. In both the cases domestic transport cost is not added.

- xlvi. There is no causal relationship between any possible injury and imports of PTA from subject countries as the increase of import volume and price effect is insignificant and there is no material injury.
- xlix. MCCPI could not operate its production facility due to internal problems and caused shortage of PTA supply. Imports were made as a supplement to fill supply shortage. Thus there is no causal link between imports and alleged injury to the domestic industry.
1. PTA imports from the subject countries did not cause material injury to the domestic industry. None of the economic parameters, except facility utilization, profitability and inventory, show indications of material injury. The demand and market share trends also exhibit the absence of a causal link. While there was an increase in both domestic sales and demand, there was a reduction in imports.
    - i. As per Annexure II to the AD Rules, any factors other than dumped imports should be segregated from the injury analysis. There is no price or volume effect in the present investigation. The claimed losses of the Applicants are primarily on account of High wage cost, absence of link between profits and imports, unwanted increase in capacity resulting in increase in costs, Technical problems suffered by MCPL, Shortage of raw material PX, depreciation of rupee, use of recycled PTA etc.
    - ii. While there was an increase in both domestic sales and demand, there was a reduction in imports. This also demonstrates the absence of a causal link between the subject imports and any injury which may have been sustained by the Applicants. The losses of the Applicants are primarily on account of MCPL's high wage cost, unwanted capacity expansion, unstable operation and frequent breakdown of its plant and fall in profits despite fall in imports, and not dumping.

**Submissions made by domestic industry**

48. The following submissions with regard to injury and causal link have been made by the domestic industry and considered relevant by the Authority:
- i. With respect to the argument that the domestic industry has not established potential decline in various factors, the Authority is examining the actual position of the domestic industry and it is only if this shows no injury then the potential factor becomes relevant.
  - ii. The fact that the base year was during the recession is irrelevant as the claim of injury is based on price and not volume parameters. Further, imports in 2009-10 were in fact significantly higher as compared to preceding year.
  - iii. The import volume has declined after 2010-11 because of commencement of production at the new capacities installed by MCPI. However, the performance of the domestic industry materially deteriorated in respect of profits, cash flow and return on investment after 2010-11.

- iv. With respect to the domestic industry not being able to meet demand even while operating at full capacity, the domestic industry has claimed adverse price effect of dumping.
- v. While import prices have increased, as claimed by the responding party, the increase in the CIF and landed price of import is far lower than the increase in raw material cost and there is price suppression.
- vi. With respect to the argument that the sales and production of the domestic industry have undergone a substantial increase, the domestic industry has claimed price and not volume injury.
- vii. With respect to the argument that MCPI has claimed technical problems in their plant in the letter to the Ministry of Environment, the domestic industry has claimed price and not volume injury.
- viii. With respect to the argument that the other domestic producers' plants are operating at more than 100% capacity and so low capacity utilization cannot be claimed, the domestic industry has claimed price and not volume injury.
- ix. With respect to the argument that from 2010-11 onwards, the market share of imports has declined substantially, the domestic industry has claimed price and not volume injury.
- x. The responding party claimed that increase in sales from 2011-12 to POI is more than the increase in production for the same period and so inventories cannot have increased. The domestic industry has claimed price and not volume injury. Further, increase in sales of the domestic industry was lower than increase in production, which led to increase in inventories.
- xi. With respect to productivity, employment and wages, the petitioners have not claimed injury on account of these. Further, the rules don't specify that injury be in respect of all parameters.
- xii. With respect to capacity expansions by the domestic industry, these were made with a long term outlook.
- xiii. The responding party argued that the applicants, though not subject to customs duty, are claiming customs duty notionally at 5.583% of the reference price and that, as prices are at USD, they are getting unjustified benefit of steep depreciation of rupee. This shows that the pricing mechanism followed by the domestic industry is based on import parity. Further the depreciation of the rupee would also have impacted the cost of production. It is established practice of the authority to proceed with determination based on exchange rate prevailing during period of investigation.
- xiv. Since imports from Malaysia were below prescribed limits during the investigation period, the issue of a relationship between one of the petitioners and a Malaysian exporter becomes irrelevant.
- xv. MPCL is not suffering due to shortage of PX, as claimed by the responding party. This would have caused adverse volume effects, which have not been claimed by the domestic industry.

- xvi. With respect to the issue of absolute decline in imports from Thailand and marginal increase in imports from Korea, the domestic industry requested that a cumulative assessment be made of the effect of all subject country imports on the domestic industry. Decline in imports from Thailand is due to increase in imports from Korea.
- xvii. With respect to the argument that there has been a depressed increase in demand due to a shift to recycled material such as PET bottles, there has been no contraction of demand or change in the pattern of consumption that has affected the domestic industry.
- xviii. With respect to the claim that as per RBI current exchange rate is 62.88, the exchange rate during the POI was 55.67, which was what was adopted by the domestic industry.
- xix. With respect to the Designated Authority seeking information from Central Excise Commissionerate regarding reporting of losses, this is not required of the Authority under the Anti-dumping Rules.
- xx. The responding party has incorrectly interpreted the Annex II (iv) of Anti-dumping Rules requirement of 'separate identification'. Annexure II (iv) provides for a situation where information concerning the production of the like product, such as producers' profits and sales, cannot be separately identified. Annexure II(iv) allows the authority to consider information concerning production of a broader product group than the like product produced by the domestic industry, which includes the like product, in evaluating the effect of imports. It does not deal with the separate injury analysis of different producers.
- xxi. The claim that 66% of RIL's PTA production is captively consumed and does not compete with imports does not justify a separate analysis. RIL has already provided information including and excluding captive production.
- xxii. With respect to the argument that due to the PX PTA delta decreasing, MCPI incurred losses but RIL and IOC achieved profits, decline in profits is also considered injury.
- xxiii. The argument that because the domestic industry's market share is more than 80%, Korea producers cannot lead market price in India contradicts the previous argument that international prices were followed.
- xxiv. The argument that cumulating cost of production of RIL and MCPI cannot be done as it will distort analysis cannot be accepted since the performance of the domestic industry as a whole has to be considered.
- xxv. The claim that MCPI's PX-PTA delta (difference between the PTA price and cost of PX) is 253-279 \$/MT which shows MCPI cannot compete with foreign producers unless it reduces its costs is factually incorrect.
- xxvi. The claim that RIL made significant profit in PX division but losses in PTA division contradicts the previous claim that RIL's costs are low and MCPI is suffering injury. The Authority should consider captive inputs at their market prices.

- xxvii. With respect to some parameters not showing injury, adverse effect of dumping on the domestic industry is in respect of parameters such as price undercutting, price suppression/depression, inventories, profit, cash flow and return on investment.
- xxviii. With respect to inventories, the domestic industry was faced with rising inventories despite significant demand- supply gap.
- xxix. With respect to the argument that RIL and IOC operated PTA facility at full capacity but MCPI could not normalize its production because of technology problem, volume injury has not been claimed in the present case.
- xxx. With respect to the argument that MCPI increased actual production by more than 100% during the POI as compared with the base year, volume injury has not been claimed in the present case. Despite such increase in production, profits of the domestic industry steeply declined.
- xxxi. The responding party has argued that RIL and IOC have achieved best capacity utilizations in the POI so averaging capacity utilization of the three producers is misleading. Volume injury has not been claimed in any case.
- xxxii. The responding party has claimed that RIL in Annual Report admitted the petrochemical sector realized 11.2% and 8.2% of operating profit which were significantly above company-wide profit. The injury to the domestic industry is claimed for the product concern and not for the sector as a whole.
- xxxiii. With respect to the information provided by RIL, the company has provided information as per the records kept by the company.
- xxxiv. The responding party claimed IOC's Annual Report shows profitability of the petrochemical sector improved from loss to profit in the POI and the realized profits since it produces and uses PX. The injury to the domestic industry is claimed for the product concern and not for the sector as a whole. Further, such injury is required to be seen for domestic industry and not for IOCL.
- xxxv. The responding party has stated that there was no sharp increase in subject imports. Injury to the domestic industry is because of price undercutting, price suppression/depression caused by the imports.
- xxxvi. PF issued by the designated authority and implemented by Govt., establishes dumping, injury, causal link and the need for anti dumping duty. Further, the responding exporters at the time of hearing submitted that the dumping margin determined in the preliminary findings contains minor factual errors, thereby acknowledging dumping.
- xxxvii. There is no legal prescription under the law with regard to determination of injury margin. Only as a matter of convention and practice, the Designated Authority determines injury margin as the difference between non injurious price and landed price of imports in order to determine the quantum of anti-dumping duties which would be sufficient to address injury to the domestic industry. The injury margin determined in the preliminary findings is quite low

and shows that the methodology adopted at present does not constitute a fair comparison for the following reasons.

- xxxviii. Authority has not taken into account the difference in credit period between domestic industry and foreign suppliers while determining injury margin. The domestic industry is largely selling the goods in the domestic market offering payment terms as “cash against delivery”. As opposed to this, the foreign producers have been offering interest free credit of up to 180 days. Since the credit offered by the domestic industry and foreign producers are different, the non-injurious price is required to be compared with landed price of imports after appropriately adjusting any one of the two for the difference in the credit period.
- xxxix. Freight cost of the domestic industry has been completely ignored while comparing the domestic industry price with landed price of imports. Freight cost is required to be adjusted for determination of injury margin.
- xl. PTA plants, being petrochemical plants, are required to run at high operating rates. High operating rate is not a choice but a business compulsion. The only choice with the producers is to produce to the maximum extent and sell the product at the market price. Thus, even in Indian context where the market is huge (demand is more than supplies), the producers have no choice but to follow the market price. Consequently, the impact of dumping would not be visible in terms of volumes but would be found in respect of adverse price effect.
- xli. Exporters from a number of countries are dumping subject goods in the Indian market. Designated authority should cumulatively assess injury to the domestic industry cumulatively from the subject countries.
- xlii. In a situation where the imports are inevitable, there is no reason for the foreign producers to depress the prices. The surplus unutilized capacities with the foreign producers are forcing them to sell their product aggressively in the Indian market. In a situation of reduction in the prices either by the foreign producers or by traders, either the Indian producers must realign their prices with the changes in the import prices or traders' resale prices, or the petitioners must lose orders.
- xliii. The consumers compare the prices offered by two sources—foreign producers and domestic producers and if they find that the price of imported product is lower, the consumers would either place orders on the foreign producers, or would expect the domestic industry to reduce the prices. Therefore, the price undercutting must be determined after considering the methodology that is followed by the consumers in comparing the two prices.
- xliv. Production facility of one of the petitioners, namely, MCC PTA is located at Haldia. The company has to however sell the consumers who are either in the western or northern part of the country. Since the importers/consumers compare the imported and domestic price on the basis of cost to them, MCC has to offer a price where the consumers find its prices comparable to the imported product price. Thus, MCC bears the freight cost from factory to the consumers. Therefore, the selling price of the domestic industry should be compared with the landed price of imports after including the freight cost involved in case of domestic industry.

- xliv. In addition to the material injury already inflicted on the domestic industry, imports from subject country are posing threat of material injury to the domestic industry.
- xlvi. Injury to the domestic industry has continued even after imposition of anti dumping duty because of low quantum of anti dumping duty which is not sufficient to counteract dumping.
- xlvii. Profit/loss, return on investment and cash flow in captive consumption can be irrelevant and could even be misleading. Injury in the captive consumption in terms of price parameters may even be difficult to be ascertained. Domestic industry may or may not maintain separate records of different products.
- xlviii. The domestic industry has claimed adverse price effects of imports on the domestic industry. As regards increase in high fixed cost due to enhanced capacity, MCPI has increased capacity in the year 2010-11 and but the claim of the injury to the domestic industry is during period of investigation, which is 2012-13. Hence the argument of increased fixed cost does not hold good. Further, while determining Non Injurious Price, the Designated Authority has not considered high fixed cost resulting due to enhanced capacity and determined positive injury margin. This shows that even when the high fixed cost due to enhanced capacities is segregated, there exists significant injury to the domestic industry. MCPI earned profits after increase in capacities. MCPI suffered severe decline in profits thereafter and suffered losses in POI, which directly establishes that the losses to MCPI are not due to capacity enhancement.
- xlix. The contention that Injury margin for imports from China and EU was 0-10% and therefore duty recommended from imports of these countries should be of same range is incorrect. The Designated Authority has done month by month comparison, whereas the interested party has done weighted average comparison.
1. PTA User Association requested the authority to verify the valuation reported by the petitioners to the Central Excise Authorities and examine whether the petitioners have undercharged excise duty. The Designated Authority is operating under Rule 4 of the AD Rules and has been entrusted with specific duties. There is no reason for the Designated Authority to deviate from the entrusted responsibilities.
  - ii. The authority has been consistently examining actual performance of the domestic industry over the injury period. It is only in a situation where actual performance over the injury period does not show injury to the domestic industry that the authority shall examine potential situation with regard to various economic parameters. In fact, the investigating authorities globally examine actual performance of the domestic industry over the injury period and make their determination on the basis of the same.
  - iii. The fact that 2009-10 was a time of global recession is entirely irrelevant. In any case, the claim of injury is largely based on price parameters i.e. price undercutting or price suppression/depression; decline in profits, cash flow and return on investment. The claim of injury is not based on decline in production, sales and capacity utilization. There was significant increase in imports in 2009-10 as compared to previous two years. If it is contended that imports in 2009-10 were higher due to recession, it only implies that imports thereafter are still higher. If it is contended that imports in 2009-10 were lower due to

recession, it would be seen that imports in 2009-10 were in fact significantly higher as compared to preceding year.

- l.iii. The opposite interested parties have argued that Designated Authority may take on record that IOCL has temporarily shut down its production facilities and RIL cut down the supply and hence domestic supply was reduced and imports increased to sustain the production of downstream industries. It may be noted that the petitioners have claimed adverse effect of dumped imports on parameters such as profits, return on investment and cash flow. Petitioners have not claimed adverse effect on production, capacity utilisation and sales for the reason that the petitioners are selling the product in competition to imports and after aligning their prices to import prices and therefore the petitioners are able to sell the product.
- l.iv. As regards the argument of opposing interested parties that sales and production of domestic industry has undergone substantial increase, it may be noted that the Petitioners have not claimed that imports have prevented the domestic industry from selling the product. In fact, petitioners have extensively contended that they have no option but to sell the product. Submissions made earlier are relied upon.
- l.v. As regards the contention that the claim of petitioners that low capacity utilization is due to imports is incorrect since other domestic producers' plants are operating at more than 100% capacity, it is submitted that Designated Authority is required to consider domestic industry and not other domestic producers for assessment of injury. Further, the domestic industry has claimed adverse effects of imports on the parameters such as profits, cash flows, return on investment, etc.
- l.vi. Market share of the domestic industry has remained constant because of addition of capacities by MCPI. However, even after producing and selling more, the profits, return on investment and cash flows have reduced drastically to a situation that all these parameters have become negative from a situation of positive earlier.
- l.vii. The opposing interested parties argued that keeping in view the trends of landed value and selling price the price undercutting in 2011-12 would be even lower than in POI and hence no reason for domestic industry suffering losses in this period. It is submitted that the profitability of the domestic industry declined to significant losses due to dumping resorted by foreign producers. Declining difference between PX and PTA establishes the increasing dumping of the product in the Country, which intensified after the POI. Since the interested parties concede that this was a normal period, the Designated Authority may kindly grant this level of profits to the domestic industry as a reasonable level of profits. The domestic industry is not against imports per se. The domestic industry is against imports at dumped prices.
- l.viii. When the interested parties concede that the injury margin is low/negligible, petitioners fail to understand and appreciate their concern/objection against imposition of anti dumping duty. The quantum of anti dumping duty is not higher than injury margin. By their own argument, such injury margin is low or even negligible. Further the interested parties are not disputing the presence of price undercutting.

- lix. When the interested parties concede that the price undercutting, injury margin and difference between NIP and NSR is low/negligible, petitioners fail to understand and appreciate their concern/objection against imposition of anti dumping duty. The quantum of anti dumping duty is not higher than injury margin. Further, if the NIP and NSR are comparable and undercutting is low, it again implies that the quantum of anti dumping duty is low/negligible in the eyes of the consumers. In such a case, the consumers should not be raising any concern against imposition of anti dumping duty.
- lx. The User Association agrees that the captive consumption is not affected with the import price. The purpose of injury analysis is to assess the impact of dumped imports on the domestic industry. If it is admitted fact that the impact of dumped imports is not onto captive consumption, the authority is not required to carry out the mechanical exercise. The interested parties must establish a justification for the same.
- lxi. It is wrongly assumed that PTA captively consumed by RIL are unaffected by impact of price of imports. RIL operates its products at arm's length and transfer prices are market prices at which RIL supplies in domestic market.
- lxii. Injury to the domestic industry is required to be determined considering financial records of the company. Annexure-III is only for determination of NIP. It is relevant to point out that several countries do not even determine margin of injury, while none of the countries other than India has a law such as NIP. All these countries consider economic parameters on the basis of financial records of the domestic industry.
- lxiii. The opposing interested parties contended that Applicants though not subject to customs duty are charging the same at 5.583% of the reference price. Further, it has been argued by them that as prices are at USD, they are getting unjustified benefit of steep depreciation of rupee. This further establishes that the pricing mechanism followed by the domestic industry is based on import parity and deterioration in performance of the domestic industry in respect of profits, return on investment and cash profits is because of dumping of the product in the Country. In order to arrive at import parity, various expenses/cost that the consumers shall incur (upto consumption point) in importing the product are considered by the domestic industry and the domestic industry forced to fix the prices keeping in mind this landed cost to the consumer at consumption point for the imported product. As regards depreciation of rupee, the consumer association has selectively considered the depreciation rupee and its impact on PTA prices. The consumer industry has conveniently ignored the adverse impact of depreciation of rupee on the cost of production of domestic industry and its favourable impact on the consumers own product. It cannot be said that depreciation of rupee impacted only PTA prices and has not impacted the cost of production of the PTA producers. Further, the depreciation has protected the downstream industry to higher extent. In any case, it is established practice of the authority to proceed with determination based on exchange rate prevailing during period of investigation and actual records of the domestic industry. It is also pointed out that despite these alleged rupee depreciation; the domestic industry has suffered injury, as established by the decline in profits and return on investment during this period. This at the least establishes that had the Rupee not depreciated, the injury to the domestic industry would have been higher. Thus, the claimed injury to the domestic industry is despite the Rupee depreciation.

- lxiv. The opposing interested parties contended that with imposition of anti-dumping duty, the domestic industry has increased its price by Rs1550/MT and they are resorting to profiteering at the cost of users. The domestic industry has provided data upto Sept., 2014 which shows continued financial losses, leave aside profiteering. In fact, dumping got intensified after the POI, as would be observed from the difference between PX and PTA prices. The price increase by the domestic industry is in fact lower than what is necessary to reach back the situation of the POI, leave aside reaching the situation of 2009-10 and 2010-11.
- lxv. The contention that RIL is expanding capacities by 100% which reinforces that PTA business is doing extremely well and landed value, has shown consistent and substantial increase, is incorrect. The petitioner refers and relies on the preliminary findings by Designated Authority. Further Capacity expansions are made by the industry considering long term outlook of the product. The mere fact that the market is at present suffering from dumping does not mean that the constituents of the domestic industry will shy away from making fresh investments that too in a situation where there is significant demand supply gap for the product in the country. RIL planned the present capacity expansion in Q3 2014-15 and Q2 of 2015-16, the year when the profitability of the product under consideration was far better. In fact, this further establishes that the dumping of the product under consideration is causing injury to the domestic industry and imposition of anti dumping duty is vital to protect the investments that were planned earlier by the domestic industry.
- lxvi. Capacity expansions are made by the industry considering long term outlook of the product. The mere fact that the market is at present suffering from dumping does not mean that the constituents of the domestic industry will shy away from making fresh investments that too in a situation where there is significant demand supply gap for the product in the country. As regards monopolization of RIL, the opposing parties have not demonstrated or provided any evidence in order to establish that RIL will enjoy monopoly status on imposition of anti-dumping duty. Mere having integrated facility does not tantamount to monopolization.
- lxvii. The contention that Imposition of ADD will further strengthen the dominant position of Reliance is without basis. RIL deals with more than 80 products and employs around 24,000 persons. The company has divided its business into about 4 different segments comprising of more than 40 different businesses. Given the size of its operations, there are clearly defined responsibilities with different businesses. The product is transferred from one business segment to other segment at prices linked to market prices. Thus, contrary to the argument of the interested parties, access to dumped imports to the consumers was causing unfair advantage to these consumers vis-à-vis. While value of PTA for RIL was higher in downstream products, the same was lower for the consumers. Thus, the dumping of the product under consideration has been causing injury not only to the merchant market of RIL, but also in the downstream products. Table below shows the price at which RIL has transferred its captive consumption and has sold PTA in merchant market. It is evident that the downstream products of RIL were significantly disadvantaged because of dumping of PTA in India.

- lxviii. As regards the contention that Reliance has acquired 100% stake in BP Chemicals (Malaysia) Sdn Bhd (BPCM) and raw material of PTA was sent to Malaysia converted to PTA and re-imported and sold in India, it is submitted that imports from Malaysia were negligible during the injury period. Since imports from Malaysia are de-minimis the issue of possible relationship of one of the petitioner company with one of the Malaysian producer becomes entirely irrelevant. It is also relevant to point out that PX was sold by RIL to the Malaysian company and the Malaysian company sold PTA in Indian market. This resulted in no advantage to either company.
- lxix. As regards the contention that after imposition of anti-dumping duty, capacity utilization in the user industry has declined and imports of final product using PTA has increased, it is submitted that the petitioners filed the application for imposition of anti-dumping duty on the positive evidence of dumping, injury and causal link. As regard increase in imports of downstream products, it is submitted that the anti-dumping duty was imposed only in July 2014, whereas the imports of the downstream products is entering the Indian market since long. Hence, it is incorrect to attribute such imports on anti-dumping duty of PTA.
- lxx. Operating losses are nothing but injury due to dumped imports. Shortage in operating cash flows is the effect of dumped imports on the domestic industry. In fact, the Rules require the Designated Authority to examine actual and potential negative effects of dumped imports on cash flow. The interested parties concede that the domestic industry's cash flows suffered. Foreign exchange loss is nothing but the amount paid to the raw material suppliers. In case the amount is higher because of improvement in exchange rates, the selling price of the domestic industry is also higher to the proportionate extent. It is not a case where the domestic industry first took order at a pre-determined price then bought raw materials and suffered additional costs on such raw materials. It is a case where the domestic industry first bought the raw material, accounted for the same as per exchange rate prevailing at the time of procurement, accounted for the difference between actual payment and amount earlier debited as exchange fluctuation and sold the product at the rates which corroborates the exchange rate prevailing at the time of sales.
- lxxi. The domestic industry does not dispute that the Designated Authority should examine other factors causing injury. However, such claims should be based on quantitative information and not mere statements.
- lxxii. The arguments with regard to MCPI technology are totally without basis. The decline in profitability is because of dumping and not because of any other factor. In fact, even if capacity utilization of MCPI is considered at reasonable level, it would show that the company would have suffered significant financial losses. In fact, as submitted by the petitioners earlier, considering the prices of PX that have been prevailing since POI, no producer of PTA can claim that it is earning profits on production and sales of the product under consideration - whether in India or globally.

- lxxiii. As regards the contention that injury may also be attributable to disproportionate increase in wage cost, it is submitted that the petitioners have not claimed injury on this account. Further, AD Rules do not specify that injury to the domestic industry should be visible in respect of all parameters. While wage cost per unit of production declined in POI, profitability steeply deteriorated, thus establishing that the decline in profits in POI is not because of increase in incidence of wage cost per unit of production.
- lxxiv. The contention that capacity expansion in 2010-11 led to high fixed cost and reduced profitability, is not correct. Increase in capacity led to only a marginal decline in profits in 2010-11. Thereafter, profitability of the domestic industry steeply declined and the domestic industry suffered financial losses despite same level of capacity. In fact, in POI, whereas capacity utilization increased, losses further declined steeply.
- lxxv. As regards the contention that due to technical problems suffered by MCPI, reduced export obligation was allowed to them, it is submitted that domestic industry has not claimed that the dumping of the product under consideration has prevented them from selling the product. Rather, domestic industry has claimed adverse price effects of dumped imports.
- lxxvi. The contention that prices of IOCL are lower than the other domestic producers by 4-10% and the applicants are suffering price effect due to lower prices of IOCL, is baseless. Petitioners submit that there is no evidence provided by the PTA User Association that the consumers benchmark their prices to the prices offered by IOCL. In fact, majority of the consumers are being represented by PTA User Association and therefore, the association should be well aware how its members are buying PTA in Indian market. This is another example of serious efforts being made by PTA User Association in misleading the Designated Authority and making efforts to impede the present investigations.
- lxxvii. The Users Association simultaneously contended that the domestic industry's prices are impacted by IOCL prices and also benchmarked by CFR China prices. This clearly shows contradictory and inconsistent arguments by the association. Imports of the product under consideration occur around prices declared in ICIS or Platts. It is not the argument of PTA Users Association that the imports are not made around the prices reported in ICIS or Platts. Thus, the CFR China prices reported by ICIS or CFR China prices reported by Platts is nothing but the prices which are benchmarked at which imports can be and were made in that period. The Designated Authority may kindly compare the prices reported in ICIS/Platts with the price at which responding exporters have exported the product to India.
- lxxviii. Since PTA Users Association is representing the interests of the users, the association should at the least be aware why its members are benchmarking their prices with the domestic industry on the basis of these Platts or ICIS prices. The argument clearly implies either of the two situations – (a) the users have not even informed the Users Association of the facts in which these users are buying material from domestic and imported sources, OR, (b) the users association is aware of the facts, but has attempted to present distorted facts before the Designated Authority in an attempt to create confusion and impede the process of investigations. This also clearly shows that the Users Association is not with clean hands before the Designated Authority. The User Association concedes that the domestic industry has fixed its prices on the basis of prices mentioned in ICIS/Platts. Since the imports are being made by the consumers considering these prices mentioned in ICIS/Platts, it follows

that domestic industry prices are impacted by the prices at which imports are being made in India. Thus, the reasons for domestic industry to fix its prices based on prices mentioned in ICIS or Platts is the fact that the consumers consider these prices as the prices at which they can import the product and compare the prices offered by the domestic industry. If the consumers find that the prices reported in ICIS/Platts are lower than the prices quoted by domestic industry, the consumers have an option of importing the product at the prices mentioned in ICIS/Platts.

lxxix. The pricing mechanism followed by the domestic industry is based on import parity. In order to arrive at import parity, various expenses/cost that the consumers shall incur (upto consumption point) in importing the product are considered by the domestic industry and the domestic industry forced to fix the prices keeping in mind this landed cost to the consumer at consumption point for the imported product. If the concern of the association is that the domestic industry should not add customs duty to the import price, should sell the product at CIF import prices and the domestic industry is making extra profits by charging customs duty, this is really laughable at the least. Not only it is established business situation in the Country that the domestic industry fixes its prices considering the import price and basic customs duty, the user association cannot say that their prices are benchmarked to CIF import prices. The argument defeats the very purpose for which the Govt. of India and Governments globally fixes customs duty and way these are utilized by business enterprises.

lxxx. The opposing interested parties argued that price of PX have increased however price of Naphtha did not increase at the rate of increase in PX. But Increase in price of Naphtha was commensurate with increase in price of PTA. Two of the three domestic producers produce PX from Naphtha and consume it to produce PTA. Therefore actual cost of production should be taken for PX and not any notional price for determination of cost of production, NIP, profits/loss, and return. As against these arguments, the petitioners submit that the raw material involved for production of the product under consideration is PX. Naphtha is not the raw material involved for production of the product under consideration. There is no evidence provided that producers of PTA benchmark their prices to Naphtha prices, nor globally, Naphtha prices benchmark the PTA prices. PTA prices are benchmarked on PX prices. Further, the relevant legal requirement is whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree. In a situation, where prices of PX have been increasing over the relevant period, natural expectation of every producer is to increase the selling prices.

lxxxii. The consumer association has selectively considered the depreciation rupee and its impact on PTA prices. The consumer industry has conveniently ignored the impact of depreciation of rupee on the cost of production of domestic industry, selling price of the product and import price of the product. It cannot be said that depreciation of rupee impacted selectively either PTA prices or PTA costs. Whether the Rupee appreciates or depreciates, the same impacts both the raw materials and finished product. In any case, it is established practice of the authority to proceed with determination based on exchange rate prevailing during period of investigation. Despite these alleged rupee depreciation; the domestic industry has suffered injury, as established by the decline in profits and return on investment during this period.

- lxxxii. The opposing interested parties have argued that the depressed increase in demand is due to the fact that certain users have shifted to use of recycled material such as PTE bottles which is a substitute of fresh PTA. The petitioners submit that the legal requirement is whether there is a contraction in demand and whether pattern of consumption of the product under consideration has undergone a change. Change in pattern of consumption is relevant, as this change in pattern of consumption might have led to decline in demand for the product in the Country, which might have in turn resulted in decline in domestic industry's sales, production, capacity utilization, etc. As far as these requirements are concerned, petitioners submits that there was positive growth in the demand for the product in the country and therefore contraction in demand for the product under consideration was not one of the factors for injury to the domestic industry. Pattern of consumption with regard to product under consideration has not undergone a significant change. This is clearly established by rising demand. Thus, the fact that use of recycled product has increased is entirely immaterial in the present case.
- lxxxiii. The opposing interested parties have not provided any information to substantiate the claims that MCPL is suffering losses on account of power consumption as (i) no firm contract for coal supply (ii) there has been change in clearance requirements for energy systems by State Pollution Control Board. The argument is baseless. Further, the arguments are contradictory in as much as the association has contended that MCPI has suffered due to (a) technical factors, (b) PX supplies, (c) coal supply. Above all, all these factors could have impacted production of the company. Petitioners have however claimed that the dumping of the product under consideration has led to significant erosion in profits of the domestic industry.
- lxxxiv. The opposing interested parties have wrongly argued that MCPL is incurring substantial cost on freight in transporting raw material for its manufacture of raw material which increased its cost of production. As far as injury to the domestic industry and its determination is concerned, the data relating to domestic industry as a whole and separately for MCPI both shows steep decline in profits, cash flows and return on investment. MCPI data shows that the company was earning profits earlier and suffered financial losses in the POI. With the same locational situation, if the company was earlier earning profits and now suffering losses, it must be concluded that the deterioration in performance of the company is not because of locational situation but because of dumped imports. When the plant of MCPI was conceived, it was well known that the plant will be at its present location. The plant was earning profits for quite some time.
- lxxxv. The argument that the petition has been initiated to seek protection for planned capacity expansion by RIL is baseless. The petition is based on the injury suffered by the domestic industry during POI i.e., 2012-13 on the grounds that significant dumped imports have caused injury to the domestic industry. The Designated Authority after analysis of all the arguments of the domestic industry and other interested parties came to the conclusion

that the domestic industry has suffered injury due to dumping of product from subject countries in the POI and recommended provisional anti-dumping duty which was imposed by Ministry of Finance. Hence, the argument of the interested parties is baseless.

- lxxxvi. As regards the argument that there has been no volume injury, the petitioners submit that the preliminary finding issued by the authority establishes adverse price effects of imports on the domestic industry.
- lxxxvii. The argument that the applicants have increased their prices based on the freight which is not paid by them, is incorrect. There is no dispute that the domestic industry prices are influenced by the price at which the imports can be made. Further, the facts clearly show that the domestic industry is continuing to suffer losses. Thus, the price at which the domestic industry is selling the product is insufficient to recover the cost of production of the product and the domestic industry is suffering financial losses. Since these prices are influenced by the import prices, it must be considered that the imports are causing injury to the domestic industry.
- lxxxviii. The argument that the Domestic Producers have further increased the price of PTA after the imposition of ADD and are trying to seek profit at the cost of domestic users is incorrect and baseless. The domestic industry is continuing to suffer financial losses. Thus, the price at which the domestic industry is selling the product is insufficient to recover the cost of production of the product and the domestic industry is suffering financial losses. Since these prices are influenced by the import prices, it must be considered that the imports are continuing to cause injury to the domestic industry.
- lxxxix. As regards the contention that the domestic producers IOCL and RIL are making huge profits on year on year basis, the petitioners submit that except for the producers who have their own captive PX and who are transferring PX at less than its value in PTA costs, none of the global producers are earning profits. Further, though RIL is not suffering financial losses, the company has faced significant decline in profits which also tantamount to injury under the Rules. As regards IOC, since the company is not part of “domestic industry”, the issue is entirely irrelevant. It has not been shown that the profits of IOC have not declined. Given the situation of RIL, it can be safely concluded that IOC profits have also declined.
- xc. The opposing interested parties argued that imposition of ADD will allow RIL to raise the price of PTA and will also kill the competition in the Polyester market as the other polyester producers will no longer be able to compete with RIL due to high price of PTA. The petitioners submitted that in the POI, merchant sales of MCPI were higher than RIL. Further, there are several cases where anti dumping duty has been imposed and where the product is being produced only by one company in India. Such being the case, the mere fact that production of one company is higher does not bar the company from seeking protection. As regards the fact that RIL is producing both the product and downstream products, the same does not vitiate the position any way. Contrary to the argument of the interested parties, RIL is at present at a disadvantaged position in downstream products, as their competitors in India are having access to unfairly priced dumped imports.

- xcvi. The significance and purpose of anti-dumping duty is to maintain a level-playing field and prevent dumping, while allowing for healthy competition. The domestic industry of PTA is suffering material injury due to presence of dumped imports. If PTA industry is expected to face low utilization ratio and steep price competition, it is all the more important to provide the industry with level playing field.
- xcvii. The argument that increases in imports after the initiation of investigation was due to failure of domestic producers to satisfy the market demands due to technical reasons is incorrect. The price difference between PTA and PX declined further after the POI, which establishes intensified dumping. Assuming for sake of argument that there was increased need for imports to meet the demand that could not have been met with the foreign producers to intensify dumping.
- xcviii. The argument that anti-dumping duty is imposed against all main exporting countries to ensure monopoly control and enrich RIL is baseless. Anti-dumping duty is imposed on the basis of positive evidence of dumping and consequent injury to the domestic industry. Further, the interested parties have stated on one hand that Malaysia has not been included and on the other hand has stated that all major exporting countries have been included. Evidently, the arguments of the interested parties are highly biased. In any case, duty can be imposed only if the product is being exported at dumping prices.
- xcix. As regards the argument that like the Indian producers, Korean producers determine their prices on the same international market price, and there is no price undercutting, petitioners submit that it is entirely irrelevant for determination of dumping that the exports have been made at the international prices. Only normal value and export price alone are relevant. The normal value has been defined under the Rules and has to be determined accordingly. Further the Designated Authority has determined positive price undercutting in its preliminary findings. The Rules require the authority to determine whether the imports were undercutting the prices of the domestic industry in the market, OR, whether imports were suppressing/depressing the prices of the domestic industry in the market. Thus, in a situation where the domestic industry prices are the same as import prices, it is proved beyond doubt that the imports are forcing the domestic industry to sell at a price which led to suppressing/depressing effect.
- cx. As regards the argument that both RIL and IOC have marked significant levels of profits, the petitioner submits that the relevant legal requirement is whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree. In a situation, where prices of PX have been increasing over the relevant period, natural expectation of every producer is to increase the selling prices. However, the domestic industry is unable to increase its prices in proportion to increase in cost resulting in price suppression. The selling price of the domestic industry has not increased in proportion to the increase in the costs. Further, the domestic industry has not been able to increase its prices in proportion to the increase in costs on account of PX.

- xcvi. The interested parties have contended both that the imports have declined in POI and that the imports have increased in POI. The argument of the interested parties itself shows that (a) the price undercutting and price suppression suffered by the domestic industry at present is due to dumping, (b) even when the domestic industry was earlier earning profits, it was suffering severe losses in the POI, which is due to dumping of the product in the Country.
- xcvii. The domestic industry has not claimed that the dumping of the product under consideration has prevented the domestic industry from selling the product and its production has suffered. Interested parties have assumed an argument which the domestic industry has not at all made. The domestic industry has claimed adverse price effects of dumped imports on the domestic industry. The domestic industry is able to sell whatever they produce so long as the prices offered by the domestic industry are comparable to the landed price of imports. Thus, adverse effect of dumping on the domestic industry is in respect of parameters such as price undercutting, price suppression/depression, inventories, profit, cash flow and return on investment.
- xcviii. As regards the argument that RIL admitted operating profits in its annual report in petrochemical sector and RIL was not injured by the PTA imports, the petitioners submit that the argument of the interested party does not have any basis. It is mainly because in the calculation of COP and profitability RIL has used internal intra- company transfer price of PX. Thus, the calculations showed RIL's PX Plant to have undergone profit by sales to other PTA producers and its sales to own PTA Plant, and RIL's PTA Plant made loss from sales to other polyester producers and from internal sales to its own polyester plants. This calculation is misleading and in actuality it should have been done in accordance to the Indian GAAP. The injury to the domestic industry is claimed for the product concern and not for the sector as a whole. While value of PTA for RIL was higher in downstream products, the same was lower for the consumers. Thus, the dumping of the product under consideration has been causing injury not only to the merchant market of RIL, but also in the downstream products. Designated Authority is required to proceed based on records maintained by the company. Further, RIL has not claimed that it has suffered losses. Data relating to RIL may be seen.
- xcix. As regards the contention that low production volume was one of the reasons for financial losses of MCCPI, it is submitted that low production volume was not one of the reasons for financial losses of MCPI, as is established by the increase in production and decline in profits. Company earned profits with lower production and suffered losses with higher production.

- c. As regards the contention that since market prices of crude oil, naphtha, PX and PTA are determined based on international market price, global economy and demand/supply condition are the main factors for price fluctuation, it is submitted that the present investigation is against imports of PTA. And price of Paraxylene, being the raw material of PTA and the product concerned alone are the relevant and determining factors. The market prices of crude oil and naphtha are irrelevant to the present investigation. Further, reasons for dumping are not relevant for the present purpose. Only the fact of dumping is relevant. The Designated Authority is not conducting a study on petrochemical industries.
- ci. The contention that PTA prices are determined by international market prices which are announced on a daily or weekly basis is entirely irrelevant for determination of dumping. Only normal value and export price alone are relevant. The normal value has been defined under the Rules and has to be determined accordingly. Mere fact that the goods have been exported at international prices does not mean “no dumping”.
- cii. The sales volumes of RIL do not constitute predominant position. In fact, sales volumes of MCPI were higher than RIL. Further, all parties concede that domestic industry prices are linked to import prices. No party has established that MCPI prices are linked to RIL prices. The argument is misleading and factually incorrect.
- ciii. The imports of PTA have substantially increased post preliminary findings. Dumping has intensified after initiation of investigations. Significant increase in imports at reduced prices has led to decline in demand of the domestic industry product and accumulated inventories.
- civ. As regards the contention that there is no causal link, since volume of imports increased so also profitability, the petitioners submit that it is incorrect. The data proves that as imports increased, profitability of the domestic industry declined.
- cv. The contention that MPCL is suffering due to shortage of PX and not due to imports, is incorrect. At one place association has contended that MCPI could not produce due to technical problem, at other place, the association has contended that MCPI is suffering due to PX. The association has resorted to all sorts misleading or contradictory statements. MCPI is not suffering due to shortage of PX. It is not established how availability of raw material is a cause of injury to the domestic industry. In fact, availability of raw material would have adversely impacted production and capacity utilization. The petitioner has not claimed that dumping of the product under consideration prevented the domestic industry from producing and selling the product.

#### **Examination of the Authority**

49. The submissions made by the domestic industry and other interested parties during the course of investigations with regard to injury and causal link and considered relevant by the Authority are examined and addressed as below:

- a. As regards the submission that price of IOCL, who have not supported the petition, is lower than the other domestic producers by 4-10%, the Authority notes that IOCL has neither supported nor opposed the applicants in the present investigation and therefore cannot be construed as domestic industry under the Anti-dumping Rules. The applicant domestic producers in the present investigation i.e. MCPI and RIL constitute domestic industry under the Anti-dumping Rules. Therefore, in terms of the provisions

laid down under the Anti-dumping Rules, the Authority is required to investigate and determine injury in respect of the domestic industry only.

- b. As regards the contention that expansion of PTA capacity by RIL is indicative of their healthy and profitable position, the Authority notes that the decision for expansion of capacity of production is generally governed by prospective demand in the market. Therefore, such business decision cannot be interpreted as indicative of absence of injury to an industry.
- c. As regards the contention that RIL in Annual Report admitted the petrochemical sector realized 11.2% and 8.2% of operating profit which were significantly above company-wide profit, the Authority notes that injury to the domestic industry is required to be analysed for the product concern and not for the sector as a whole. RIL being a multi-product company, performance of company as whole cannot be indicative of the injury being suffered by the company in one of the products.
- d. It has been contended by the opposing interested parties that due to the PX PTA delta decreasing, MCPI incurred losses but RIL and IOC achieved profits, the Authority notes that cost of production of subject goods produced through different technologies may differ, but that does not mean that the handicap suffered by MCPI due to manufacturing the subject goods from the stage of PX is the sole cause of injury. Moreover, RIL is also faced with declining profits in the subject goods.
- e. As regards the submission that RIL treats PX production as a separate profit centre and transfers cost of PX to PTA at cost plus or market price basis inflating the actual cost of PTA, it is noted that the Authority has determined the NIP based on the accounts maintained by the domestic industry and in accordance with Annexure III of the Rules and established practices of DGAD.
- f. As regards the submission that DGAD should not grant protection to the domestic industry when only one domestic producer (MCPL) has a low rate of capacity utilization and that too because of its capacity expansion and problems in its production facilities, the Authority notes that in anti-dumping investigation the injury analysis is required to be conducted for domestic industry as a whole and not for individual domestic producers. Moreover, in the present investigation, the crux of the injury is on account of adverse effects of imports on profits, cash flows, return on investment, etc. As regards the submission that MCPI suffered technical problems in their plant which is the real cause of injury, the Authority notes that it is a fact that MCPI suffered technical problems in their plant, but that cannot be interpreted as the only cause of injury. Further, while determining NIP, the impact of such factors has been taken into account.
- g. The opposing interested parties have contended that the domestic industry has not established potential decline in various factors. In this regard, it is noted that only in a situation where actual performance over the injury period does not show injury to the domestic industry, the authority is required to examine potential situation in respect of various economic parameters.

- h. It has been alleged that 2009-10 was a time of global recession and any analysis with the same as base year, is inaccurate. The Authority notes that the injury is largely based on price parameters and therefore alleged impact of global recession is entirely irrelevant.
- i. As regards the contention of the opposing interested parties that MCPI has claimed technical production problems in their letter to the Ministry of Environment and claimed the benefit of reduced export obligation, the Authority notes that it is a fact that MCPI suffered technical problems in their plant, but that cannot be interpreted as the only cause of injury. Moreover, MCPI has claimed adverse effects of imports on the parameters such as profits, cash flows, return on investment, etc. Further, while determining NIP, the impact of such factors has been taken into account.
- j. As regards the submission that MCPI suffered technical problems in their plant which is the real cause of injury, the Authority notes that it is a fact that MCPI suffered technical problems in their plant, but that cannot be interpreted as the only cause of injury. Moreover, the domestic industry has claimed adverse price effect of the imports from the subject countries and not volume effect.
- k. As regards the submission that fixation of prices by domestic producers of PTA is based on reference price which is CFR CMP reported by ICIS or CFR China reported by Platts and is independent of imports, the Authority notes that the prices announced by such sources do act as a benchmark for the domestic producers while determining their domestic selling prices. However, under the Anti-dumping Rules, for establishing injury and causal link, what is relevant is the actual landed price from the subject countries, which compared with the non-injurious price of the domestic industry, forms the basis for determination of injury margin.
- l. As regards the submission that unlike other domestic producers MPCL is suffering due to shortage of PX and therefore actual cost of production should be taken for PX from the stage of Naphtha and not any notional price for determination of cost of production, NIP, profits/loss, and return, the Authority notes that claimed injury to the domestic industry is not on account of volume effect. Therefore, shortage of major raw materials impacting production of subject goods by the domestic industry is not relevant. The Authority further notes that PX and not Naphtha is a major raw material for the subject goods.
- m. As regards the contention that MCPI started incurring losses from the year it expanded its capacities and in turn resulted into losses, the Authority notes that MCPI has expanded its capacity in the year 2010-11 and this was the year when the industry has earned profits. Therefore, the argument is factually incorrect.
- n. As regards the contention that current exchange rate is 62.88, and if prevailing exchange rate is considered instead of 54, the level of price undercutting and price underselling would be eliminated, the Authority notes that in anti-dumping investigation the exchange rate prevailing during POI is relevant and not the current exchange rate.

- o. As regards the submission that separate injury analysis is required for each domestic producer as they have different production processes, the Authority notes that as per the Anti-Dumping Rules, injury is required to be determined for the domestic industry as a whole.
- p. As regards the submission that 66% of RIL's PTA production is captively consumed and does not compete with imports, the Authority notes that the injury analysis has been done only for domestic sales. In view of the above, the need for conducting injury analysis for merchant and captive supply separately, as claimed by some of the interested parties, does not arise.
- q. As regards the submission that all economic parameters (including price undercutting, underselling, depression and suppression) should be examined on monthly basis due to wide fluctuation in price and cost, the Authority notes that dumping margin and injury margin have been ~~are~~ determined on monthly basis.
- r. As regards the submission that there is a significant difference between the costs of RIL and MCPI and simple cumulation of COP will distort the analysis, the Authority notes that injury to the domestic industry is required to be analysed for domestic industry as a whole and not in a segmental manner.
- s. As regards the submission that the pressure on the sales price of PTA is on account of under supply of PX and oversupply of PTA, the Authority notes that the domestic industry has not claimed injury on account of volume effect of imports. Therefore, shortage of major raw materials and over supply of subject goods impacting production of subject goods by the domestic industry is not relevant. Moreover, the contention that PTA is in over supply in India is not factually correct since the demand in India is more than the supply.
- t. As regards the submission that RIL's claimed operating losses from PTA domestic sales is on account of internal intra-company transfer price of PX, the Authority notes that the data/information furnished by the Company has been verified and the same has been relied upon along with the verified data/information furnished by the other constituent domestic industry.
- u. As regards the submission that 22% return on capital employed, allowed by DGAD, is not reasonable, the Authority notes that granting 22% return on capital employed is a consistent practice in the DGAD.
- v. The opposite interested parties argued that when imports increased to its peak in 2010-11, the Applicant generated maximum profits. Designated Authority has estimated negative price undercutting for 2009- 10 and 2010-11 and in the 0-10% range for POI. Therefore, there was no reason for Applicant Domestic Producer to incur losses during 2011-12. The Authority notes that the injury analysis in this final

finding is self explanatory. As per the verified information, the domestic industry has suffered losses during the POI and positive underselling.

- w. The opposite interested parties argued that for determining NIP, profit, return on capital employed and cash flow must be determined after excluding extraordinary expenses and costs and adopting best utilisation method, the Authority notes that NIP for the domestic industry has been determined as per Annexure III of the Anti-dumping Rules and as per consistent practice in the DGAD.
- x. The opposite interested parties argued that the price of PX increased substantially during 2011-12 and 2012-13 while the price of naphtha did not increase at the rate in which prices of PX increased. However, the increase in prices of Naphtha was commensurate with increase in prices of PTA. Therefore, RIL cannot report loss and negative return on capital during 2011-12 and 2012-13. The Authority notes that the fact that Paraxylene producers have increased their prices in proportion to or more than their cost increases due to increase in naphtha prices is entirely immaterial for the present investigation as the subject goods is PTA and neither naphtha nor PX.
- y. As regards the contention that MCPL has no firm contract for coal supply, which has an adverse effect on its cost of production, causing injury, the Authority notes that the opposing interested parties have not provided any information to substantiate this above claim. MCPI has claimed adverse effects of imports on the parameters such as profits, cash flows, return on investment, etc.
- z. The opposite interested parties argued that MCPL has established its plant far away from the users and transportation cost incurred by it on the subject goods make it uncompetitive. Therefore, freight as a factor of injury must be investigated and considered by the Designated Authority in its attribution analysis. The Authority notes that the company was earning profits earlier and suffered financial losses in the POI with the same locational situation. Moreover, domestic industry must be seen as it exists and not under ideal situation.
- aa. The opposite interested parties argued that the market share of the Domestic Industry has remained static inspite of increase in demand. There is no connection between Domestic Industry's static market share in demand and the import from subject countries. The Authority notes that the domestic industry is not mandated to meet the entire domestic demand for becoming eligible for fair trade. Moreover, the domestic industry is in the process of expanding its capacity to meet the increased demand.
- bb. The opposite interested parties argued that MCPL procured PX (raw material) at substantially high prices from the related party. Designated Authority should reject such price shown by MCPL and adopt the low price at which the exporters procured PX for constructing NIP. The Authority notes that NIP has been determined as per Annexure III of the Rules and as per consistent practice in the DGAD.
- cc. The opposite interested parties argued that the adjustments relating to credit cost and freight cost for the computation of NIP requested by the Applicants cannot be allowed. The Authority notes that the detailed guideline for computation of NIP is laid down

under Annexure III of the AD Rules and the same has been adopted while determining NIP in the present investigation.

- dd. As regards the submission that applicants, though not subject to customs duty, are charging the same at 5.583% from the customers while selling the subject goods in the domestic market, the Authority notes that as stated by the domestic industry, such pricing mechanism followed by the domestic industry is based on import parity.
- ee. As regards the submission that certain users of PTA Chips have shifted to use of recycled material such as Poly Ethylene Terephthalate (PET) bottles which is a substitute of fresh PTA, the Authority notes that such argument is baseless as there is no contraction in demand for the subject goods.
- ff. The domestic industry argued that since the credit offered by the domestic industry and foreign producers are different, the non-injurious price is required to be compared with landed price of imports after appropriately adjusting the difference in the credit period. The Authority notes that NIP for the domestic industry has been computed as per Annexure III of the Anti-dumping Rules and as per consistent practice in the DGAD.
- gg. As regards the contention that freight cost is required to be adjusted for determination of injury margin, the Authority notes that injury margin has been determined by the Authority as per the Anti-dumping Rules and consistent practice in the DGAD.
- hh. As regards the request of the PTA User Association that the Designated Authority should verify the valuation reports submitted by the petitioners to the Central Excise Authorities to establish whether there is any undercharging of excise duty, the Authority notes that under Rule 4 of the Anti-dumping Rules, it is not mandated to conduct investigations regarding undercharging of excise duty.

### **Cumulative Assessment**

50. Annexure II para (iii) of the Anti-dumping Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent 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.

51. The Authority notes that:

- a) The subject goods are being dumped into India from subject countries. The margins of dumping from each of the subject countries are more than the *de minimis* limits prescribed under the Rules.

- b) The volume of imports from each of the subject countries is individually more than 3% of total volume of imports.
- c) Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market.

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

53. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

### **Volume Effect of the Dumped imports on the Domestic Industry**

#### a) **Demand and market share**

54. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below:

| <b>Particulars</b>   | <b>Units</b> | <b>2009-10</b> | <b>2010-11</b> | <b>2011-12</b> | <b>POI</b>  |
|--|--------------|----------------|----------------|----------------|-------------|
| Demand   | MT           | 3456617        | 39521<br>41    | 3876427        | 40964<br>98 |
| Trend  | Index        | 100            | 114            | 112            | 119         |
| Imports from Subject Countries                             | MT           | 308102         | 61881<br>8     | 511137         | 58698<br>6  |
| Trend  | Index        | 100            | 201            | 166            | 191         |
| <b>Imports From Other Countries</b>                        |              |                |                |                |             |
| China PR   | MT           | -              | 5262           | 6490           | 3368        |
| EU   | MT           | 688<br>1       | 1272           | 5390           | 11374       |
| Others   | MT           | 159505         | 11901<br>8     | 71896          | 46230       |
| Total  | MT           | 166386         | 12555<br>2     | 83776          | 60972       |
| Trend  | Index        | 100            | 75             | 50             | 37          |
| Sales of Domestic Industry (Including captive consumption) | MT           | 2454129        | 27607<br>71    | 2739514        | 29065<br>40 |
| Trend  | Index        | 100            | 112            | 112            | 118         |

|                         |       |        |        |        |        |
|-------------------------|-------|--------|--------|--------|--------|
| Sales of Other producer | MT    | 528000 | 447000 | 542000 | 542000 |
| Trend                   | Index | 100    | 85     | 103    | 103    |

**i) Market Share in Demand**

55. Considering imports from various sources and sales of the domestic industry, market share of subject imports in demand in India was examined. The Authority notes that the share of domestic industry has remained static despite increase in demand, whereas share of dumped imports from subject countries increased substantially during the POI as compared to the base year.

| Particulars                                      | Units | 2009-10 | 2010-11 | 2011-12 | POI   |
|--|-------|---------|---------|---------|-------|
| Imports from Subject Countries                   | %     | 8.91    | 15.66   | 13.19   | 14.33 |
| Import from Other Countries including China & EU | %     | 4.81    | 3.18    | 2.16    | 1.49  |
| Sales of Domestic Industry                       | %     | 71.00   | 69.86   | 70.67   | 70.95 |
| Sales of Other producer                          | %     | 15.28   | 11.31   | 13.98   | 13.23 |

**Import volume and market share**

56. The volume of imports of the subject goods from the subject countries is as under:-

| Particulars             | Unit                                 | 2009-10 | 2010-11 | 2011-12 | POI    |        |
|-------------------------|--------------------------------------|---------|---------|---------|--------|--------|
| Volume                  | Subject Countries                    | MT      | 308102  | 618818  | 511137 | 586986 |
|                         | Other countries including China & EU | MT      | 166386  | 125552  | 83776  | 60972  |
|                         | Total imports                        | MT      | 474488  | 744370  | 594914 | 647958 |
| Market Share in Imports | Subject Countries                    | %       | 64.93   | 83.13   | 85.92  | 90.59  |
|                         | Other countries                      | %       | 35.07   | 16.87   | 14.08  | 9.41   |

57. It is observed from the above table that imports from subject countries increased significantly during the POI as compared to the base year.

**Share of imports in relation to production**

58. Authority notes that the imports from subject countries have increased in relation to the production of the domestic industry, as is evident from the following table:

| Particulars  | Unit | 2009-10 | 2010-11 | 2011-12 | POI     |
|--|------|---------|---------|---------|---------|
| Imports from Subject Countries   | MT   | 308102  | 618818  | 511137  | 586986  |
| Production of domestic industry  | MT   | 2454835 | 2754659 | 2753708 | 2931680 |
| Imports from subject countries in relation to production of domestic industry. | %    | 12.55   | 22.46   | 18.56   | 20.02   |

e) **Capacity & capacity utilization**

59. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table:-

| Particulars          | Unit | 2009-10   | 2010-11   | 2011-12   | POI       |
|----------------------|------|-----------|-----------|-----------|-----------|
| Capacity MT          | MT   | 2,595,000 | 3,420,000 | 3,420,000 | 3,420,000 |
| Production           | MT   | 2,454,835 | 2,754,659 | 2,753,708 | 2,931,680 |
| Capacity utilization | %    | 95        | 81        | 81        | 86        |

60. It is observed that capacity utilization of the domestic industry declined during POI as compared to the base year, despite increasing demand.

f) **Production**

61. Production data of the domestic industry is given in the following table:-

| Particulars                      | Unit  | 2009-10 | 2010-11 | 2011-12 | POI     |
|----------------------------------|-------|---------|---------|---------|---------|
| Production                       | MT    | 2454835 | 2754659 | 2753708 | 2931680 |
| Trend                            | Index | 100     | 112     | 112     | 119     |
| Demand                           | MT    | 3456617 | 3952141 | 3876427 | 4096498 |
| Trend                            | Index | 100     | 114     | 112     | 119     |
| Production in relation to Demand | %     | 71.02   | 69.70   | 71.04   | 71.57   |

62. It is observed that production of the domestic industry has increased due to increase in capacity.

g) **Sales volume**

63. Sales volume of the domestic industry is given in the following table:

|  | Unit  | 2009-10 | 2010-11 | 2011-12 | POI     |
|--|-------|---------|---------|---------|---------|
| Domestic sales (Including captive consumption) | MT    | 2454129 | 2760771 | 2739514 | 2906540 |
| Trend  | Index | 100     | 112     | 112     | 118     |
| Demand   | MT    | 3456617 | 3952141 | 3876427 | 4096498 |
| Trend  | Index | 100     | 114     | 112     | 119     |
| Market Share of domestic industry in Demand    | %     | 71.00   | 69.86   | 70.67   | 70.95   |

64. It is observed from the above table that sales of the domestic industry have increased during the POI as compared to the base year. However, in percentage terms, it remained static.

**I. Price Effect of the Dumped imports on the Domestic Industry**

65. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. 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.

**i. Price Undercutting**

66. The net sales realization has been arrived after deducting outward freight and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty including applicable cess to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the price undercutting from the subject countries is negative during the entire injury period including POI. In this connection the Authority notes the submission of the domestic industry, that while they are selling the goods in the domestic market on “cash against delivery”, the foreign producers have been offering interest free credit of up to 180 days, the landed value computed by the Authority is not comparable with the net sales realization of the domestic industry and the non-injurious price determined by the Authority. The domestic industry has also claimed that the freight cost of the domestic industry has been completely ignored while comparing the domestic industry price with landed price of imports. The Authority has determined the landed value of the subject goods at ex-port level and the net sales realization of the domestic industry at ex-factory level as per its established practice.

|                          | Unit   | 2009-10  | 2010-11  | 2011-12  | POI      |
|--------------------------|--------|----------|----------|----------|----------|
| <b>Subject Countries</b> |        |          |          |          |          |
| Landed price of imports  | Rs./MT | 47016    | 54115    | 63191    | 65056    |
| Trend                    | Index  | 100      | 115      | 134      | 138      |
| Net Selling Price        | Rs./MT | ***      | ***      | ***      | ***      |
| Trend                    | Index  | 100      | 103      | 138      | 145      |
| Price Undercutting       | Rs./MT | (***)    | (***)    | (***)    | (***)    |
| Price Undercutting       | %      | (***)    | (***)    | (***)    | (***)    |
| Price Undercutting Range | %      | (5 – 15) | (5 – 15) | (0 – 10) | (0 – 10) |
| <b>Korea RP</b>          |        |          |          |          |          |
| Landed price of imports  | Rs./MT | 47226    | 52738    | 62904    | 64936    |
| Trend                    | Index  | 100      | 112      | 133      | 138      |
| Net Selling Price        | Rs./MT | ***      | ***      | ***      | ***      |
| Trend                    | Index  | 100      | 103      | 138      | 145      |
| Price Undercutting       | Rs./MT | (***)    | (***)    | (***)    | (***)    |

|                          |        |          |          |          |          |
|--------------------------|--------|----------|----------|----------|----------|
| Price Undercutting       | %      | (***)    | (***)    | (***)    | (***)    |
| Price Undercutting Range | %      | (5 – 15) | (5 – 15) | (0 – 10) | (0 – 10) |
| <b>Thailand</b>          |        |          |          |          |          |
| Landed price of imports  | Rs./MT | 46731    | 55602    | 63405    | 65246    |
| Trend                    | Index  | 100      | 119      | 136      | 140      |
| Net Selling Price        | Rs./MT | ***      | ***      | ***      | ***      |
| Trend                    | Index  | 100      | 103      | 138      | 145      |

|                          |        |          |           |          |          |
|--------------------------|--------|----------|-----------|----------|----------|
| Price Undercutting       | Rs./MT | (***)    | (***)     | (***)    | (***)    |
| Price Undercutting       | %      | (***)    | (***)     | (***)    | (***)    |
| Price Undercutting Range | %      | (5 – 15) | (10 - 20) | (0 – 10) | (0 – 10) |

ii. **Price Underselling**

67. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the domestic industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules. The analysis shows that during the POI the landed value of subject imports were below the non-injurious price of the domestic industry as can be seen from the table below.

| Particulars                       | Unit   | Korea | Thailand | Subject countries |
|-----------------------------------|--------|-------|----------|-------------------|
| Non-injurious price (Bulk)        | Rs./MT | ***   | ***      | ***               |
| Non-injurious price (Packed)      | Rs./MT | ***   | ***      | ***               |
| Non-injurious price (Wt. Average) | Rs./MT | ***   | ***      | ***               |
| Landed price (POI)                | Rs./MT | 64936 | 65246    | 65056             |
| Price underselling                | Rs./MT | ***   | ***      | ***               |
| Underselling                      | %      | ***   | ***      | ***               |
| Underselling - Range              | %      | 0-10  | 0-10     | 0 - 10            |

iii. **Price suppression/depression**

68. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

| Particulars                                 | Unit   | 2009-10 | 2010-11 | 2011-12 | POI   |
|---|--------|---------|---------|---------|-------|
| Cost of Sales                               | Rs./MT | ***     | ***     | ***     | ***   |
| Trend                                       | Index  | 100     | 116     | 164     | 180   |
| Selling Price                               | Rs./MT | ***     | ***     | ***     | ***   |
| Trend                                       | Index  | 100     | 112     | 138     | 145   |
| Landed price of imports (Subject countries) | Rs./MT | 47016   | 54115   | 63191   | 65056 |
| Trend                                       | Index  | 100     | 115     | 134     | 138   |

It may be seen from the table above that the cost of sales has increased from 100 to 180 from 2009-10 to POI, the selling price increased only from 100 to 145 during the same period. The Authority

also notes that the landed prices have increased from 100 basis points in base year to 138 basis points during the POI. This shows that the prices were suppressed on account of dumped imports and the domestic industry was not able to increase its prices in proportion to increase in costs.

### **Economic parameters of the domestic industry**

#### **i. Profit/Loss**

69. The profitability of the domestic industry is given in the following table;

| <b>Particulars</b>         | <b>Unit</b> | <b>2009-10</b> | <b>2010-11</b> | <b>2011-12</b> | <b>POI</b> |
|----------------------------|-------------|----------------|----------------|----------------|------------|
| Profit                     | Rs./Lacs    | ***            | ***            | (***)          | (***)      |
| Trend                      | Index       | 100            | 114            | (39)           | (117)      |
| Cash Profit                | Rs./Lacs    | ***            | ***            | ***            | (***)      |
| Trend                      | Index       | 100            | 125            | 2              | (60)       |
| Return on Capital Employed | %           | ***            | ***            | (***)          | (***)      |
| Trend                      | Index       | 100            | 120            | (35)           | (110)      |

70. It is seen from the above table that profitability of the domestic industry declined significantly during the POI as compared to the base year. Cash profits as well as return on investment have also declined in the POI as compared to base year as well as the previous year.

#### **ii. Cash Flow**

71. The Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table.

| <b>Particulars</b> | <b>Unit</b> | <b>2009-10</b> | <b>2010-11</b> | <b>2011-12</b> | <b>POI</b> |
|--------------------|-------------|----------------|----------------|----------------|------------|
| Cash profits       | Rs./Lacs    | ***            | ***            | ***            | (***)      |
| Trend              | Index       | 100            | 125            | 2              | (60)       |

It is seen that the cash profits of the domestic industry declined from 2011-12.

#### **iii. Inventories**

72. Inventories with the domestic industry moved as follows;

| <b>Particulars</b>        | <b>Unit</b> | <b>2009-10</b> | <b>2010-11</b> | <b>2011-12</b> | <b>POI</b> |
|---------------------------|-------------|----------------|----------------|----------------|------------|
| Average Stock             | MT          | 4,747          | 3,634          | 3,554          | 11,069     |
| Stock as no. of days sale | Days        | ***            | ***            | ***            | ***        |

It is noted that inventories with the domestic industry increased in the POI as compared to the base year as well as the previous year.

iv. **Productivity**

73. The Authority notes that productivity of the domestic industry has increased during the POI as compared to base year.

| Particulars               | Unit | 2009-10 | 2010-11 | 2011-12 | POI  |
|---------------------------|------|---------|---------|---------|------|
| Productivity per Employee | MT   | ***     | ***     | ***     | ***  |
| Productivity per day      | MT   | 7014    | 7870    | 7868    | 8376 |

v. **Employment and Wages**

74. It is seen from the table below that the employment level has increased during the POI marginally as compared to the base year.

| Particulars | Unit    | 2009-10 | 2010-11 | 2011-12 | POI |
|-------------|---------|---------|---------|---------|-----|
| Employment  | Nos.    | ***     | ***     | ***     | *** |
| Trend       | Index   | 100     | 107     | 105     | 104 |
| Wages       | Rs/Lacs | ***     | ***     | ***     | *** |
| Trend       | Index   | 100     | 152     | 174     | 175 |

vi. **Magnitude of Dumping**

75. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margins determined in respect of the subject countries are above de-minimis.

vii. **Growth**

76. The Authority notes from the table below that growth of the domestic industry in respect of production, domestic sales, profit/loss, ROI, etc have declined during the POI as compared to the growth achieved in 2010-11.

| Particulars                | Unit | 2009-10 | 2010-11 | 2011-12 | POI     |
|----------------------------|------|---------|---------|---------|---------|
| Production                 | %    | -       | 12.21   | (0.03)  | 6.46    |
| Domestic Sales Volume      | %    | -       | 12.49   | (0.77)  | 6.10    |
| Cost of Sales              | %    | -       | 16.20   | 41.06   | 9.64    |
| Selling Price              | %    | -       | 12.07   | 22.92   | 5.28    |
| Profit/(Loss) per unit     | %    | -       | -14.41  | -134.98 | -158.54 |
| Return on Capital Employed | %    | -       | 16.64   | -127.89 | -228.91 |

viii. **Ability to raise capital investment**

77. The Authority notes that one of the constituent of the domestic industry is involved in production of multiple goods and ability to raise capital is not a factor for injury analysis. Further, the other constituent domestic industry has been referred to BIFR.

ix. **Factors Affecting Domestic Prices**

78. The examination of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that the landed value of imported material from the subject countries is below the non-injurious price of the domestic industry, causing significant price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of the imports of dumped subject goods from subject countries.

**J. CONCLUSION ON MATERIAL INJURY**

79. In view of the above, the Authority concludes that the dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India. However, imports of the subject goods from the subject countries are undercutting the prices of the domestic industry in the market marginally. Further, while cost of production kept increasing over the injury period, the increase in selling price was not in proportion to the increase in cost of production. The imports were thus suppressing the prices of the domestic industry and preventing the price increase that would have otherwise occurred in the absence of dumped imports. With regard to consequent impact of the dumped imports on the domestic industry, it is found that though demand for the subject goods increased significantly, the production and sales of the domestic industry has not increased in proportion to the increase in demand. Resultantly, the domestic industry did not increase its market share despite increase in capacity and demand. Profitability of the domestic industry declined. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits marked negative growths in POI. Growth in respect of price parameters shows an adverse impact on the domestic industry. It is thus concluded that the domestic industry has suffered material injury.

**K. CAUSAL LINK AND OTHER FACTORS**

80. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:-

(a) **Volume and prices of imports from third countries**

81. During POI, imports of the subject goods from countries other than the subject countries have been insignificant in volume. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

(b) **Trade restrictive practices of and competition between the foreign and domestic**

## **producers**

82. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

### **(c) Contraction of demand or Changes in the pattern of consumption**

83. The Authority notes that demand for the product showed significant increase during the injury period and also during POI. The Authority thus concludes that injury to the domestic industry was not due to contraction in demand.

### **(d) Development in Technology**

84. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

### **(e) Export performance of Domestic Industry**

85. Performance of the domestic industry has been segregated for domestic and export market. Therefore, any possible decline in export performance is not a cause of injury to the domestic industry.

### **(f) Productivity of the Domestic Industry**

86. Productivity of the domestic industry has increased during the POI. However, profitability of the domestic industry showed decline.

87. From the foregoing, the Authority concludes that there is no evidence of injury being caused due to any other factor other than the dumped imports of the subject goods originating in or exported from the subject countries.

## **L. FACTORS ESTABLISHING CAUSAL LINK**

88. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated over the injury period. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- i The dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India.
- ii While the cost of production/sales kept increasing over the injury period, the increase in selling price was not in proportion to the increase in cost of production/sales.
- iii The imports were suppressing the prices of the domestic industry and preventing the price increase that would have otherwise occurred in the absence of dumped imports.

- iv Profitability of the domestic industry declined. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits marked negative growths in POI on account of dumped imports.
- v The financial performance of the domestic industry has deteriorated in respect profit, return on capital employed and cash flow, due to dumped imports.

89. Thus the Authority concludes that the domestic industry suffered material injury due to dumped imports of the subject goods, originating in or exported from the subject countries.

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

90. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries.

| S. No. | Channel of Export | Name of producer                  | Exporter                          | Non Injurious Price USD/MT | Landed price USD/MT | Injury margin US\$/MT | Injury margin % | Injury margin Range % |
|--------|-------------------|-----------------------------------|-----------------------------------|----------------------------|---------------------|-----------------------|-----------------|-----------------------|
| 1      | Korea RP-India    | Samsung General Chemical Co Ltd   | Samsung C&T                       | ***                        | ***                 | ***                   | ***             | 0 - 10                |
| 2      | Korea RP-India    | Taekwang Industrial Co Ltd        | Taekwang Industrial Co Ltd,       | ***                        | ***                 | ***                   | ***             | 0 - 10                |
| 3      | Any               | All other Producers               | All other Exporters               | ***                        | ***                 | ***                   | ***             | 0 - 10                |
| 4      | Thailand-India    | Indorama Petrochem Ltd            | Indorama Petrochem Ltd            | ***                        | ***                 | ***                   | ***             | 0 - 10                |
| 5      | Thailand-India    | TPT Petrochemicals Public Limited | TPT Petrochemicals Public Limited | ***                        | ***                 | ***                   | ***             | 0 - 10                |
| 6      | Any               | All other producers               | All other Exporters               | ***                        | ***                 | ***                   | ***             | 0 - 10                |

## **N. Post Disclosure Comments**

91. The following are the post-disclosure comments/submissions made by the producers/exporters/importers/other interested parties:
- i. The Disclosure Statement issued by the Authority is based on incorrect appreciation of facts and law. It does not take into account many of the submissions made by the respondents. For example, the respondents had submitted that Designated Authority is bound to determine all the economic factors in light of the admitted technical problem faced by MCPL. But, the Authority brushed aside the said submission and also the cited jurisprudence.
  - ii. Contention of the applicant domestic producers that in terms of Rule 14 of AD Rules, the Designated Authority shall “not” terminate an investigation “unless” it determines that the volume of dumped imports, actual “and” potential, is de-minimis”, is incorrect.
  - iii. The Authority has stated in the disclosure statement that injury margin and price underselling have been determined month wise. A narrow range of such month-wise determinations should have been disclosed in the disclosure statement. The Authority should also have disclosed the actual calculation of the landed value with the relevant adjustments from the CIF value.
  - iv. The Authority has exercised confidentiality in the disclosure statement, especially regarding information pertaining to the details of directors of Sam Nam, determination of NIP etc. While non-disclosure of details of directors of Sam Nam affects the standing of the applicant domestic producers, non-disclosure of details/methodology of NIP casts doubt about the magnitude of the NIP arrived at by the Authority.
  - v. The faulty production technology in the Plant II of MCPL does not seem to have been taken care of by the Designated Authority while determining NIP. Further, the impact of the said factor does not seem to have been taken care of while computing market share in demand, share of imports in relation to production, determination of capacity utilization, determination of sales, etc. Injury due to such faulty production technology cannot be attributed to any other cause including the alleged dumped imports. The observation of the Authority in the disclosure statement that changes in technology have not caused injury to the domestic industry is incorrect. It is an admitted position that MCPL established Plant II during injury period and in such Plant, it is facing a number of technical problems and due to that it is suffering.

- vi. The Authority is required to clarify whether the domestic industry's contention on the issue of interest free credit and freight cost for the computation of NIP was accepted or rejected; merely stating that the established practice was followed is insufficient.
- vii. The domestic industry is not suffering any injury as there is no volume injury and price undercutting is negative.
- viii. It is an admitted position that MCPL suffers technical problems. The Authority cannot then logically conclude that such technical problem has not affected productivity.
- ix. It is an admitted position that the Applicant Domestic Producers as well as IOCL are able to sell whole of their production and even after achieving more than 100% capacity utilisation (except one plant II of MCPL which uses faulty production technology). No evidence has been produced by the Applicant Domestic Producers to establish that the users of the subject goods ever made any sustained pressure on the Applicant Domestic Producers to reduce the prices. In fact, the users always followed the dictate of the Applicant Domestic Producers in fixation of prices. The Applicant Domestic Producers earned huge profits based on the pricing formula forced by them on the user industry. However, only during POI due to changed circumstances, there was slight reduction in profitability of Applicant Domestic Producers (except in relation to Plant II of MCPL). The Applicant Domestic Producers also failed to place on record any evidence regarding loss of transactions for sales.
- x. Even before imposition of provisional anti-dumping duty, the Applicant Domestic Producers once again forced the users to adopt another formula of pricing the goods, so that the profitability of the Applicant Domestic Producers increased sufficiently. The imports have taken place only to fill the gap in demand and supply where the Applicant Domestic Producers failed to commit for scheduled supply of the subject goods. The quantity of import was never more than the shortfall in supply by the domestic producers. This proves that there is no causal link between imports and injury to the Applicant Domestic Producers.
- xi. The users of the subject goods do not have any intention remotely to cause any injury to the Applicant Domestic Producers by importing the subject goods. After imposition of provisional anti-dumping duty, the Applicant Domestic Producers as well as IOCL have increased the price of the subject goods. The Designated Authority has incorrectly noted the submission of the Respondents in para 17 (xii) of the Disclosure Statement. It was submitted that "every" producer "including" RIL increased the selling prices. It was submitted after increasing the price of PTA to

its outside users, RIL has not increased the prices of final products of PTA and due to that the users and down-stream of PTA suffering adversely.

- xii. Further, MCPL suffered injury due to its failure to stand in competition with other domestic producers. MCPL has established the Plant at a disadvantageous place in comparison to other domestic producers and due to this reason they fail to compete with other domestic producers. MCPL is situated in Eastern part of India. This results in payment of higher freight cost by the users, if they procure the subject goods from MCPL instead of from other domestic producers.
- xiii. In any case, MCPL has higher cost of production and is not able to recover from the users of the subject product; therefore, MCPL fails in inter-se competition among the domestic producers. This proves that due to inter-se competition among the domestic producers, MCPL is suffering injury apart from the fact that it has the faulty production technology.
- xiv. The Designated Authority has adopted exchange rate as 1 USD = INR 54.65. It is an undisputed fact that there is a huge devaluation of INR subsequently and the exchange rate is hovering as 1 USD=INR 62 which is becoming a permanent feature. Such change in the exchange rate has already eliminated effect of dumping/injury and provided a very beneficial situation for the Domestic Industry. Therefore, the Designated Authority may not recommend the imposition of anti-dumping duty.
- xv. It is apparent from the disclosure statement that month-wise weighted average normal value is compared with month-wise export price and then another weighted average is further applied to arrive at the final dumping margin. The Authority is requested to clarify under which legal provision such methodology adopted.
- xvi. NIP based on weighted average revised cost of two producers cannot be kept as confidential by the Authority.
- xvii. Rejection of Hyosung's data and refusal to grant it an individual margin on the ground of an "incomplete value chain" is without any legal basis. It is wholly unwarranted and arbitrary for the Authority to decline to grant Hyosung individual margins either due to lack of cooperation of third parties or due to its own act of not verifying the data submitted by SK Petrochemical.
- xviii. The Authority's conclusion on the basis of the transaction-wise imports data of DGCI&S that imports of subject goods from China PR and EU are de minimis is correct. The Authority has therefore correctly excluded China PR and EU from the scope and purview of the subject countries and terminated the investigation in respect of these countries in terms of Rule 14 of AD Rules.

92. The following are the post-disclosure comments/submissions made by the domestic industry:—

- i. The investigation should not be terminated in respect of imports from China and

EU in terms of Rule 14 of AD Rules as the Rule states that the Designated Authority shall “not” terminate an investigation “unless” it determines that the volume of dumped imports, actual “and” potential, is de-minimis”.

- ii. The import price of the responding exporters is not the best "facts available" information for the reason that it relates to a particular exporter and does not pertain to "any other exporters" for whom dumping margin and injury margin is determined under the category in "any other exporter/producer" or "non cooperating exporters". Therefore, determination of residual dumping margin and injury margin should be based on Indian customs data.
- iii. It is evident from the NIP figures disclosed to the petitioners that the working capital of MCC PTA India Corp Pvt Limited has been determined without excluding interest bearing credit purchase from the current liabilities. Interest bearing credit purchases cannot form part of working capital. The working capital is determined by deducting current liabilities from current assets. The current liabilities deducted are interest free funds/credits available to the business enterprises and to this extent, a business enterprise is not required to deploy funds (and incur a cost on such funds). It is for this reason that interest free funds/credits are treated as current liabilities and deducted from current assets in order to determine working capital. However, if current liabilities include any interest bearing loans, the same should be excluded from the current liabilities for determining working capital. Where a company has interest bearing credit purchases, such interest bearing creditors are included in creditors in accordance with GAPP and accounting standards. However, because, the company has paid a cost for it, this should be excluded from the current liabilities for determination of working capital.
- iv. The injury margin determined is inappropriate and understated for the reason that the comparison between NIP and import price is unfair, as the two figures are not at the same level. The injury margin is quite low and shows that the methodology adopted does not constitute fair comparison for the reason that difference in credit period between domestic industry and foreign suppliers not taken into account while determining injury margin. The injury margin is required to be calculated considering the credit cost.
- v. The Authority has not disclosed the methodology that has been applied for determination of cost of production of foreign producers, the elements of cost adopted and the methodology applied. The Authority has also not disclosed how it has satisfied itself about the reasonableness of the cost of production of the foreign producers.
- vi. Determination of non-injurious price is inappropriate and is against the object and intent of the dumping law and therefore, the NIP determined in the instant case is required to be revised upwards.

- vii. Authority must add excise duty to the domestic industry's non injurious price and countervailing duty on the imports for determining injury margin. The mere fact that excise duty and countervailing duty are cenvatable is wholly insufficient to decide whether excise duty should be added to the non injurious price and the customs duty should be added to the import price. If excise duty is not added to the non injurious price and countervailing duties is not added to the landed price of imports, the injury margin is proportionately understated.
- viii. Transportation cost forms a significant portion of the cost in case of domestic industry. The selling price and non injurious price of the domestic industry should be compared with the landed price of imports only after adding the transportation costs.
- ix. Reliance has already commenced commercial production in their new PTA plant having a capacity of 1.15 million MT/annum. The present value of these investments should be considered while granting reasonable profits.
- x. Capital employed should be determined considering present value of fixed assets. Adoption of net fixed assets is highly inappropriate.
- xi. The comparison of import price with non injurious price should be at fair level to determine actual extent of injury suffered by the domestic industry. The non injurious price and import price should be considered after either including or excluding associated freights. A comparison of non injurious price of the domestic industry without including associated freight with landed price of imports after adding associated freights will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry.
- xii. The rules provide that the Designated Authority shall consider non injurious price at ex-factory level. Sales tax, excise duty, discounts, commission are payable at ex-factory level and therefore the fact that injury margin is being determined at ex-factory level does not imply that the sales tax and excise duty cannot be added.
- xiii. The domestic industry sells PTA on cash, whereas exports from subject countries under investigation supply PTA with an interest free credit period ranging from \*\*\* days to \*\*\* days. This is a significant cost as interest in India is at 12%. The users of PTA in India while negotiating with the domestic industry always calculate a value of this interest free credit to bargain and extract a lower price. This may be considered while determining injury to the industry.

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

93. The Authority notes that most of the post-disclosure comments made by the interested parties are mere reiteration of their earlier submissions. However, the post-disclosure comments considered relevant are examined as below:

## **Examination of comments made by the Producers/Exporters/Importers/Other Interested Parties**

- i. The contention that the Disclosure Statement issued by the Authority is based on incorrect appreciation of facts and law is devoid of any merit. The Authority notes that the essential facts that emerged during the course of this investigation were analyzed with the applicable law and corroborated with verifiable evidence to the extent deemed necessary and disclosed to the interested parties. The submissions made by the interested parties during the course of this investigation, to the extent considered relevant, have been examined and addressed in this final finding.
- ii. As regards the contention that Authority has exercised excessive confidentiality in the disclosure statement, especially regarding information pertaining to the details of directors of Sam Nam, determination of NIP, etc, the Authority notes that the non-confidential information furnished by the various interested parties have been made available in the public file. The non-injurious price is business sensitive information for the domestic industry and therefore treated as confidential in line with the established practices.
- iii. As regards the contention that the Designated Authority should have disclosed at least the narrow range of the month-wise injury margin and dumping margin, the Authority notes that the range percentage of the said determinations for POI as a whole were disclosed in the disclosure statement as per its consistent practice. The Authority further notes that it is neither the practice nor feasible to provide the month-wise range of dumping and injury margins.
- iv. As regards the contention that the faulty production technology in the Plant II of M/s MCC PTA India Corp. Pvt Ltd., does not seem to have been taken care of by the Designated Authority while determining NIP and conducting injury analysis, the authority notes that the NIP has been determined in terms of Annexure III of the AD Rules after taking in to account the loss of production due to technical problems faced by the Company in its new plant.
- v. Post-disclosure, interested parties contented that Authority's observation in the disclosure statement that changes in technology have not caused injury to the domestic industry is incorrect in the face of injury suffered by the domestic industry on account of faulty production technology in the Plant II of MCPI, the Authority notes that a fault in the existing technology cannot be interpreted as an introduction of new technology. It is true that snags in Plant II of M/s MCC PTA India Corp. Pvt Ltd have caused injury to the Company, but dumping of subject goods from the subject countries has aggravated the injury.

- vi. As regards the contention that the Applicant Domestic Producers earned huge profits based on the pricing formula forced by them on the user industry, the Authority notes that the pricing formula adopted by the domestic producers is in line with the international pricing formula.
- vii. As regards the contention that M/s MCC PTA India Corp. Pvt. Ltd. has established the Plant at a disadvantageous place in comparison to other domestic producers and due to this reason they failed to compete with other domestic producers, the Authority notes that location of a plant and its associated advantages/disadvantages are not relevant under the anti-dumping law for injury analysis. The injury on account of dumping of subject goods from the subject countries has been established in the present finding.
- viii. As regards the contention that due to inter-se competition among the domestic producers, M/s. MCC PTA India Corp. Pvt. Ltd. is suffering injury, the Authority notes that the submission is unsubstantiated. During the course of the investigation, nothing relevant was brought before the authority to establish that injury to the domestic industry is actually on account of inter-se competition among the domestic producers and not due to dumping.
- ix. As regards the contention that the change in the exchange rate has already eliminated the effect of dumping and therefore Authority may not recommend the imposition of anti-dumping duty, the Authority notes that the entire investigation is based on POI data and post POI developments like changes in exchange rates have no relevance for recommendation of anti-dumping measures by the Authority.
- x. As regards the contention concerning the legal basis for undertaking weighted average dumping margin, the Authority notes that when a month-wise exercise is done, month-wise normal value is compared with month-wise export price to work out month-wise dumping margin. Thereafter, in order to determine the dumping margin for the POI as a whole, the Authority has computed the weighted average of the dumping margins by considering the month-wise exports as per the consistent practice.
- xi. As regards the contention of Hyosung that rejection of their data and refusal to grant them individual margin on the ground of an “incomplete value chain” is without any legal basis, the Authority notes that the issue has already been examined in detail in this finding. The value chain between the producers (SK Petrochemicals, SamNam and Lotte) and Hyosung (exporter) has been broken for a significant volume of

exports of subject goods to India during the POI as the said producers have not cooperated.

- xii. As regards the submission that the Authority should clarify whether the domestic industry's contention on the issue of interest free credit and freight cost for the computation of NIP was accepted or rejected; the Authority notes that for the reasons stated elsewhere in this finding, the request of the domestic industry in this regard has not been accepted.
- xiii. Some of the interested parties have submitted that due to non-stabilisation of the 2<sup>nd</sup> plant of M/s MCC PTA India Corp. Pvt. Ltd. during the injury period, the Authority should have done injury analysis without taking into account the performance of their 2<sup>nd</sup> plant so that injury, if any, suffered by the domestic industry on account of the technical problems faced in operation of the 2<sup>nd</sup> plant is excluded. The Authority has, therefore, made the injury analysis by considering the performance of the 2<sup>nd</sup> plant of M/s MCC PTA India Corp. Pvt. Ltd. @ \*\*\*% of its capacity as was considered for determining NIP. The following Table gives the notional performance of the domestic industry in terms of the major economic parameters had the second plant of the Company operated without any technical problems during the injury period including the POI.

| S. No. | Particulars            | Unit       | 2009-10   | 2010-11   | 2011-12   | 2012-13 (POI) |
|--------|------------------------|------------|-----------|-----------|-----------|---------------|
| 1      | Capacity               | MT         | 25,95,000 | 34,20,000 | 34,20,000 | 34,20,000     |
|        | Trend                  | Index      | 100       | 132       | 132       | 132           |
| 2      | Production             | MT         | 25,03,093 | 32,26,130 | 33,20,442 | 32,97,251     |
|        | Trend                  | Index      | 100       | 129       | 133       | 132           |
| 3      | Capacity utilisation   | %          | 96        | 94        | 97        | 96            |
|        | Trend                  | Index      | 100       | 98        | 101       | 100           |
| 4      | Domestic Sales         | MT         | ***       | ***       | ***       | ***           |
|        | Trend                  | Index      | 100       | 172       | 177       | 178           |
| 5      | Captive Consumption    | MT         | ***       | ***       | ***       | ***           |
|        | Trend                  | Index      | 100       | 98        | 99        | 96            |
| 6      | Cost of Sales          | Rs./MT     | ***       | ***       | ***       | ***           |
|        | Trend                  | Index      | 100       | 114       | 163       | 180           |
| 7      | Selling price          | Rs./MT     | ***       | ***       | ***       | ***           |
|        | Trend                  | Index      | 100       | 112       | 138       | 145           |
| 8      | Profit/loss            | Rs./MT     | ***       | ***       | (***)     | (***)         |
|        | Trend                  | Index      | 100       | 100       | (17)      | (68}          |
| 9      | Profit/loss before tax | Rs./lakh s | ***       | ***       | (***)     | (***)         |

|    |                                   |               |     |     |       |       |
|----|-----------------------------------|---------------|-----|-----|-------|-------|
|    | Trend                             | Index         | 100 | 171 | -28   | -111  |
| 10 | Depreciation                      | Rs./lakh<br>s | *** | *** | ***   | ***   |
|    | Trend                             | Index         | 100 | 213 | 210   | 216   |
| 11 | Interest                          | Rs./lakh<br>s | *** | *** | ***   | ***   |
|    | Trend                             | Index         | 100 | 274 | 233   | 249   |
| 12 | Cash Profit/loss                  | Rs./lakh<br>s | *** | *** | ***   | (***) |
|    | Trend                             | Index         | 100 | 170 | 8     | -59   |
| 13 | Profit/loss before interest & tax | Rs./lakh<br>s | *** | *** | (***) | (***) |
|    | Trend                             | Index         | 100 | 173 | -22   | -104  |
| 14 | Return on Capital Employed        | %             | *** | *** | (***) | (***) |
|    | Trend                             | Index         | 100 | 168 | -23   | -100  |

The Authority notes from the above Table that there is improvement in the production and sales of the domestic industry in POI as compared to the base year. However, the capacity utilisation of the domestic industry remained stable during the injury period. The Authority also notes that while both cost of sales as well as selling price increased over the injury period, the increase in selling price was not commensurate with the increase in the cost of sales. This has resulted in the domestic industry incurring huge losses from 2011-12 and the POI. Similarly, the return on capital after increasing from 100 basis points in 2009-10 to 168 in 2010-11, has declined to -23 points in 2011-12 and -100 points in the POI. The Authority also notes that one of the domestic producers constituting domestic industry could not cover its entire variable cost during POI due to dumped imports from the subject countries. The Authority, therefore, holds that the contention of some of the interested parties that the injury to the domestic industry is mainly on account of technical problems faced by one of the producers in its new plant is not correct.

#### **Examination of comments made by the Domestic Industry**

- i. As regards the argument of the domestic industry that even if volume of imports from China in the POI is considered as de-minimis, the Authority should rely upon the potential volume of imports (which is more than 3%) and therefore not terminate the investigation, the Authority reiterates that the provisions laid down under Rule 14 of the Anti-dumping Rules amply clarify that when either the actual imports or the potential imports account for less than 3% of total imports, the investigation should be terminated.
- ii. With regard to the domestic industry's request to consider the lowest price as per DGCIS import data for the purpose of determining dumping margin and injury margin for the non-cooperative exporters, the Authority notes that the DGCIS import data does not give separately the details of imports of PTA made from co-operative exporters and other exporters. Therefore, the Authority does not consider the request of the domestic industry in this regard. The Authority further notes that the dumping margin and injury margin for the non-cooperative exporters have been determined on

facts available basis, in terms of Rule 6(8) of the Antidumping Rules and established practice in the DGAD, which includes the data of co-operative exporters, including month-wise data.

- iii. With regard to the request of domestic industry to include the interest bearing credit availed by M/s. MCC PTA India Corp. Pvt. Ltd. for purchase of imported paraxylene, the Authority notes that this Company has been importing Paraxylene on credit from foreign suppliers and the cost of raw materials include the cost of credit also. M/s MCC PTA India Corp. Pvt. Ltd. has considered the entire cost including the cost of credit and the impact of foreign exchange variation as part of material cost. Further, it has exhibited in its audited accounts the amount of credit availed from the foreign supplier as current liabilities. Since the Authority has considered the cost of PX as claimed by the Company (including credit cost and exchange rate variation), for determination of NIP, it has not agreed to the request of the domestic industry to exclude the interest bearing credit availed from raw materials suppliers from the current liabilities. Further, the Authority has determined the net working capital as the difference between the current assets and current liabilities as exhibited in the audited annual accounts of the Company in terms of Annexure III to the AD Rules. The Authority, therefore, holds that the submission of the domestic industry in this regard is not acceptable.
- iv. With regard to the submission of the domestic industry to determine injury margin by taking into account the interest cost on account of difference in the credit period allowed by the domestic industry and the exporter, the Authority notes that the injury margin has been determined as the difference between the landed value and the non-injurious price. While the landed value has been arrived at by considering the assessable value and the applicable customs duty and cess thereon as per Authority's established practice, the non-injurious price at ex-factory level has been determined in terms of the principles laid down under Annexure III to the Anti-dumping Rules. This comparison does not capture the effect of the difference in the credit periods allowed by the domestic industry and the exporters.
- v. With regard to the comment of the domestic industry about how the Authority has satisfied about the correctness of data provided by the exporters, the Authority notes that the data on cost of production (raw materials, utilities, overheads, etc), selling & general administration expenses, financial and other expenses/income submitted by the exporters have been verified to the extent considered relevant from their audited accounts and the computerised accounting system
- vi. With regard to the submission of the domestic industry either to include the freight incurred by the domestic industry in transporting the product to the customers

factory/warehouse from the non-injurious price or to deduct from the landed value of the imported subject goods, the Authority notes that the 'Landed value' has been determined at the port level and the NIP have been determined at the ex-factory level as per the established practice and the Annexure III to the AD Rules respectively. Therefore, the freight charges incurred by the domestic industry in respect of transportation of subject goods from their factories to the customer's premises have not been considered.

- vii. As regards the contention of the domestic industry that Authority must add excise duty, sales tax, discounts, commissions etc to the domestic industry's non injurious price and countervailing duty on the imports for determining injury margin, the Authority notes that these issues are similar to the issues pending before the Honourable Delhi High Court. The Authority further notes that it has, initiated action for considering the issues raised by a section of the domestic producers before the Honourable Delhi High Court very recently by inviting comments of all the stake holders. The Authority, therefore, holds that until final decision is taken in this regard, the Authority has to adhere to the principles outlined in the existing Annexure III. The Authority further notes that the NIP determined by the Authority in the instant case is as per the principles outlined in the present Annexure III to the Anti-dumping Rules.

## **O. CONCLUSIONS:**

94. 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:
  - a. The product under consideration has been exported to India from subject countries below its associated normal value, thus resulting in dumping.
  - b. The domestic industry has suffered material injury due to dumping of the product under consideration from the subject countries.
  - c. The material injury has been caused by the dumped imports from the subject countries.

## **P. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

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

96. The concern expressed by the user sector that imposition of anti-dumping duty on the imports of PTA would adversely affect production of downstream industries is farfetched and not supported by verifiable evidence. The imposition of anti-dumping duty ranging from 2% to 11% might have a minimal cost push effect of about 2 – 3% on the cost of production of the downstream products like PFY and PSF. However, imposition of anti-dumping duties would create a level playing field for the domestic industry vis-à-vis unfair trade practices of dumping and the end users of PTA, who have been benefitting out of such unfair trade practices, would now have to pay for the raw materials at undumped/fair prices.
97. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

#### **Q. RECOMMENDATIONS**

98. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted the investigation into dumping, injury and causal links in terms of the provisions laid down under the Anti-dumping Rules and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is required to offset dumping and injury. Therefore, Authority considers it necessary and recommends imposition of anti-dumping duty on imports of subject goods from the subject countries (Korea RP and Thailand) in the form and manner described hereunder from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.36/2014-Customs (ADD) dated 25th July, 2014.
99. The Authority notes that Indorama Petrochem Ltd, Thailand and TPT Petrochemicals Public Limited, Thailand are related companies operating in Thailand and exported the subject goods to their own related party in India i.e. M/s Indo Rama Synthetics (I) Ltd . In view of their relationship, the Authority has recommended antidumping duty on weighted average basis for both the related exporters so as to avoid circumvention of antidumping duty.
100. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of

injury, so as to remove the injury to the domestic industry. Accordingly, anti-dumping duty equal to the amount mentioned in Col 8 of the table below is recommended to be imposed from the date of imposition of provisional duties, on all imports of subject goods originating in or exported from subject countries.

**DUTY TABLE**

| S. No. | Heading/ Subheading | Description of goods        | Country of origin   | Country of export   | Producer  | Exporter                          | Duty Amount | Unit | Currency |
|--------|---------------------|-----------------------------|---|---|---|-----------------------------------|-------------|------|----------|
| (1)    | (2)                 | (3)                         | (4)   | (5)   | (6)   | (7)                               | (8)         | (9)  | (10)     |
| 1      | 29173600            | Purified Terephthalic Acid' | Korea RP  | Korea RP  | Samsung General Chemical Co. Ltd.                           | Samsung C&T                       | 27.32       | MT   | US\$     |
| 2      | -do-                | -do-                        | Korea RP  | Korea RP  | Taekwang Industrial Co. Ltd.                                | Taekwang Industrial Co. Ltd.,     | 23.61       | MT   | US\$     |
| 3      | -do-                | -do-                        | Korea RP  | Korea RP  | Any combination other than mentioned in S. No. 1 to 2 above |                                   | 78.28       | MT   | US\$     |
| 4      | -do-                | -do-                        | Korea RP  | Any country other than those countries subject to Anti-dumping duty | Any   | Any                               | 78.28       | MT   | US\$     |
| 5      | -do-                | -do-                        | Any country other than those subject to Anti-dumping duty | Korea RP  | Any   | Any                               | 78.28       | MT   | US\$     |
| 6      | -do-                | -do-                        | Thailand  | Thailand  | Indorama Petrochem Ltd                                      | Indorama Petrochem Ltd.           | 45.43       | MT   | US\$     |
| 7      | -do-                | -do-                        | Thailand  | Thailand  | TPT Petrochemicals Public Limited                           | TPT Petrochemicals Public Limited | 45.43       | MT   | US\$     |
| 8      | -do-                | -do-                        | Thailand  | Thailand  | Any combination other than mentioned in S. No. 6 to 7 above |                                   | 62.55       | MT   | US\$     |
| 9      | -do-                | -do-                        | Thailand  | Any country other than those subject to Anti-dumping duty           | Any   | Any                               | 62.55       | MT   | US\$     |
| 10     | -do-                | -do-                        | Any country other than those subject to Anti-dumping duty | Thailand  | Any   | Any                               | 62.55       | MT   | US\$     |

101. Subject to the above, the Preliminary Finding notified vide notification of even No. dated 19<sup>th</sup> June, 2014 in respect of Korea RP and Thailand is hereby confirmed.

**R. FURTHER PROCEDURE**

102. 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.

**J.K. DADOO**

Designated Authority