

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

New Delhi the 2nd December, 2008

Final Findings

Subject: Sunset Anti-dumping review investigations in the matter relating to imports of Float Glass from Indonesia and China PR

No.15/1/2007- DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

Background of the Case

2. On the basis of an application filed by the domestic producer in India, the Designated Authority (herein after referred to as the Authority) initiated an antidumping investigation on 05.07.2002 and notified its final findings recommending definitive antidumping duty on import of Float Glass (hereinafter referred to as subject goods) originating in or exported from Indonesia and China PR vide Notification No. 14/19/2002-DGAD, dated 22.08.2003 and definitive duty was imposed vide Notification No. 165/2003-Customs, dated 12.11.2003. Authority initiated sunset review on 13.12.2007

3. The present application has been filed by M/s Saint-Gobain Glass India Limited under Section 9A (5) of the Customs Tariff Act, 1975, as amended in 1995 read with Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 requesting sunset review of anti dumping duties earlier imposed on imports of Float Glass from Indonesia and China PR. In its application, the applicant substantiated the need for a review of the anti dumping duty imposed on the subject goods originating in or exported from Indonesia and China PR. The petitioner claimed with prima facie evidence that cessation of anti dumping duty imposed on subject goods from these countries is likely to lead to continuation or recurrence of dumping and injury and have requested for continuation and enhancement of the anti dumping duty imposed on subject goods from subject countries for a further period of five years.

4. Authority initiated sunset review vide notification No. 13th December 2007 in accordance with Section 9A(5) of the Act, read with Rule 23 of Antidumping Rules, to review the need for continued imposition of duties in force and whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

Procedure

5. The procedure described below has been followed with regard to this investigation:

i) After initiation of the review investigation, the Authority notified the domestic industry, all known exporters/producers in the subject countries and known importers, calling for questionnaire responses and necessary information in accordance with Rule 6(4);

ii) The Embassy of the subject countries in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.

iii) The Authority sent questionnaires, to elicit relevant information, to the known exporters from Indonesia and China PR.

iv) Only one of the exporters from Indonesia, PT. Muliaglass Float Division responded to the questionnaire in response to the above notification.

v) The period of investigation for the purpose of the present review is 1st July 2006 to 30th June 2007 (12 months). However, injury analysis covered the years 2004, 2005, 2006 and POI.

vi) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation;

vii) The Saint-Gobain Glass India Ltd. (domestic producer) of the subject goods has provided their cost and injury information for injury investigation.

viii) No other interested party has submitted any response to the initiation notification.

ix) The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.

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

xi) The Authority verified the information furnished by the domestic industry to the extent possible to examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;

xii) The Authority also verified the data of the cooperating exporter, to determine the normal value and dumping margin as per the Rules.

xiii) The Authority held a public hearing on 12th September 2008 to hear the interested parties orally, which was attended by representatives of domestic industry only. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered and incorporated in the disclosure to the extent they are relevant and substantiated with evidence.

xiv) **** In the statement represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

Product Under Consideration and "Like Article"

Views Of the Domestic Industry

6. The product involved in the original investigation and this sunset review is Float Glass of thickness 2mm to 12mm, (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes. Since, the present investigation is a review investigation; product under consideration remains the same as has been defined in the original investigation, as there has been no significant development or change in the product during the period thereafter. It is classified under Chapter heading 70.05 of the first schedule of Customs Tariff Act, 1975.

Views of Interested Parties

7. No interested party other than the domestic industry has made any submissions with regard to the product under consideration

Examination by Authority

8. Authority examined the contentions of the domestic industry in detail. It is noted that the present investigation is a sunset review investigation and therefore the scope of the product under consideration should not be altered in review investigation. The Authority therefore holds that the scope of the present product under consideration is the same as was the scope of the product under consideration in the sunset review investigations notified vide Notification No. 14/19/2002-DGAD, dated 22.08.2003 and consequent Customs Notification No. 165/2003-Customs, dated 12.11.2003.

Standing and scope of the Domestic Industry

Views Of the Domestic Industry

9. Following submissions have been made by the domestic industry with regard to standing of the domestic industry.

i. Petition was filed by M/s Saint-Gobain India Ltd. There are three producers of subject goods in India who created capacity for production of Float Glass namely M/s Saint-Gobain Glass India Ltd., M/s Asahi India Glass Ltd. and M/s Gujarat Guardian Ltd. Apart from M/s Saint-Gobain Glass India Ltd., the other two producers have been importers of the subject goods during the period of investigation. Therefore, the said two producers are not being considered as part of the domestic industry.

ii. It has been submitted that no issues have been raised by any interested party on standing of the domestic industry and hence they are not offering any comments on standing. It has been pleaded that it has been admitted by PT Multi-glass in their letter dated 3.3.2008 that they exported subject goods to M/s. Asahi India and further that no party has disputed that M/s. Gujarat Guardian has not imported subject goods. In view thereof, they have submitted that in terms of Rule 2(b) deeming fiction, both the above named domestic producers cannot form part of Domestic Industry. It has further been stated that in any case, without prejudice, it is relevant here to state that Rule 5 of the Anti-dumping Rules is not applicable to the sunset review hence, the present sunset review initiated by the Designated Authority is fully in accordance with the Anti-dumping Rules and therefore eminently maintainable.

Views of Interested Parties

10. No interested party other than the domestic industry has made any submissions on the issue of the standing.

Examination by the Designated Authority

11. The petitioner alleged that the other producers are importers of the subject goods during the period of investigation. No details of imports made by these other producers were provided by the petitioner, nor it was established why these producers should be excluded from the scope of domestic industry in view of the discretion available to the Authority under Rule 2(b). The published information available with the Authority does not show that M/s Asahi has imported the goods in significant volumes. The information available on record shows that imports made by the company was in the region of 10,000 MT and thus constituted 1.33% of Indian production and 1.51% of demand in the Country. As regards the third Company, namely M/s Gujarat Guardian Ltd. the information on record does not show any imports made by the company. The Authority holds that imports made by the two companies are not so significant that the same justify their exclusion. Therefore, the Authority considers it appropriate not to consider any company ineligible domestic industry.

12. The present investigations however are sunset review investigations, being conducted to determine whether anti dumping duties are required to be extended further. Rule 5 with regard to initiation of investigation and standing of the applicant to file an application are not attracted in the present case. Therefore, the Authority holds that inclusion of the other producers within the category of eligible domestic industry does not vitiate the initiation and the present investigations.

13. Rule 2(b) with regard to the scope of the domestic industry provides that those domestic producers whose production constitutes a major proportion in Indian production shall be considered as domestic industry. In the present case, production of the petitioner constituted more than 25% in Indian production. The Authority holds that the petitioner constitutes domestic industry within the meaning of the rule.

Dumping Determination

Continuance of Dumping: Determination of Normal Values, Export Prices and Dumping Margins:

14. Only one exporter/manufacturer, M/s PT. Muliaglass, Float Division has filed its questionnaire response.

Views of the Domestic Industry

15. The domestic industry has sought declaration of the responding exporter from Indonesia as non-cooperating on the following grounds

- i. The only participating exporter from Indonesia viz. PT Muliaglass has failed to fulfill their obligation under the Indian law by not providing the meaningful summary of the response to exporter's questionnaire.
- ii. They have claimed excessive confidentiality without any justification.
- iii. The non-confidential version of the questionnaire response is incomplete & deficient, as they have failed to give the non-confidential version of all the information contained in the confidential version and incomplete and deficient questionnaire response by them does not permit a reasonable understanding of the substance of the information submitted in confidence.
- iv. There is also no statement of reasons for claiming excessive confidentiality whereas it was obligatory for the exporter to give proper statement of reasons as to why confidentiality was claimed and why summarization was not possible for certain information.
- v. The appendices enclosed with the response also contain no meaningful non-confidential response and incomplete and deficient questionnaire response by them does not permit a reasonable understanding of the substance of the information submitted in confidence.

16. According to the Domestic Industry Rule 7 mandates that all the information submitted by a party on a confidential basis cannot be regarded as confidential unless the same is supported by reasons and is so accepted by the Authority by passing a separate order granting such confidentiality. In other words, Rule 7 does not in any way permits that the exporter can get away with minimal information rather it casts a responsibility on the exporters to furnish summaries in sufficient details so as to permit a reasonable understanding of the substance of the information submitted on confidential basis to enable the interested parties to give their comments and to assist the Authority in arriving at the correct determinations. The law further states that if the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities

may disregard such information. It is also submitted that in terms of the Rule 7, the Designated Authority has to record the reasons for accepting the claim of confidentiality.

17. According to them, CESTAT, in the tiles case has clearly held that information provided to the Designated Authority on confidential basis is not required to be treated as confidential merely because it is provided to the Designated Authority on a confidential basis and has further laid down detailed guidelines to examine claims of confidentiality. Further, it has been clearly held that confidentiality is not a mere tool to deny disclosure to kill transparency, or to create a handicap for opposing parties. It has been laid down that for the purpose of transparency; there is an obligation on the authority to require the parties to furnish non-confidential summaries, which shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

18. Domestic industry in their written submissions has pointed out that in response only the name of the owner has been given as PT Mulia Industrindo tbk. No answer has been given to a specific question, whether any of them are related to any other company engaged in production and sale of subject goods. According to them PT Mulia Industrindo is also engaged in sale of tiles and is presently facing duties in South Africa. Interestingly, the findings record that such float glass is manufactured by PT Muliaglass Industrindo a fact which has not been disclosed to the Designated Authority.

19. The exporter has not given any answer with respect to change in the structure of the company in the last three years including the period of investigation.

20. Name of owner holding 99.9% in exporter as producer has not been disclosed. List of other products produced by the company have also not been disclosed though there is a specific question from the Designated Authority seeking such details.

21. Name of all subsidiaries or other related companies is not disclosed. Contrary to attachment B.2, it has not been mentioned that related company PT Muliaglass Industrindo sells all subject goods produced by the exporter in the domestic market. Further, the activities of each related company in terms of questionnaire response has not been provided. The exporter has not provided any information relating to investments and kept the same confidential without assigning any reasons.

22. Price lists are stated to be available and are not filed. It has been mentioned that they shall be given to the authority during verification. It is settled law that unless, all the information required to be filed is available on record; the authority does not proceed for verification.

Examination by the Authority

23. The Authority has examined the submissions of the domestic industry in detail and notes that the submissions as above are mostly legal in nature. The Authority further notes that meaningful information related to this case has been submitted by the responding exporter and they have fully cooperated with the Authority in seeking verification of all the related records. Even the price list has been made available to the Authority during spot verification. To that extent the Authority holds that the responding exporter from Indonesia as a fully co-operating exporter for the purposes of the investigation.

24. The information submitted by the exporter was also verified by the Authority as per the procedure prescribed and the dumping margin has been determined as follows.

Normal Value:

25. PT. Muliaglass filed a detailed questionnaire response containing details of domestic as well as exports sales of the subject goods manufactured and sold by them. For computation of Normal Value, domestic sales of the subject goods were considered based on the verified data. The element wise cost of production was also verified and reconciled from the books of account maintained by the company. An analysis of the profit and loss account of the company shows that the company has been suffering losses on the sale of subject goods during the period of investigation, although there is an insignificant profit margin of less than ***% during the year 2007. The claims of the company with regard to cost of production were also verified and the cost of production of the company (excluding packing and direct costs) determined based on the information filed by the company and verified by the Authority works out to US \$*** per MT. Average domestic selling price at ex-factory level after allowing claimed and verified adjustments on account of Packing, Inland freight and commission, was however found to be US \$*** per MT. Average per unit domestic selling price being less than the average cost of production, the Authority therefore tried to adopt the second option of reliance upon third country exports for determination of normal value. However, verification of records revealed that the average selling price to third countries was US \$ *** per MT which was again far less than the cost of production. Therefore this method of determination of normal value is ruled out and the Authority has adopted the cost of production of the cooperating exporter and determine the normal value by adding a reasonable profit margin (i.e.5%) to this cost of production. The normal value so determined at ex-factory level works out as US \$ *** per MT.

Export Price:

26. During the POI, PT. Muliaglass Float Division had exported *** MT Float Glass to India. The invoice-wise details of exports to India during the period of investigation were considered based on verified data. Price adjustments were considered in appendix-2 itself in respect of each sales transaction. Details regarding their claim of adjustments were verified during the course of verification from the records maintained by the company. No adjustments were claimed on account of credit cost, bank charges. Therefore the Authority has adjusted these costs based upon the actual verified data. Further packing cost on export sales was claimed as US \$ *** per MT. However detailed apportionment as to how the same was allocated was not explained. The Authority has therefore considered the packing cost of the domestic industry i.e. US \$ *** per MT to be applied in the present case as well and deduct the same for determination of the export price at ex-factory level. The export price so determined is as follows:

Export Price	US\$
CIF Price as per Appendix /MT	***
Export Incentives	***
Gross Export Price	***
Less : Adjustments as per Appendix 2	
Ocean Freight	***
Ocean Insurance	***
Inland Freight	***
Handling Charges	***
Export Packing	***
Credit Cost @ 0.493%	***
Bank Charges @ 0.15%	***
Total Adjustments	***
Ex-factory Export Price US \$/MT	***

All other exporters from Indonesia

Normal Value

27. No other exporter from Indonesia made any submission before the Authority in response to this review investigation. Therefore, for all other exporters from Indonesia, the Authority has adopted the normal value determined for the cooperating exporter for Indonesia.

Export Price

28. The net export price has been determined based on the lowest export transaction value from Indonesia based on the export data of the cooperating exporter from Indonesia, after allowing for adjustments at the same level as applied to cooperating exporter works out as follows.

Export Price	US \$
CIF Price as per Appendix /MT	***
Export Incentives	***
Gross Export Price	***
Less : Adjustments as per Appendix 2	
Ocean Freight	***
Ocean Insurance	***
Inland Freight	***
Handling Charges	***
Export Packing	***
Credit Cost @ 0.493%	***
Bank Charges @ 0.15%	***
Total Adjustments	***
Ex-factory Export Price US \$/MT	***

Normal Value and Export Price for China PR

Normal Value

29. The Authority notes that China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO members in the past three years. In terms of Para 8(2) of the annexure-1 of Anti-dumping rules, China PR is to be treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.

30. As per Paragraph 8, Annexure 1 to the Anti-Dumping Rules, as amended, the presumption of a non-market economy can be rebutted, if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment (MET) questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

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

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

33. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms.

34. The exchange rate conversions are carried out at the market rate.

35. In this connection Para 7 of Annexure I of the Rule provides that

“In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

36. None of the exporter from China made any submission before the Authority in response to this review investigation. Therefore, The Authority proceeds to determine the normal value in China on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules. Accordingly, the ex-works Normal value of the product under consideration for all exporters from China has been constructed based on facts available. The normal value was determined by the petitioner on the basis of estimates of cost of production. In the absence of any response from the China exporters, the Authority has determined normal value on the basis of estimates of cost of production, with addition of selling, general and administrative expenses. Reasonable profit has been added to determine ex-factory normal value which works out to US \$ *** per MT.

Export Price

37. The Authority has perused transaction wise data from Info drive data source with regard to imports from China PR. The Authority notes that the Info drive data source information shows imports of *** MT of PUC from China PR during POI. The Authority also procured DGCI&S data and perused the details of exports of subject goods to India from China PR. As per information available in DGCI&S data source the total imports of PUC from China PR during POI was to the tune of *** MT. There being under reporting in info drive data source, the Authority has relied upon the volume of imports from China PR for calculation of net export price Per MT CIF as per DGCI&S data source which works out to Rs. ***. After allowing adjustments on account of ocean Freight at the same level as allowed in case of verified data of Indonesia, i.e. US\$ *** (Rs. ***) and Ocean Insurance US \$ *** (***) the net export price at ex-factory level works out to **Rs. *** equal to US \$ *** per MT.**

Import volume	*** MT
Import value	Rs. ***
CIF export price per MT	Rs. ***
Less : Adjustments	
Ocean Freight	Rs. ***
Insurance	Rs. ***
Total Adjustments	Rs. ***
Ex-factory Export Price	Rs. ***
Ex-factory Export Price	<u>US \$ ***</u>

Dumping Margin

38. The normal values determined at the ex-factory level has been compared with the respective net export prices determined at the ex-factory level to determine the dumping margins as follows:

	Normal Value	Export Price	Dumping Margin	Dumping
Dumping Margin Calculations	US \$	US \$	US \$	Margin %
PT. Muliaglass Float Division Indonesia	***	***	***	Negative
All Others exporters from Indonesia	***	***	***	Negative
Exporters / producers from China PR	***	***	***	70-75 %

39. Whereas the current dumping margins from Indonesia are negative, the same from China PR have been found to be above de minimis.

Likelihood of continuation or reoccurrence of dumping in the event of withdrawal or reduction of ADD

Views of the Domestic Industry

40. The domestic industry has pleaded that the Designated Authority is required to examine whether the cessation / discontinuance of anti-dumping duties in force is *likely* to lead to *continuance or recurrence* of dumping and injury.

41. They have pleaded that Section 9A (5) requires an opinion as to the probability/possibility of recurrence or continuance of dumping and injury and not a categorical positive finding of recurrence or continuance. While arriving at the opinion of likelihood of continuance or recurrence of dumping and injury, it is necessary to bear in mind the effect and influence of the anti dumping duties already in place against the subject countries and the likely future behaviour of the exporters if the duties are allowed to lapse. The Designated Authority is also required to examine whether the trend/behavioral pattern of dumping continues to persist despite Anti dumping duties in place. It is pertinent to note while carrying out the review that the exporter/producers in subject countries are fully aware of the proximity of impending sunset review, hence their pricing behavior is likely to be manipulated/determined and hence suspect and untrustworthy. In other words, the behaviour during the period of investigation is not conclusive as the same may be tainted due to prior knowledge about the review which is undertaken in terms of the trade notice on sunset review.

42. It has been submitted that in this backdrop, the improvement in the various injury factors, *per se*, during the period of investigation is not directly relevant.

43. The Domestic Industry has pleaded that all the subject countries have been found to be dumping the subject goods during the period of investigation and the dumping margins have been very significant. Not only is the dumping margin from all the subject countries still significant, but the dumping has not ceased to exist despite the Anti-dumping duties being in force. It also relevant to note that the exporters from the subject countries have also indulged in the dumping during the years prior to POI. These facts establish beyond an iota of doubt that there is no

change in the pricing behaviour of the exporters and they will continue to export at dumped prices once the duties are removed and the impact of the dumping would be much more serious and the domestic industry would be certainly injured.

44. The domestic industry in their submissions has further stated that the subject countries are dumping the subject goods not only in India but also in other countries.

(i) Korea in 2008 imposed anti-dumping duties on China. Blocked exports of China are likely to be exported to India if duties are removed.

(ii) Philippines in 2006 have extended safeguard measures on float glass for another 3 years. Due to safeguard measures, subject countries are blocked from exporting subject goods to Philippines. Blocked exports of subject countries are likely to be exported to India if duties are removed.

45. Philippines in a sunset review against Indonesia extended anti-dumping duty on float glass for another 5 years vide Notification dated 02.10.2006. Blocked exports of Indonesia for another 5 years are likely to be exported to India if duties are removed. PT Muliaglass was found to be dumping subject goods even during sunset review in Indonesia.

46. South Africa has issued alert notice for extension of duties against China for another 5 years which are likely to lapse in November 2009. At least till 2009 and possibly thereafter, blocked exports of China are likely to be exported to India if duties are removed. It is to be noted that PT Muliaglass was found to be dumping Float Glass and is presently subject to duties in South Africa.

47. Turkey has imposed specific safeguard against China on 7.04.2006 for a period of 3 years. Blocked exports of China are likely to be exported to India if duties are removed.

48. Authorities in the said countries have determined significant dumping margin from the subject countries. This clearly establishes that price behavior of exporters/producers from the subject countries continues to be aggressive and suggests a strong probability of continuance and recurrence of dumping once the duties are withdrawn.

49. Subject countries have excessive capacity. The same is apparent from following:

(i) Pilkington report indicating 180 float plants operating in China.

(ii) There is a rapid growth in setting up of float glass capacities in China as detailed below.

Float Plants in China

Rapid growth in float glass plants:

<i>Year</i>	<i>Number of Float Plants in China</i>
1980	1
1988	18
1992	25
1997	60
2000	69
2003	103

2005	120
2006	160 (estimated)
2007	179 (estimated)

Source: <http://www.usgmn.com> News Article China Seminar 30.01.2006

(iii) Philippines in a sunset review against Indonesia has recorded that there are excessive capacities in Indonesia.

(iv) Philippines in the sunset review reached a finding of fact that new capacities are being setup in 2007.

50. Clearly the exporter/producers from the subject Countries are currently faced with Anti-dumping Duties and safeguard duties in other jurisdictions and that their export markets have been curtailed in such other countries, hence they are unable to utilise the surplus capacities and there is a strong likelihood of large scale diversion of subject goods to India at dumped prices, in the event the Anti-dumping duties are withdrawn at this stage. It is pertinent to note that none of the exporters has led any evidence to prove that their pricing behavior has changed or that they have no reasons to continue/resume dumped imports into India. No information whatsoever has been provided with regard to their capacities, demand, sales projections, likely prices in other markets etc. Complete non-cooperation from China and only partial cooperation from Indonesia clearly goes to show that participation would have resulted in heavy dumping margins even greater than the estimates made herein.

Examination By the Authority

51. The authority has taken note of various submissions made by interested parties. The Authority holds that the concept of dumping and consequent injury in the original investigation and the sunset review investigation are different and distinct. While in the original investigation, the dumping and injury is required to be established before imposition of Anti-dumping duties, in a sunset review investigation since the anti-dumping duties are already in existence, the 'likely' continuance or recurrence of dumping and injury has to be ascertained and the injury analysis has to focus on the future likely situation of the domestic industry if duties are allowed to expire. The Authority has accordingly analyzed this aspect and the same are detailed as under.

Indonesia

Cooperating Exporter

52. Verification of the data of responding exporter from Indonesia viz. PT Mulia Glass revealed that they had an installed pullout capacity of *** MT in the year 1997 which continued to be the same during POI as no additional capacities have been installed since 1997. Their total production during POI was *** MT against this installed / pullout production capacity of *** MT, which indicates capacity utilization to the extent of 70% only. Authority notes that there are no dedicated lines for PUC and Non-PUC items and to that extent they are capable of utilizing 100% of the capacity for manufacture of PUC, subject to demand being there. The production of PUC during POI was *** MT out of which total sales including domestic sales, exports to India and exports to third countries taken together was *** MT. Thus during POI they were able to sell only 71% of the total production of the product under consideration. This is indicative of the surplus available with the subject exporter, likely to be diverted to India at dumped prices in the event of withdrawal of the antidumping measure in force.

53. The Authority also notes that the said cooperating exporter has exported only *** MT of 2mm to 5 mm variety of PUC to India during POI which comprises merely 4% of their total production of PUC during POI. On the contrary, exports to Third Countries were to the extent of *** MT, i.e 51% of their production and domestic sales accounted for *** MT, i.e, 45% of the total production during POI.

54. The Authority further notes that as against the average selling price of US \$ *** per MT (FOB) in the domestic market, the exports to third countries were made at an average FOB price of US \$ *** per MT and to India at an average FOB price of US \$ *** per MT. The Authority also notes that the high selling price to India is primarily because of export of high end product i.e. 2mm to 5mm variety from amongst PUC.

55. Analyzing the trends on volumes during Injury period, the Authority notes that during the calendar year 2004, 2005 and 2006, the exports to India were to the extent of *** MT, *** and *** MT respectively whereas during the same period the exports to third countries were *** MT, *** MT and *** MT respectively. As far as domestic sales are concerned, the same were to the extent of *** MT, *** MT and *** MT respectively during 2004, 2005 and 2006.

56. Analyzing the pricing pattern during injury period, the Authority notes that the exports to third countries were at FOB price US \$ ***, US \$*** and US \$*** per MT for the periods 2004, 2005 and 2006 respectively. The pricing pattern for exports to India during the corresponding period was FOB US \$ ***, US \$*** and US \$ *** respectively. Domestic selling prices during 2004, 2005 and 2006 were US \$ ***, US \$ *** and US \$ *** respectively. The Authority therefore notes that barring 2004, the export prices to India have been far higher than the prices at which the sales were made, either in the domestic market or to third countries, although in terms of quantity the percentage share of these sales to India was minuscule and not reliable for assessment of dumping in the event of withdrawal of duties, particularly in view of huge surplus capacities.

57. Even during Post – POI the verified data reveals that the volume of exports to India was *** MT (2% of total sale) at an FOB price of US \$ *** per MT, whereas export to third countries was *** MT (48% of total sale) at an average FOB price of US \$ *** per MT and sales in the domestic market were to the tune on *** MT (50% of the total sale) at an average price of US \$ *** per MT. They further admitted not having sold any subject goods to India during the calendar year 2008 till the date of verification.

58. The Authority concludes that high price of sales to India has been primarily because of the export of high end Automotive variety of PUC, i.e. 2.00 mm to 5.00 mm variety only and they have not been selling 6.00 mm and above varieties to India, possibly because of ADD in place and in all likelihood, these other varieties of PUC will find their way into Indian markets at dumped prices in the event of withdrawal of antidumping duties.

59. The Authority further concludes that the said responding exporter admitted being under AD investigations from Philippines since 2005 and Anti dumping duties imposed by that country. They also admitted of having been under investigation from South Africa and ADD being in place for export to that country. They Authority also takes note of the fact, as further stated by the responding exporter that they were under review investigation from Thailand and Australia since 2004 but the duties had not been extended by these countries.

60. Authority communicated these details to the subject exporter in the form of verification report to which they responded by accepting these observations of the Authority.

61. From the above Authority concludes that the subject exporter has not been able to penetrate the Indian market to export at dumped prices, particularly low end varieties of the PUC, because of the ADD being in place. The Authority further concludes that actual dumping margin in respect of the responding exporter, based upon the high end variety alone, as worked above, cannot form a benchmark for future exports by the said responding exporter, particularly when the price variation in respect of exports to third countries as also domestic sales vis-a vis exports to India is huge. The Authority further holds that anti dumping measure in force can be construed as an effective measure of low volume exports to India and stalling dumping of the subject goods to India by the subject exporter. Further, even going by their submissions in response to the disclosure statement, the Authority concludes that the inventory level of app. ***MT of PUC is huge by any standards and they are in all likelihood bound to look for alternate markets to offload these unsold stocks at dumped prices in the event of withdrawal of ADD, already in place.

Other Exporters from Indonesia

62. No other exporters / producers from Indonesia have participated in the investigation. As per the best available information, available with the Authority, there are at least three other producers / exporters in Indonesia viz. Asahi Glass, PT Tensindo and Adbi Rakyat Bakpi with a combined capacity of approximately 900000 MT. None of these producers / exporters has exported the PUC to India during POI as per the Info drive source data available with the Authority. Authority takes note of these surplus capacities in Indonesia when seen from the perspective of possible diversion to India of PUC, and also takes note of the fact that ADD in place has been an effective measure in force to prevent dumping into India from these other manufacturers as well and concludes that the actual dumping margin worked out above based upon the lowest price of the exports of the high end variety of the responding exporter, for non co-operating exporters, can also not be considered as a bench mark dumping margin for future exports by these other producers / exporters from Indonesia.

China PR

63. The Authority concludes that the dumping margin from China is significant during the period of investigation. In fact the dumping margin during POI is much higher than the antidumping duty in place as on date. Further, China is not only exporting the subject goods to India at dumped price but also to various other countries. The Authority also observes that the subject goods from China are facing measures in many parts of the world. The submissions made by domestic industry in this regard remain un-rebutted and the fact that in 2008, Korea imposed anti-dumping duties on China, and in 2006, Philippines has extended safeguard measures on float glass for another 3 years becomes a fact on record. Similarly the claim of the domestic industry that South Africa has issued alert notice for extension of duties against China for another 5 years beyond November 2009 also remains un-rebutted. The Authority further notes the submissions made by the domestic industry that Turkey has imposed specific safeguard against China on 7.04.2006 for a period of 3 years.

64. The authority also concludes that there is excessive available capacity in China as reported by the domestic industry. The submission of the domestic industry that float plants in China PR have increased from just one plant in the year 1980 to 179 in the year 2006 have been taken on record. These submissions made by the domestic industry have not been contested by any other interested party and therefore the Authority therefore relies upon this information for carrying out a likelihood analysis.

65. To cross check the submissions made by the domestic industry about excessive capacities, the Authority has gathered information on China glass industry from secondary sources. "Market Watch" Business wire, New York report dated October 28,2008, sets about the supply and demand market of China glass industry; and expounds the output tendency, regional distribution, industry structure, product price, import and export etc of China glass industry in recent years. Also, the report states to have made pertinent research on glass segmented markets to architecture, automobile and glass fibre; giving an in-depth analysis of investment hotspots in super-thin ultra-clear glass, solar cell bonding glass and other deep-processed glass; and predicts the development trend of glass products in 2008. Ultimately, the report states about making comparisons between key listed manufacturers with regard to glass output, ex-factory price and financial performance, etc; and assessing the development of those manufacturers in the next stage.

66. Authority, relying upon this report, concludes that, after its downturn in 2006, China glass industry turned to the better in 2007 and the relationship of supply and demand improved significantly. The prosperity of glass industry in 2007 continued in the first half of 2008, with a fast growth rate. Production capacity kept increasing but the competition became fiercer. The market has grown saturated and the growth rate slows down. It is still the main pressure of fast growing production capacity on glass market.

67. Authority further concludes that, based upon this report, that East China, North China and Central South China are the key regions of glass production; wherein, the top 3 by glass output capacity are Hebei province, Guangdong province and Jiangsu province. The province of Hebei, ranking the first by flat glass output in 2007, still sees a rapid growth rate in 2008. Besides, glass output of Jiangsu province dropped to some extent in recent two years. In Guangdong province, float glass and high-grade float glass take high proportions and industry structure is superior to that of the other two provinces.

68. It has further been reported that Glass price rose slightly in the first quarter of 2008, and then dropped starting from March. However, the prices of key raw materials still maintained high and the production cost further increased. This, according to this report, foresees the declining of this round of prosperity

69. Based upon the above, the Authority concludes that the same gives credence to the submissions of the domestic industry about availability of excessive capacities in China. Considering the facts that several markets are blocked or seriously restricted for Chinese exports of the subject goods coupled with the fact that there is significant excess capacity in China, there is every likelihood that the Chinese exports will continue to be dumped at injurious prices into India. The Authority concludes that removal of anti-dumping duties from China at this stage will expose the Indian industry to unfair competition leading to continuation/recurrence of injury to the Domestic Industry.

70. To further assess likelihood scenario, the Authority analyzed the data available in WTA data source. The Authority notes that the market share of Chinese exports of float glass, which includes PUC, to India, was less than 2% of the total exports world over throughout the injury period. During July04-June 05, it stood at 1.45% and July05-June 06 at 1.96%. During POI the same was to the extent of 2.02% of the total exports of Float glass made by China. Even in post POI period (Figures available for July 07-March 08), it stood only at 2.13% of the total exports made by Chinese exporters to world over. As far as per unit price is concerned, the unit export price to India (per SQ. M) has been higher than the unit selling price world over. For period July 2004-June2005, July 2005-June 2006, July 2006-June 2007, and July 2007-March 2008, the average unit selling price to world over has been US\$2.85, US\$ 2.75, US\$ 2.53 and US\$ 3.23 respectively, whereas during the same periods, the average unit export price to India stood at US\$ 3.51, US\$ 4.35, US\$ 2.83 and US\$ 3.62 respectively.

70A. The Authority therefore concludes that Chinese exporters have continued to sell the subject goods to the Indian market with higher dumping margins and the available volumes at their disposal are going to result into intrusion into India and dumping is going to intensify unless the antidumping duty is increased to the level of existing dumping margins during POI or else Chinese exporters are likely to penetrate the Indian markets with huge volumes at prices, at par or even lower than the ones at which they have been exporting to the rest of the world.

INJURY AND CAUSAL LINKS DETERMINATION

Views of the interested parties

Views of the Domestic Industry

71. Domestic Industry has reiterated the submissions made for continuation and recurrence of dumping for the purposes of continuation and recurrence of injury as well

Views of M/s PT Mulia Glass Indonesia.

72. M/s PT Mulia Glass, having participated in the investigation, neither participated in the oral hearing nor have they made any written submissions on this issue.

Views of other interested parties

73. No other interested party has made any submissions in respect of any aspect of the present investigation.

Examination by the Authority

74. The Authority has taken note of various arguments raised by the domestic industry in their submissions and issue of continuation of injury to the domestic industry has been examined in the light of these arguments made before the Authority. The Authority concludes that the current dumping margins from Indonesia are negative whereas the same from China PR are above de minimis. The Authority therefore, proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.

Cumulative Assessment of Injury

75. Subject countries in the present investigation are Indonesia and China PR. Annexure II of Anti Dumping Rules provides that in case more than one country simultaneously subjected to anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent, the imports collectively accounts for more than seven per cent of the import of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles. Present investigation is a sunset review investigation initiated under section 9A (5) of the Act. The Designated Authority therefore, notes that the various conditions of cumulative assessment will apply in this investigation. In view of the above, Designated Authority would cumulatively assess the injury and likelihood of continuation and recurrence of injury to the domestic industry.

76. On examination of information, the Authority finds that the prices of the subject goods of the domestic industry are comparable to price of subject goods coming from subject countries. These have been imported under the same tariff classification. The user and user industry for the imported product and the domestic product is the same. The Authority has, therefore, found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the conditions of competition between the imported products and domestic like product. It is appropriate to examine cumulatively the effect of injury by imports of subject goods from subject countries on the domestic industry in this investigation.

Current Injury and causal link

77. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

78. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods from the subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority notes that antidumping duty is also in force on the subject goods being imported from a number of countries. Accordingly, the volume and price effect of dumped imports have been examined as follows:

Volume Effect of dumped imports and Impact on domestic Industry

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

Import volumes and share of subject countries:

80. According to the import data submitted by the Domestic Industry, the share of subject countries in total imports has increased to 20% during the period of investigation as compared to 12% in the base year. In absolute terms also, imports from the subject countries have increased to more than three and a half times over the injury investigation period as compared to base year.

	Jan 04 to		Jan 06 to Dec		July 06 to
	Dec 04	Jan 05 to Dec 05	06		June 07 (POI)
Imports from Subject Countries (MT)	2067	4464	7067		7239
Imports from Other Countries	15387	22357	20318		29566
% Share	12%	17%	26%		20%

Source: Info drive India Pvt. Ltd.

81. The Authority concludes that the import data mentioned in the above table and as made available from secondary sources is grossly under-reported. It is observed that the imports reported by the only cooperating exporter from Indonesia far exceed the quantities reported in the data provided by the secondary sources. It is a matter of fact that there are three other major producers of subject goods in Indonesia who have not cooperated in the investigations. It is apparent that the total imports into India from Indonesia would be much higher than the exports by a single cooperating exporter. However, in the absence of cooperation by other exporters from Indonesia, the Authority has made a conservative estimate of total imports by taking into account only the exports made by the cooperating exporter.

82. As regards China, since none of the exporters has cooperated in the investigations and in view of the fact that the imports of the subject goods have been grossly under-reported in the import data, the Authority considered it appropriate to rely upon the data of imports from China to India from DGCI&S data source. Further imports from other countries as per DGCI&S data source have been considered for volume analysis. The details of imports based on the above available data are as under:

Particulars	Unit	Jan 04- Dec 04	Jan 05- Dec 05	Jan 06- Dec 06	July 06-June 07 (POI)
China	MT	***	***	***	***
Trend	Indexed	100	945	424	976
Indonesia	MT	***	***	***	***
Trend	Indexed	100	2257	4535	4271
Total Imports from Subject countries	MT	775	10248	12428	14889
Trend	Indexed	100	1322	1603	1920
Imports from Other Countries	MT	9623	17832	16825	28642
Total Imports	MT	10398	28080	29253	43531

Subject Imports as a % of Total Imports	%	7.46	36.49	42.48	34.20
Production (including captive)	MT	***	***	***	***
Subject Imports as a % of Total Production	%	0.45	6.88	3.69	4.25
Total Domestic Sales	MT	***	***	***	***
Total Demand	MT	454928	491061	571244	669157
Trend	Indexed	100	108	126	147
Subject Imports as a % of Total Demand	%	0.17	2.09	2.18	2.23
Share of DI as a percentage of total demand.	%	***	***	***	***

83. The authority concludes from the above that the imports from the subject countries have gone up manifold in the period of investigation as compared to the base year. At the same time, the percentage share of imports from subject countries in total demand has also increased from 0.17% in the base year to 2.23% during POI. Similarly, the imports from subject countries in comparison to domestic production in percentage terms have also increased from 0.45% in the base year of the injury period to 4.25% during POI. Even though the quantum of imports in the period of investigation recedes into insignificance in case of sunset review, it is important to note that the imports from the subject countries have increased in absolute as well as relative terms despite the existence of anti-dumping duties.

Demand, Output and Market shares

84. The Authority concludes that the share of the domestic industry has declined, though marginally from 97.71% during base year 2004 to 93.49% during the period of investigation.

Capacity, Production, etc. of the Domestic Industry

85. Verified information shows as follows

	UOM	2004	2005	2006	POI
Installed capacity	MT	***	***	***	***
Trend	Index	100	100	263.89	263.89
Plant Production	MT	***	***	***	***
Trend	Index	100	97	207	214
Capacity utilization	%	***	***	***	***
Trend	Index	100	97	78	81
Production of PUC	MT	***	***	***	***
Trend	Index	100	86	195	203

86. The above data shows the followings-

(a) The domestic industry significantly expanded the capacity in 2006 (the present capacities are more than 2.5 times of the capacity in 2004).

(b) The petitioner is in a position to utilize the plant for production of subject goods as also other goods;

(c) The production of the domestic industry in respect of product under consideration declined in 2005, but increased thereafter significantly. Production in period of investigation was more than double the production in 2004.

(d) In view of decline in production in 2005, the reasons for the decline were examined in detail. The data shows that the decline in production in 2005 appears to be because of diversion of capacities for other products.

(e) As regards capacity utilization, it is noted that the capacity utilization declined over the injury period. The decline in capacity utilization is in spite of the fact that the imports from the subject countries were at prices higher than the domestic price. In other words, the data does not show that the imports from subject countries have prevented the domestic industry from increasing capacity utilization. In fact, the domestic industry alone had unutilized capacity to the extent of *** MT while imports from subject countries were just 14889 MT. It also appears that even other domestic producers are holding unutilized capacities.

(f) Published information shows that M/s. Saint-Gobain India Ltd is further planning massive capacity expansion at Bhiwadi. Published news item indicates the company intends to invest Rs. 1000 crores to set up a greenfield plant having a capacity of 300000 MT.

87. In view of the above, The Authority could not conclude that import from subject countries prevented or are likely to prevent the domestic industry from utilization of their capacities. On the contrary, it is found that the domestic industry is holding significant unutilized capacities far disproportionate to the volume of imports from subject countries.

Sales, Inventories, etc. of Domestic Industry

88. Verified information shows as follows

	UOM	2004	2005	2006	POI
Opening Stock	MT	***	***	***	***
Trend	Index	100	128	74	261
Production	MT	***	***	***	***
Trend	Index	100	86	195	203
Domestic sales	MT	***	***	***	***
Trend	Index	100	99	151	159
Export sales	MT	***	***	***	***
Trend	Index	100	59	575	647
Captive	MT	***	***	***	***
Trend	Index	100	106	182	240
Domestic Sales and Captive consumption	MT	***	***	***	***

Trend	Index	100	100	155	169
Closing Stock	MT	***	***	***	***
Trend	Index	100	57	234	266

89. The data shows that the domestic sales of the domestic industry declined marginally in 2005 and increased thereafter. While demand grew by 47% over the injury period, the sales of the domestic industry in the domestic market grew by 59%. The data with regard to captive consumption shows captive consumption grew by about 140%. Thus sales of the domestic industry in the domestic market after including captive consumption grew by about 69% in a situation where demand for the product increased only by 47%. The export sales of the domestic industry have also shown a significant increase (more than 500%). It is also noted that imports from subject countries are negatively undercutting the price in the domestic market. Thus it could not be established that sale of the domestic industry have suffered or are likely to suffer because of imports from subject countries.

Price Effect of the Dumped imports on the Domestic Industry

90. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the weighted average cost of production, 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.

Price undercutting and underselling effects

Price Undercutting:

Views of The Domestic Industry

91. The Domestic Industry has submitted that the price undercutting from Indonesia is negative as the imports from Indonesia are only for float glass of automotive variety which is significantly costlier than the other float glass. It is seen that the share of the automotive glass for the Domestic Industry is only 1.5% of the total domestic production. The Domestic Industry further submits that the price undercutting analysis in case of sunset review investigation is not a conclusive indicator as to the likely future behavior of the exporters from subject countries. The exporters from subject countries, being in full knowledge of the impending sunset review, can always as a matter of strategy increase their prices or export only those types which are costlier in the period of investigation.

Examination By The Authority.

92. The price undercutting details are given in the table below. The Authority has taken note of the submissions made by the Domestic Industry and concludes that price undercutting from China is significant, whereas, for Indonesia, the price undercutting is negative. The Authority further concludes that the imports made by Indonesia are predominantly float glass of the automotive variety only as was verified during spot verification. In their submissions post disclosure, the Cooperating exporter has contested likelihood of continuation by referring to non availability of excess capacities to be diverted to India which cannot be taken on its face value in view of the likelihood analysis done in preceding paragraphs. However, considering the facts made available, the Authority has done the price undercutting analysis by comparing the weighted average net sales realization with the weighted average landed value for the subject countries. The landed value for the subject countries is derived by adding landing charges and basic custom duty into the CIF prices.

Landed value

Subject countries	Rs. /MT	***
China	Rs. /MT	***
Indonesia	Rs. /MT	***
Domestic Prices / NSR	Rs. /MT	***

Price Undercutting

Subject countries	Rs. /MT	-(***)
	%	negative
China	Rs. /MT	***
	%	25-30%
Indonesia	Rs. /MT	-(***)
	%	negative

Price Underselling:

93. The Authority concludes that the landed value of the product under consideration from China is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods. The following table will show the extent to which the dumped imports from the subject countries have undersold the domestic prices.

	Unit	July 06-June 07 (POI)
Landed value		
Subject countries	Rs. /MT	***
China	Rs. /MT	***
Indonesia	Rs. /MT	***
Desirable Selling Price / NIP	Rs. /MT	***

Price Underselling

Subject countries	Rs. /MT	***
China	Rs. /MT	***
Indonesia	Rs. /MT	-(***)

Subject countries	%	5-10%
China	%	35-40%
Indonesia	%	negative

Price suppression and depression effects of the dumped imports:

Particulars	Unit	2004	2005	2006	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	102	100	101
Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	101	106	108
Landed value from subject countries	Rs./MT	***	***	***	***
Trend	Index	100	110	112	106

94. In order to determine whether imports of the subject goods were suppressing/depressing the prices of the domestic industry in the market, the Authority considered and examined the trends in cost of production, selling price and landed price of imports from subject countries and other countries. The relevant information is given above. The data shows that the selling price increased in 2005 but the increase was less than the increase in the cost of production. Thereafter, even though cost of production increased, the increase in selling price was more than increase in the cost of production in 2006. During the period of investigation, whereas the cost of production was almost in the same region, selling price increase, though marginally. Movements in selling prices were therefore, compared with the movements in landed price of imports and it was considered whether imports could have forced the domestic industry to reduce the prices. Comparison of selling price of the domestic industry with landed price of import given above shows that the imports from subject countries were at prices far higher than the prices of the domestic industry. It could not be demonstrated that the imports could force the domestic industry to reduce the prices in the period of investigation

Other Economic Parameters Relating To The Domestic Industry

95. Annexure II to the Rules requires that the determination of injury shall involve an object examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows“

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

Examination of other Injury Parameters

96. Other economic parameters, which could indicate existence of injury to the domestic industry, have been analyzed here as follows:

a. **Productivity:** The productivity per employee during the period of investigation has increased as compared to the base year Jan 04 to Dec 04. Thus, there is no decline in the productivity.

	Jan 04- Dec 04	Jan 05- Dec 05	Jan 06- Dec 06	July 06-June 07 (POI)
Production(MT)	***	***	***	***
Productivity per day (MT)	***	***	***	***
Trend	100	97	207	214
Employees	***	***	***	***
Production / Employee	***	***	***	***
Productivity per day	***	***	***	***
Trend	100	76	162	142

b. **Employment and Wages:** There is no impact on the number of employees and the wages paid to them over the injury investigation period.

	Jan 04- Dec 04	Jan 05- Dec 05	Jan 06- Dec 06	July 06-June 07 (POI)
No of Employees	***	***	***	***
Trend	100	127	127	150
Wages Total (Rs. Lacs)	***	***	***	***

Trend 100 92 160 170

c. Profitability, Return on Investment and Cash Flow: With the imposition of anti-dumping duties against the subject countries, the profitability, and return on investment as well as cash profit have shown some improvement. However, the same are still far below the desirable return the domestic industry ought to earn.

Profits, return on capital employed and cash flow

97. Verified information shows as follows

Particulars	Unit	2004	2005	2006	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	102	100	101
Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	101	106	108
Profit/Loss	Rs. MT	-(***)	-(***)	***	***
Trend	Index	-100	-466	1210	1747
Total Profit/Loss on domestic sales	Rs. Lacs	-(***)	-(***)	***	***
Trend	Index	-100	-463	1824	2777
Cash Profit/Loss	Rs. Lacs	***	***	***	***
Trend	Index	100	82	175	187
PBIT	Rs. Lacs	***	***	***	***
Trend	Index	100	41	246	275
Capital Employed	Rs. Lacs	***	***	***	***
Trend	Index	100	192	168	157
Return on Capital Employed	%	***	***	***	***
Trend	Index	100	21	146	175

98. The above data shows that per unit profit of the domestic industry declined significantly in 2005 to such an extent that the domestic industry suffered losses in this period. Thereafter, the domestic industry could improve its profit significantly in 2006 as well as POI.

99. It was found that the landed price of imports were significantly higher (except in case of China PR) than the selling price of domestic industry. Thus, it could not be concluded that the imports forced the domestic industry to reduce its prices in the period of investigation.

100. In view of the same, it could not be established that the reasons for decline in profits during the period of investigation could be linked to dumped imports.

101. Return on capital employed and cash flow showed the same trend as that of profits. It could not be concluded that the decline in cash flow and return on investment during the period of investigation was because of dumped import.

Overall assessment of Injury

Causal Link

Submissions made by the Domestic Industry

102. Domestic Industry has submitted that it is a settled position of law that causal link analysis is not required to be done in sunset reviews. In this connection, they have relied upon the following excerpts from the Appellate Body decision in the case of Oil Country Tubular Goods from Mexico (WT/DS282/AB/R dated 2 November 2005):

“118. We therefore agree with Mexico that this fundamental principle is expressed in Article VI of the GATT 1994 and in various provisions of the Anti-Dumping Agreement. The United States does not question this principle per se. However, this does not mean that a causal link between dumping and injury is required to be established anew in a "review" conducted under Article 11.3 of the Anti-Dumping Agreement. This is because the "review" contemplated in Article 11.3 is a "distinct" process with a "different" purpose from the original investigation.”

“119. The Appellate Body has underlined that "[t]he nature of the determination to be made in a sunset review differs in certain essential respects from the nature of the determination to be made in an original investigation", and that "[t]he disciplines applicable to original investigations cannot, therefore, be automatically imported into review processes.”

“X. Findings and Conclusions

219. For the reasons set forth in this Report, the Appellate Body:

(a) in relation to causation:

(i) finds that there is no requirement to establish the existence of a causal link between likely dumping and likely injury, as a matter of legal obligation, in a sunset review determination under Article 11.3 of the Anti-Dumping Agreement and that, therefore, the USITC was not required to demonstrate such a link in making its likelihood-of-injury determination in the sunset review at issue in this dispute;”

103. The Domestic Industry further submits that there are good technical and logical reasons for not applying the requirement of causal link in a sunset review case. Extension of anti-dumping duties is envisaged even if there are no imports during the review investigation period. Further, the test for extension of the period of duties under Section 9A(5) is only to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.

Examination by the Authority

104. The Authority has examined the submissions of the Domestic Industry with regard to the significance of causal link in a sunset review investigation. It is important to note that the Authority is required to examine the need for continuation of duties; even if there have been no imports during the review investigation period. This requirement is very clear from Section 9A (5) itself. This has also been the consistent practice of the Authority and is also borne out from the jurisprudence on the issue. Thus, it is not mandatory for the Authority to apply the criterion of causal link in sunset reviews investigations. Nevertheless, the Designated Authority has examined the causal link aspect which is discussed in the following paragraphs.

Volume and Prices from Other Countries:

105. It is concluded from the import statistics that the subject goods have been imported from other sources at prices similar to those from the subject countries. It has been emphasized by the Domestic Industry that the jurisprudence and practice of the Designated Authority clearly suggests that causal link is of no consequence in a sunset review. The Designated Authority in any case concludes that injury has been caused due to dumped imports from China PR and further the current level of spare capacities in the subject countries as well as the likely level of prices from the subject countries is a clear indicator of likelihood of injury to the Domestic Industry in the event the anti-dumping duties are not extended.

Contraction in Demand and / or Change in Pattern of Consumption:

106. The Authority concludes that there is no contraction of demand. On the other hand, the demand of the subject goods has increased sharply by 47% in the period of investigation as compared to the base year. There is also no indication of any change in the consumption pattern as is apparent from the sales pattern of the Domestic Industry.

Trade Restrictive Practices of and Competition between the Foreign and Domestic producers:

107. The Authority concludes that import of the subject goods is not restricted in any manner and the same are freely importable in the country. The Domestic Industry competes among one another and at the same time competes with the landed prices of the subject goods. The price of the Domestic Industry is determined by the landed price of subject goods. Moreover, no evidence has been submitted by any interested party even to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

Development of Technology and Export Performance:

108. None of the interested parties has raised any issue with regard to technology as being the cause of injury to the Domestic Industry. As regards exports by the Domestic Industry, the Designated Authority has already segregated the export sales related data for the purpose of this analysis. Therefore, it cannot be said that the injury is being caused or likely to be caused by exports by the Domestic Industry.

109. Even though the causal link aspects are not significant in a sunset review, the Authority has considered the above injury. The Authority having relied upon the same information for likelihood of injury determination also as has been relied upon for likelihood of dumping analysis in the preceding paragraphs concludes that the scope for diversion of subject goods to India at dumped prices from subject countries is established in view of the surplus capacities available in the subject countries. Authority further concludes that the price variation between exports to other countries from subject countries and prevalent prices at which the subject goods are exported to India is huge. The Authority further concludes that the subject countries are selling the subject goods to other countries in the world at dumped prices and therefore the existing ADD in place is an effective instrument in preventing the subject goods being exported to India at dumped prices.

FINAL FINDINGS:

110. Having regard to the contentions raised, information provided and submissions made by the interested parties at various stages of investigation including submissions made as comments to the disclosure statement, and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i) The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from China PR are substantial and above de-minimis.

ii) The subject goods are likely to enter the Indian market at dumped prices and the likely dumping margins in respect of imports from China PR and Indonesia is substantial and above de-minimis.

iii) The subject goods are likely to enter Indian market at dumped prices, should the present measures be withdrawn.

ii) Even though the domestic industry has improved its performance during the POI, the withdrawal of the existing AD measure on subject goods from subject countries is going to cause a substantial injury to the domestic industry. Further, should the present anti dumping duties be revoked, injury to the domestic industry is likely to intensify.

111. Having concluded that the situation of the domestic industry continues to be fragile and there is likelihood of continuation or resumption of dumping and injury on account of imports from Indonesia, if the duties are revoked, and China PR has continued to export the PUC to India with higher dumping margins, the Authority is of the opinion that the measure is required to be extended in respect of imports from these countries.

112. Authority, having examined all the submissions made by interested parties, including those submitted in response to the disclosure statement, concludes that the quantum of anti dumping duty in force need not be revised so far as Indonesia is concerned. Therefore, the Authority considers it necessary and recommends continuation of anti dumping duty on imports of subject goods from Indonesia at the rates notified vide customs notification no. 165/2003 dated 12.11.2003, to the extent that duty in respect of **PT Mulia Glass, Indonesia**, shall continue to be US \$71.16 per MT, for all other exporters from Indonesia, the same shall be US \$ 81.21 per MT. So far as China PR is concerned, the Authority recommends Antidumping duty of US \$ 133 per MT, in respect of all the imports into India, originating in or exported from China PR.

113. 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.

R. Gopalan
Designated Authority