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

NOTIFICATION

NEW DELHI,
Dated the 29th September 2009

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports “All Fully Drawn or Fully Oriented Yarn / Spin Draw Yarn / Flat Yarn of Polyester (non-textured and non-POY) and other yarns of originating in or exported from China PR, Thailand And Vietnam

No.14/3/2008- DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995(hereinafter referred to as AD Rules), thereof:

A. Background and Procedure

2. The procedure described below has been with regard to the investigation:
 - i) The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application filed by the Association of Synthetic Fibre Industry, on behalf of the domestic industry, alleging dumping All Fully Drawn or Fully Oriented Yarn / Spin Draw Yarn / Flat Yarn of Polyester (non-textured and non-POY) and other yarns (hereinafter referred to as subject goods) originating in or exported from China PR, Thailand And Vietnam (hereinafter referred to as subject countries).
 - ii) The Authority on the basis of evidence submitted by the applicant found it appropriate to initiate the investigation concerning imports of subject goods originating in/or exported from CHINA PR, THAILAND AND VIETNAM. The authority notified the Embassies of subject countries in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.
 - iii) The Authority issued a public notice dated 6.5.08 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of the subject goods classified under Chapter 54 of

Schedule I of the Customs Tariff Act, 1975 originating in or exported from subject countries.

- iv) The Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were available with the authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2).
- v) The Authority forwarded a copy of the public notice to all the known importers (whose names and addresses were available with the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vi) Request were made to Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India for the period of investigation and preceding three years. However the transaction wise detail were not available with DGCI&S under the Custom Heading 52.07. Therefore, the imports data from Immortal Computer lab Pvt. Ltd. have been relied upon in this findings.
- vii) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassies of subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- viii) The Authority sent a questionnaire to elicit relevant information to the known exporters/producers, in accordance with the Rule 6(4).
- ix) Other exporters, producers and other interested parties who have not supplied information in this investigation have been treated as non-cooperating interested parties.
- x) A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters and Embassies of China PR and Vietnam. While for the purpose of initiation the normal value in China PR and Vietnam was considered based on the constructed cost of production of the subject goods in China PR and Vietnam, the Authority informed known exporters that it proposes to examine the claim of the applicant in the light of para 7 and para 8 of Annexure I of Anti Dumping Rules, as amended. The exporters/producers of the subject goods from China PR and Vietnam were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers.

- xi) Importers/users who have not provided information in this investigation have been treated as non-cooperating interested parties.
- xiii) Information regarding injury was sought from the applicant and other domestic producers also.
- xvi) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xvii) Cost investigations were conducted 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 applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xiv) After preliminary findings, all interested parties were asked to file their comments on preliminary findings.
- xv) The Authority held a public hearing on 5.05.09 to hear the interested parties orally, which was attended by representatives of interested parties. The interested parties were asked to file written submissions and rejoinder. The written submissions and rejoinders received from interested parties to the extent considered relevant have been considered in the findings;
- xvi) On the spot verification of the data of exporters were carried out to the extent necessary.
- xvii) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for the findings have been disclosed to known interested parties and comments received on the same have been considered in Final Findings.
- xviii) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xviii) Investigation was carried out for the period starting from 1st October 2006 to 30th September 2007 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the

period from April 2004 - March 2005, April 2005 – March 2006, April 2006 – March 2007 and the POI.

B. Product under consideration and like Article

3. All Fully Drawn or Fully Oriented Yarn / Spin Draw Yarn / Flat Yarn of Polyester (non-textured and non-POY) and other yarns conforming to the tariff description of Customs Heading 5402.47”

4. The product in commercial market parlance is generally known as ‘Fully Drawn Yarn’. The subject goods are used for manufacture of apparel / household textiles, and other industrial textiles.

5. Technical specifications of the subject goods are defined in terms of their deniers, tenacities, lustres, colours (like semi dull, bright, super bright, full dull, Dope dyed), cross section and shrinkage.

6. The subject goods are used for manufacture of apparel / household textiles, and for other industrial applications

7. It has been submitted that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject goods. Hence, the goods produced by the domestic industry are ‘Like Article’ to dumped goods from subject countries. There is no difference in the dumped goods and the product under consideration manufactured by the applicants. The two are technically and commercially substitutable and hence should be treated as ‘like articles’ under the Anti Dumping Rules.

8. M/s Thai Polyester Company Ltd. (TPC) submitted that TPC exported mainly the so-called premium grade FDY or SDY (Mono), 20 denier, 1 filament, semi-dull luster, to India during the period of investigation. It is also understood that large Indian domestic producers produced and sold only the non premium SDY grades in the domestic market. Although TPC’s export product is classified as Man Made Filaments under Chapter 54 with the sub-heading of 5402-47-00 stipulated under the petition, the product sold by TPC is in fact not the same product type which is largely sold by the Indian domestic industry who claimed for the effecting injury. In order to produce the premium grade FDY, the producers have to use new technology to produce innovative premium grade. As a result, the prices of premium grade FDY are normally higher than those of low grade quality normally produced and sold in typical Indian market. Since the domestic producers in India have not yet produced premium grade FDY, the demand of the SDY (Mono) in Indian market outstrips the supply. Therefore, SDY (mono) product should not be conceivably classified as the subject goods

exporting from Thailand, which cause intrinsically injurious effect to the domestic industry under this investigation.

9. The authority notes that the statement of TPC has not been substantiated with any subsequent evidence. Other co-operating exporters and other interested parties have not raised any issue in this regard, the authority has, therefore, treated the goods produced by the domestic industry are 'Like Article' to dumped goods from subject countries.

C Standing of the applicant and Domestic industry

10. Authority notes that the application has been filed by the Association of Synthetic Fibre Industry on behalf of the Indian domestic industry. Data has been submitted by Reliance Industries Ltd., Nova Petrochemicals Ltd., Gupta Synthetics Ltd. and Chiripal Petrochemicals Ltd. The application was supported by M/s Century Enka Ltd., M/s Indorama Synthetics (I) Ltd., M/s Paras Petrofils Ltd., M/s Garden Silk Mills Ltd., JBF Industries Ltd. and M/s Welspun Syntax Ltd. These producers accounts for 85% of the Indian production and thus have desired standing. The companies providing data account for 68% of total production, therefore constitute domestic industry within the meaning of the Rule 2(b).

Confidentiality

11. In this findings the data of the domestic industry concerning capacity, production and sales etc. have not been kept confidential, however the information concerning customers, prices and costs have been considered confidential.

12. The confidentiality claims of the cooperating exporters relating to their data have been accepted and data/information has been kept confidential as claimed by them in this investigation.

Other issues

PCN wise information from domestic industry.

13. It has been contended by JIANGSU HENGLI CHEMICALS FIBRE CO.LTD that the logic of having PCN-based determination of dumping is that there is a vast variation within the category of the product under consideration in terms of grades, qualities and prices. In absence of PCN-wise cost and price information, the determination of normal value and export prices would be completely skewed. For example, if in the market in the country of origin of the exporter, the exporter was selling only the least expensive grades/qualities but exports to India were of the higher quality/more expensive grades, the Designated Authority would be forced to come to the conclusion that there is no

dumping at all. Similarly there is every possibility that the Domestic Industry may not be injured in respect of those PCNs which have been exported by Jiansu Hengli or other exporters as well. Therefore, the entire investigation, both on the side of the domestic industry and the exporters, needs to be based on PCN-wise cost and price information.

14. The domestic industry in this regard stated that the PCN –wise information is required from the exporters to determine the dumping margin appropriately. The basis of PCN -wise analysis is emanating from Article 2.4 of WTO Agreement on Anti Dumping which is meant only for dumping margin analysis. It may also be noted that the exporter in their submission has also acknowledged the need of PCN-wise data for the normal value, export price and dumping margin. Therefore, it is neither permissible nor envisaged to extend the concept of PCN wise analysis to any issue other than dumping margin. The concept of model wise or PCN wise analysis is limited in law to the dumping margin under Article 2.4. At the same time paragraph (vi) of Annexure II of the anti dumping Rule which would confirm that the analysis and the requirements of injury analysis of the Domestic Industry are quite different from the mandate of Article 2.4 (or paragraph 6 of Annexure I of the Anti Dumping Rules). With regard to maintenance of the record, it has been submitted the cost records are maintained by the domestic industry under the Companies Act. However, the domestic industry is neither required nor is it maintaining or keeping the cost records at the PCN level.

15. The Authority note that for injury analysis, the legal parameters do not require segregated information in respect of different variation of the like article. However, for determination of dumping margin the comparison of different specification of the product would lead to unfair results, therefore comparison is to be made PCN wise. In pursuance of lesser duty rule as being practiced in India and consequently the determination of injury margin it would be desirable to have separate cost of production to calculate accurate non injurious price (NIP) , however, if the information is not maintained by domestic industry, the calculation has to be based on available authentic information. After the preliminary findings, denier-wise information on the cost of production was procured from the domestic industry. The relevant information has been used to construct the normal value, wherever required and NIP to determine injury margin.

Retrospective application of the anti dumping duty

16. The domestic industry has requested for retrospective application of duties on the ground that the PUC is not only being dumped by the subject countries in the present case but has also been dumped by the subject countries in the previous investigation and subject goods have been continuously dumped for the past 3-4 years. Its has further been submitted that imports from subject countries have gone up significantly subsequent to imposition of anti dumping

duties on certain countries clearly indicating that injury is caused by massive dumping in a relatively short time.

17. International Trade Law Consultants on behalf of Tongkun Group Zhejaing Heng Sheng Chemical Fibre Co. Ltd., China has submitted that it would be very unfair to impose retrospective application of anti dumping duty as no injury caused by exporters of the subject goods in a relatively short time. It has also been submitted that the claim of applicant is baseless and unjustified. It has been submitted by M/s Indo Poly (Thailand) Limited that it is an admitted position that there is a history of dumping of subject goods. However, that such history of dumping was not related to imports from Thailand. The Thailand was not subject country in the previous investigation. Regarding massive dumping of article imported in a relatively short time, it has been submitted that it is an admitted fact that there is a decrease in total imports from the base year to period of investigation. At the same time, the share of domestic industry has increased from 32.78% in the base year to 51.6% in the period of investigation. Further, it has been submitted that the burden of proof lies on the domestic industry to justify the retrospective application of the anti dumping duty. The domestic industry is not only required to justify the imposition of anti dumping duty retrospectively but is also required to specify and justify the date from such retrospective application of duty should come into operation. The domestic industry having failed to discharge the above said burden of proof and thus cannot be permitted to ask for the retrospective application of anti dumping duty.

18. The Authority in this regard notes that the allegation that the dumping was being done by the subject countries in the previous investigations has not been substantiated with any evidence. The statement of the domestic industry cannot be ground for imposition of retrospective imposition of duties. It has further been noted that no further evidence on important elements of section 9A(3) have been submitted which may become ground for imposition of duties retrospectively. Therefore, the Authority has not recommended retrospective imposition of anti dumping duty in this investigation.

D Methodology For Dumping Margin Determination

D.1 Submission made by domestic industry

19. It has been submitted that the subject countries namely China and Vietnam are non-market economy countries under the Indian Anti-dumping Rules. Therefore, the normal value in case of China and Vietnam is required to be determined as per the procedure described in the para 7 of the Annexure I to the Anti-dumping Rules.

20. It has been submitted that for the purpose of determination of normal value in case of a non-market economy country, an appropriate third market economy country is required to be selected as the first alternative. It was

proposed China Taipei Taiwan be taken as an appropriate market economy third country. It has been submitted that the capacity in China and Vietnam for manufacturing the subject goods is close to the manufacturing facility in China Taipei. It has also been submitted that Taiwan be taken as a surrogate country in view of the fact that the industry structure, the average capacity of plants, the cost structure, the production process and the technology are reasonably and fairly close to that found in the subject countries. The domestic industry also has no links or relationship with any of the producers in Taiwan. This proposition is also guided by the fact that Taiwan is a market economy country with considerable competition within the local producers as well as from imported goods. Such conditions are a good indicator of market determined prices.

21. It was further submitted that Domestic Industry tried to get the information on export price details from Taiwan to other countries, however, was not able to get any documentary evidence or reliable information with regard to prices in Taiwan as such information is not available in public domain. For the purpose of initiation, the normal value in Taiwan was constructed, as this is one of the permissible methods under the first set of alternatives in terms of the provisions of paragraph 7 of Annexure I of the Anti-dumping Rules.

D.2 Market Economy Treatment for Cooperating Exporters

22. At the stage of initiation, the Authority proceeded with the presumption by treating China PR and Vietnam as a non-market economy countries as per para 8(2) of Annexure I of the Rules, for purposes of an anti dumping investigation. Upon initiation, the Authority advised the producers/Exporters in these countries to respond to the notice of initiation and provide information relevant to determination of their market economy status.

23. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China and Vietnam to advise producers/exporters in their countries to provide information.

D.3 Submissions by NM/s Jiangsu Hengli Chemicals Fibre Co. Ltd., China PR.

24. It has been stated that the domestic industry has made the following allegations:

1. China is a Non-Market Economy;
2. In the past the Designated Authority has treated China as a Non-Market Economy. Therefore the country should be treated as a Non-market Economy.

3. The Normal Value in respect of exporters from China needs to be constructed.

25. It has also been stated that an established position of trade law that even if a country is being treated as a Non-Market Economy, a company can be accorded Market Economy treatment, provided it fulfils the parameters set for the determination of market economy. It is a matter of record that the DGAD itself has granted market economy treatment to many Chinese companies in the past four years. Further it has been stated that under the Indian Law not only set out four criteria in general that are to be considered by the Designated Authority for Market Economy Status, but also the conditions for consideration of such criteria. Specifically, the terms, such as “significant State interference”, “substantially reflect”, “significant distortions”, “sufficient evidence”, “market conditions prevail”. Etc. are the conditions which shall be taken into account by the Designated Authority in measuring and applying the criteria for MES. It has been submitted that the Designated Authority should apply the rules under Indian Law, dealing with market Economy Treatment to a cooperating exporter from a designated Non-Market Economy country, only if it is established that there is significant State interference affecting cost and pricing of the subject material and the costs of major inputs substantially reflect market value,. In such investigation, emphasis is to be given on significant State interference, as no where in the world can an enterprise work without State interference, in one form or the other.

26. It has also been submitted that M/s Jiangusu Hengli Chemical Fibre Co. Ltd., China PR was founded in 2002 as a stock holding company with a registered capital of US\$ 50 million. Its main business comprises manufacturing and selling of Polyester Fibre and Differential Chemical Fibre.

27. M/s Jiansu Hengli Chemical Fibre Co. Ltd., is owned by the following companies:

1. Suzhou Shenglun Investment Co.Ltd.,
2. Suzhou Huaer Investment Co. Ltd.,
3. Tak Shing Li International Holdings Ltd.

All these shareholders of the company are neither state owned nor do they have any direct or indirect relation with the State. It is further submitted that in accordance with the Anti-Dumping Rules of India, even erstwhile state owned company which have been transferred to private individuals in a fair manner are not barred from claiming Market Economy Status if they are able to establish that they are operating under a Market Economy System. In the past the Hon'ble Designated Authority has accorded market Economy Status to number of such companies. On the contrary, Jiangsu Hengli is a totally privately established and owned by private companies. Hence Jiangsu Hengli needs to be accorded market Economy Status by the Hon'ble Designated Authority.

28. The Authority has noted that the exporter claimed to be established by Yun Chun Holdings Limited as a wholly foreign owned enterprise in 2002 in Hongkong. In the same year 75% of the shares was transferred to Wujiang Chemical Fibre Weaving Factory. Subsequently balance shares were transferred to Yun Chun Holdings Limited and Hong Kong Tak Shing International Holding Limited. In 2007 Wujiang Chemical Fibre Weaving Factory transferred on its shares to Suzhou Shenlun Investment Co. Ltd. and Suzhou Huaer Investment Co. Ltd..

29. The exporter was asked to provide the annual Reports indicating activities and Balance sheet of the Holding companies. The exporter was asked to explain about the method of valuation of shares and mode of payment. In reply it was stated that the two of the present holding company was established in 2007, therefore no Annual Reports are available, however the Annual Reports and Balance Sheets for Hong Kong Tak Shing International Holding Limited. were provided. It has also been stated that *“while transferring shares the valuation share is determined purely through negotiation of the parties. Part of the payment for transferring shares is made through bank and also in cash.”*

30. During the verification, it was noted that there was no real change of ownership of the company as Wujiang Chemical Fibre Weaving Factory has transferred share to Investment Company which was held by owner of Wujiang Chemical Fibre Weaving Factory. Originally Wujiang Chemical Fibre Weaving Factory was bought by Mr. Chen Jianhua in 1994 by taking loan from bank (As information provided during the verification). In 2003, Mr. Chen Jianhua established China Hengli Group, which is composed of Jiangsu Hengli Chemical Fibre Co. Ltd., Wujiang Chemical Fibre Weaving Factory, Wujiang Huayi Real Estate Co. Ltd., Wujiang Huayi Investment Co. Ltd., Suzhou Yixiang Textile Co., Ltd., Wujiang Chenchen Weaving Co. Ltd., Wujiang Huajun Textile Co. Ltd., Wujiang Huayi Trading Co. Ltd., Wujiang Yunhao Weaving Co. Ltd., Wujiang Tongli Lake Holiday Resort and Suzhou Susheng Thermal Power Co. Ltd.. During the verification process, the company was asked to provide annual report of Wujiang Chemical Fibre Weaving Factory of the year 2002 when it bought Jiangsu Hengli Chemical Fibre Co. Ltd. to know about the flow of funds for purchasing the company. No annual report was provided. For the fund flow, it was stated that *“the capital can be received gradually from foreign investment company and rely the capital accumulation”*. It has also been noted that a Report on company's milestone indicate that *Jiangsu Hengli Chemical Fibre Co. Ltd. financed by Wujiang Chemical Fibre Weaving Factory, was formally established with the occupied area of 80 hectares. It imported two sets of 200,000 ton polyester production plants from German Zimmer AG, the 1152 position FDY and POY with the production capacity of 350,000 terylene products from Japanese TMT Corp. and German Barmag AG, as well as 120 DTY high speed texturizing machines from Japan and German. The gross investment reaches RMB2.2 billion yuan. It lays a solid foundation for the future development way of large scale group operation.* Further it has been noted that in the response to the

31. The above information provided by the company indicate that the flow of fund and acquisition of the company are not transparent making it difficult to understand the real ownership of the company. Further in absence of transparency in working of the company specifically with reference to flow funds, it is not possible to determine distortion carried over from the former non-market economy system. In absence of transparency, it is also not possible to rule out state interference in the major decisions making of the company concerning cost price etc.. Therefore, the Authority has not granted market economy treatment to this company for the purpose of this investigation.

32. After the Disclosure Statement, it was stated by the exporter that in their opinion Annual Report of 2002 of *Wujiang Chemical Fibre Weaving Factory* is not required. It has also been stated that *'the transference was de facto an internal transference among the company's shareholder controls. Generally, before and after the above transference, the final and actual ownership of Hengli has been Chen Jianhua as we claimed during verification. Accordingly for change of shareholding between sister and affiliated companies does not need any valuation as the ultimate shareholder of both transferor companies and transferee companies are the same. Accordingly conclusion of the Designated Authority that there is absence of transparency in the working of the company with regard to flow of funds is not correct and contrary to the facts placed before the Authority'*. The Authority has examined the arguments of the exporter, however, did not find any reason to change its decision in view of the reasons already recorded in the preceding paragraph.

33. It has been submitted that Wuxi Godsheep Industry & Trade Co. Ltd (“Godsheep Trade”) export FDY which is manufactured by its related company Jiangsu Chemical Fiber Co. Ltd. (Godsheep Chemical) upon processing contracts between them.

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35. The exporter was also asked to provide details of transfer of shares by ***** , a holding company for Wuxi Godsheep Industry & Trade Co.ltd. In reply it has been stated that while making transfer there were no valuation of shares.

**TONGKUN GROUP CO. LTD.(TONGKUN GROUP) AND TONGKUN GROUP
HENGSHENG CHEMICAL FIBRE CO.LTD. (HENGSHENG)**

37. It has been submitted that Hengsheng has only ***** shareholder i.e. ***** In respect of **** it has been submitted that it has **** share holders .The major shareholders of the Tongkun Groups are ***** Ltd., ***** Ltd., ***** Ltd, and J***** Ltd., in addition to individual shareholders.

38. These exporters were asked to provide Annual Reports indicating activities and Balance Sheets of *****Ltd., *****Ltd., *****Ltd., *****., (holding companies for exporters) for POI in previous years. It was also asked whether holding companies are /were owned/controlled or any share is/were held by State. In reply the Balance Sheets and Income Statements for these holding companies have been submitted. The information provided in Balance Sheets and Income Statement is inadequate and does not throw any light on the activities of these holding companies.

39. After the preliminary findings, no further information was provided by the companies. During the verification, it was also noted that there was no change in directors of the company from 1999, when it was held by one Asset Management Company and Employee Stock Ownership Companies, to 2002 when the company was transformed and the shares were held by Zhejiang Tongkun Holding Group Company Ltd..

40. In view of the information that the holding company of the manufacturer/exporter were earlier held by state and later on the holding companies only have been changed. The Directors of the company however remained same indicating clearly that these companies are held by the state owned companies. Therefore, it is not possible to grant market economy treatment to these companies as state interference cannot be ruled out in the major decisions making of the companies.

41. After the Disclosure Statement, it was stated that all information was promptly supplied and Authority has no clear evidence that company was earlier held by State. In this regard, it has been noted that during the verification it was informed that they were not aware of the nature of Asset Management Company who was earlier holding company. In view of the fact that the producer/exporter was not even aware/ready to disclose the nature of holding company, therefore, the Authority did not find any reason to change its decision already recorded in preceding paragraph.

Normal Value

Normal Value for China PR

42. In anti-dumping investigations concerning imports originating in non-market economy normal value shall be determined in accordance with para 7 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provide that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed

value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.”

43. As explained above, the market economy status has not been accorded any of the exporters. Therefore the normal value has been determined in accordance with para 7 of annexure I of the Rules. The domestic industry at the time of application has proposed Chinese Taipei as a surrogate country for determination of normal value, however no information was made available to the authority. In the responses by the cooperating exporters as well as by the domestic industry, no comment has been provided to treat Chinese Taipei as an “appropriate market economy third country”. The authority has therefore determine the normal value in accordance with method “any other reasonable basis”.

44. For the purpose of calculating the normal value the international prices of raw materials to India, consumption norm and conversion cost of the efficient producer of the domestic industry have been taken into account. A profit @ 5% has been added to arrive at the normal value. By this methodology the weighted average normal value has been determined as \$^{***}/kg.

Export Price for Cooperating Exporters

Jiangsu Hengli Chemical Fibre Co.Ltd.

45. The exporter has provided transaction wise details of exports to India during the period of investigation. After verification of data, all transactions of exports have been taken into consideration for determination of export price. The expenses incurred on account of local transportation, packing, overseas freight, insurance, custom clearance, handling, VAT loss and other expenses claimed by exporter have been adjusted to arrive at ex-factory export price. By this methodology the ex-factory weighted average export price has been determined as \$^{***}/kg.

TONGKUN GROUP CO.LTD.

46. The exporter has provided transaction wise details of exports to India during the period of investigation. After the verification, all transactions of exports have been taken into consideration for determination of export price. The expenses incurred on account of packing, overseas freight, insurance, Port fee, VAT loss and bank expenses claimed by exporter have been adjusted to arrive at ex-factory export price. By this methodology the ex-factory weighted average export price has been determined as \$^{***}/kg.

TONGKUN GROUP HENGSHENG CHEMICAL FIBRE CO.LTD

47. The exporter has provided transaction wise details of exports to India during the period of investigation. After the verification, all transactions of exports have been taken into consideration for determination of export price. The expenses incurred on account of packing, overseas freight, insurance, Port fee, VAT loss and bank expenses claimed by exporter have been adjusted to arrive at ex-factory export price. By this methodology the ex-factory weighted average export price has been determined as \$^{***}/kg.

WUXI GODSHEEP INDUSTRY & TRADE CO.LTD.

48. After the preliminary findings, the exporter did not cooperate for verification of the information submitted in response to the initiation. In the preliminary findings, separate export price and dumping margin were determined. However, after the preliminary findings, the exporter has been treated as non-cooperative because of refusal to get the data verified. Therefore, no separate dumping margin has been determined for this exporter.

Export price for Non-cooperating Exporter

49. To determine the export price from non cooperating exporters details of the transaction wise export made to India by Immortal Computer lab Pvt. Ltd. have been taken into account. As the transactions are on CIF basis therefore to determine ex factory export price, the expenses incurred on account of export to India have been adjusted. For this purpose the expenses declared by the cooperating exporter had been taken into account and adjusted. By this methodology the ex-factory export price has been determined as \$^{***}/kg.

Vietnam

FORMOSA INDUSTRIES CORPORATION (FIC)

Market Economy treatment

50. At the stage of initiation, the Authority proceeded with the presumption by treating Vietnam as non-market economy country as per para 8(2) of Annexure-1 of the Rules for the purpose of anti dumping investigation. However, the exporters in the Vietnam were sent MET questionnaire for rebutting the presumption of non-market economy in accordance with criteria laid down in para 8(3) of Annexure I of the Rules. In response to the initiation, FIC submitted information to rebut presumption of non-market economy on the prescribed format. On the spot verification of the information submitted was also carried out. In this regard, it has been noted that FIC is held by companies based in Chinese Taipei. The Annual Reports of holding companies show the investment made by

these companies in FIC, Vietnam. The Board of Directors represent these holding companies. The land has been taken by the company for 50 years on lease from a company named NGHIA Import-Export Company (TIMEXCO). As the company has been set up by the private companies of Chinese Taipei, therefore, distortion carried over from the former non-market economy system was not detected. The raw materials are purchased by the company from the related companies in Taiwan which also sells the raw materials to unrelated customers. No material differences in prices on purchase of raw materials have been found. Other parameters as provided in para 8(3) of the rules were also examined. However, no final decision has been taken concerning market economy status in view of the non-cooperation of the entity through which the exports were effected during POI.

Normal Value for Vietnam

51. For the purpose of Normal Value, the Authority has relied on the facts available as per Rule 6(8). For this purpose, the home sale transactions provided by FIC have been taken into consideration. As the PCN of export sales to India and domestic sale were same, therefore, all transactions of home sale for comparable PCN have been taken into consideration for determination of the normal value. For domestic sale, expenses on account of inland freight and packing were claimed and were found to be correct during on the spot verification. The domestic sale transactions were also found to be above the cost of sale, therefore, all transactions have been taken into consideration for determination of the normal value for relevant PCN. For each PCN weighted average normal value have been determined for determination of the dumping margin. The weighted average normal value for all domestic sale of relevant PCN have been calculated as US\$^{***}/Kg..

Export price for Non-cooperating Exporters

52. The exporter provided transaction-wise data on the export sales to India. From the information it was noticed that the shipments were made directly from Vietnam to India, however, sales were first made to a trader in Chinese Taipei who in turn made sale to Indian customers. Before the preliminary findings, information by the trader in Chinese Taipei was not provided to complete the chain of transactions to India; therefore, separate dumping margin was not determined for the FIC. After the preliminary findings, the transaction-wise export sale information was provided by the trader. As the chain of export transactions have been completed, therefore, the authority verified the information provided by FIC. The trader was asked to provide copies of invoices so that actual export prices to India could be verified. The Trader refused to cooperate and did not supply the requisite information and even did not reply to letter of the authority. In view of non cooperation of the trader, export price

cannot be determined. Therefore, the Authority has not determined separate export price for the FIC.

53. To determine the export price from non cooperating exporters details of the transaction wise export made to India by Immortal Computer lab Pvt. Ltd. have been taken into account. As the transactions are on CIF basis therefore to determine ex factory export price, the expenses incurred on account of export to India have been adjusted. For this purpose the expenses declared by the FIC has been taken into account and adjusted. In respect of freight and insurance no information was made available by FIC, therefore information provided by domestic industry has been relied on for adjustments. By this methodology the ex-factory export price has been determined as \$ ***/kg.

Thailand

54. M/s Thai Polyester Co. Ltd. , responded to the initiation of notification and provided the detail about the domestic and export sale transactions. During the examination it was noticed that the business to India has been transacted through a trader in another country. The exporters stated that the prices to trader may be taken as export price to India, however no details of export price to India by trader were provided. As the chain of transactions to India were not fully established, therefore, separate dumping margin for this exporter has not been determined.

Submissions made by Indopoly (Thailand) Ltd.

55. There are no differences in the goods sold in the home market and goods exported to India. The SDY produced is categorized into two gradations which are A quality and PQ Quality. The latter products (PQ grade) are mostly shipped to India and domestic markets and are without any dyeing guarantees and they are produced from a lower graded raw material and utilized, reused packing material and lubricants. It was further clarified that during the production process by use of downgraded PTA and MEG, PQ grade of SDY are produced. The cost of downgraded raw materials is comparatively lower.

56. During the verification it was noted that the company showed the record for separate production of the inferior grade for one type of denier. For the other denier, no separate production information was made available. It has further been noted that even for the inferior grade, the domestic sales transactions were made below the cost of sale. Therefore, the domestic sale transactions have been discarded and the normal value for this grade have been determined by adding profit @5% to the cost of sale. For other deniers for which comparable grade were not available in domestic sale, the cost of sale for prime grades have been taken into consideration and profit @5% have been added to construct the normal value. For prime grades for which comparable sales were available, the same has been taken into consideration.

57. Further It was informed that Indopoly (Thailand) Ltd. (IPL) is transferring its entire business to Indorama Polyester Industries Public Company Limited (formerly known as 'Tuntex Textiles Public Co. Ltd.') with effect from August 03, 2009. Further a declaration has been submitted that 'Indorama Polyester Public Company Limited (formerly known as 'Tuntex, (Thailand) Public Company Limited has neither produced nor sold any SDY product during October 2006 to September 2007'. In this regard, copies of the consolidated financial statement have also been submitted. After disclosure statement, it was intimated that with effect from 1.8.2009 as a result of merger, the business, assets and liabilities have been transferred to M/s Indorama Polyester Industries Public Limited. It has also been stated that subsequent to the merger, the entire business operations such as sales, purchases etc. of M/s Indopoly (Thailand) Limited will be done in the name of M/s Indorama Polyester Industries Public Limited. It has further been stated that 'M/s Indopoly (Thailand) Limited, post the BTA has been dissolved'. In this regard, copies of the affidavit (in original and its translation) before the appropriate authority and copies of certificate (in original and its translation) from Liquidator of the Company stating that M/s Indopoly (Thailand) Limited has been dissolved. The Authority has taken note of this development and the change has been reflected at appropriate places in the findings.

Normal value for Thailand

Normal value for Indopoly (Thailand) Ltd

58. The exporter has provided transaction wise details of domestic sale for the purpose of determination of normal value. All transactions have been taken into consideration to calculate weighted average PCN wise normal value. To determine the normal value at the ex-factory level, the exporter has provided details of expenses incurred in making sale and wherever necessary the same has been taken into account. The expenses on account of credit cost, commission, freight and handling have been adjusted to determine PCN wise weighted average normal value. The expenses were also claimed on CTS and insurance on domestic sale. In respect of insurance, it was noted that this expense is common to both domestic and export sales, as it has not been adjusted in the export sales, therefore, the same has also not been adjusted for determination of normal value. Concerning CTS, it was explained that expenses on the technical service provided in respect of domestic sales. As no specific documentary proof was provided for these expenses, therefore, the same has been disallowed. By this methodology the weighted average normal value has been calculated as \$^{***}/kg.

Normal value for non cooperating exporters from Thailand

59. For non cooperating exporters, all domestic sales price of cooperating exporter have been taken into consideration. The expenses of cooperating

exporter has been adjusted to determine the normal value. By this methodology the weighted average normal value has been calculated as \$^{***}/kg.

Export Price for Cooperating Exporters

INDO POLY (THAILAND) LTD.

60. The exporter has provided transaction wise details of exports to India during the period of investigation. For the purpose of determining export price, all transactions of exports have been taken into consideration. During the verification it was noted that some invoices shows prime quality whereas it was claimed by the exporter as PQ grade. In support of the claim, the exporter during verification submitted back-up evidence in the form of packing list etc.. The Authority has however relied on information provided in the invoices and taken the same as prime grade. Other transactions have been considered to be of PQ grade as claimed by them. By taking into account the transactions PCN-wise, weighted average export price has been determined.

61. The expenses incurred on account of local transportation, overseas freight, insurance, bank charges and other expenses claimed by exporter and verified during on the spot verification have been adjusted to arrive at ex-factory export price. By this methodology the ex-factory weighted average export price has been determined as \$^{***}/kg

Export price for Non-cooperating Exporters.

62. To determine the export price from non cooperating exporters details of the transaction wise export made to India by Immortal Computer lab Pvt. Ltd. have been taken into account. As the transactions are on CIF basis therefore to determine ex factory export price, the expenses incurred on account of export to India have been adjusted. For this purpose the expenses declared by the cooperating exporter had been taken into account and adjusted. By this methodology the ex-factory export price has been determined as \$^{***}/kg.

Dumping Margin

63. The dumping margins have been determined by using weighted average to weighted average methodology. For this purpose, weighted average export prices of relevant PCNs have been compare with normal value of relevant PCNs. After determining dumping margin for relevant PCNs, the weighted average has been calculated depending upon the weight of each PCN. Based on the weighted average normal value and weighted average export price as determined above, dumping margins determined are as under:

	NV	EP	DM	DM%
China PR				
TONGKUN GROUP CO.LTD.	***	***	***	19.29
TONGKUN GROUP HENGSHENG CHEMICAL FIBRE CO.LTD	***	***	***	18.30
JIANGSU HENGLI CHEMICALS FIBRE CO.LTD	***	***	***	18.03
Non Cooperating Exporters from China PR	***	***	***	48.32
VIETNAM				
Non Cooperating Exporters from Vietnam	***	***	***	24.5
THAILAND				
M/s Indorama Polyester Industries Public Limited (Formerly INDO POLY (THAILAND) LTD.	***	***	***	6.76
Non Cooperating Exporters from Thailand	***	***	***	44.8

The above determined dumped margin is more than *de minimis*.

E. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

E.1 Views of the domestic industry

The domestic industry made the following submissions:-

64. The share of imports from the subject countries has increased from 4.83% in April 04-March 05 to 89.64% during the period of investigation. It may also be seen that during the POI, imports from the subject countries have increased to almost 24 times of the imports for the year April 04-March 05. It clearly indicates that the imports from subject countries have been able to capture a higher market share due to aggressive policy of price undercutting adopted by the exporters from the subject countries.

65. Further, imports from the subject countries in comparison to the total demand in India have increased from 1.45% during April 04-March 05 to 20.37 % during the period of investigation.

66. The imports from subject countries as percentage of domestic production of the petitioners have increased from a level of 4.33% in the year April 04-March 05 to 39.24% during the period of investigation. Thus, the imports from the subject countries have increased not only in absolute terms but also as a share to total imports into India, market demand and domestic production.

67. It has been submitted that the landed value from the subject countries has further come down during the period of investigation as compared to previous two years from already a lower level of landed value whereas the domestic industry was under consistent pressure and could not increase its selling prices. The domestic selling prices have in fact come down over the injury investigation period causing injury to the domestic industry.

68. The share of the domestic industry has increased over the injury investigation period on account of the fact that the demand has increased by 73% over the same period. The market share of the domestic sales also increased as a result of imposition of duties against Indonesia, Korea, Malaysia and Taiwan in a previous investigation. However, it may be noted that as against a total increase of 73% in demand, the share of the domestic sales could increase only 7% clearly depicting that the volume of the domestic sales have been affected.

69. The capacity utilization of the domestic industry has increased from 83% in the year April 04-March 05 to 96% during the period of investigation. The analysis of the capacity utilization in the present case would not provide sufficient information about the impact of injury to the domestic industry. The capacity for the subject goods is dependent upon various factors. For example, the high denier would result into higher production as compared to lower denier.

70. The productivity per employee during the period of investigation has improved as compared to base year 2004-05.

71. The domestic sales have increased over the injury investigation period as a result of decline in volume of the subject countries in the previous investigation and increase in demand. However, the sales realization of the domestic industry has not improved and has come down over the injury investigation period due to the presence of dumped imports from subject countries.

72. There is no adverse effect on the number of employees and the wages paid to them.

73. Dumping by the subject countries had a significant adverse impact on the net sales realization of the domestic industry for the subject goods. It has been submitted that due to the large scale price undercutting adopted by the exporters from subject countries, the domestic industry was not able to get any price

increase over the injury investigation period. Therefore, the profitability of the domestic industry remained negative throughout the investigation period.

74. It has been submitted that as a result of decline in selling prices of the domestic industry, the DI could not earn desirable returns on its investment.

75. The inventories of the domestic industry have increased clearly showing the difficulty being faced by the domestic industry to sell the subject goods during the period of investigation.

76. It has been stated that the landed value of the product under consideration from each subject country is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods. The injurious effect of this high level of price underselling has had a direct and deleterious effect on the financial performance of the domestic industry.

77. The injury to the domestic industry due to the dumped imports is further accentuated by the fact that not only the subject goods are being heavily undersold, the exporters from the subject countries are also indulging in significant price undercutting. Thus, there is a constant pressure on the domestic industry to bring down their prices lower than even the current prices, which are not at all remunerative.

78. It has been submitted that the cash profit of the domestic industry was at a meager level of ***% during the period of investigation clearly showing an injury to the domestic industry.

79. It has been submitted that the demand in the country has increased by 73% during the period of investigation as compared to base year 2004-05 whereas the market share of the domestic sales has increased only 8.72% over the same period.

80. The ability of the domestic industry to raise capital investment for any further expansion of capacity is not feasible in view of the low returns during the period of investigation.

81. In addition to the fact that material injury is being caused to the Domestic Industry, the threat of material injury to the Domestic Industry is imminent.

82. The imports from the subject countries have shown a significant increase during the period of investigation as compared to the preceding period. The imports have gone up from 1610 MT in April 2004-March 2005 to 39137 MT during the POI.

83. Imports from the subject countries are coming at extremely low prices which do not allow the domestic industry to even recover its cost. The domestic

industry is operating at a loss due to current severe undercutting by the subject countries despite suppressed prices of domestic industry. It is becoming very difficult for the petitioners to operate at present and the survival of the domestic industry is equally becoming difficult. Therefore, an immediate action to curb the present dumping from the subject countries would be in the interest of domestic industry.

84. The Domestic Industry also understands that there are huge disposable capacities and surplus production in the subject countries, which is likely to find its way into the Indian market if anti-dumping duties are not immediately imposed.

85. With respect to exporters' inventories, The DI could not find any evidence for the same.

Concerning Causal link it has been submitted:

86. The imports of subject goods from sources other than China, Indonesia, Korea, Thailand and Vietnam are *de minimis* during the period of investigation. The imports from Indonesia and Korea are subject to anti-dumping duty. Therefore, only the imports from the subject countries are being made at dumped prices and are above the *de minimis* limits causing material injury to the domestic industry. The imports from all other countries are below *de minimis*.

87. The demand in the period of investigation has increased over the injury investigation period. Hence, the decline in demand is not a cause of injury to the domestic industry.

88. There is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. The price determines the choice of supplier. The dumped goods are substituting the product of the indigenous producers. The imported product is also sold to meet the similar commercial grades, standards and specifications, as domestically produced subject goods. The imported goods and the domestically produced goods are like articles and are used for the same applications/end uses. Thus, pricing becomes the most important factor for purchasing the article either from imported sources or domestic sources. The domestic industry is not realizing reasonable selling price / profit with respect to subject products. This can be directly attributed to the low priced imports from the subject countries as the domestic industry is always expected to match the prices offered by the importers from the subject countries. It may also be mentioned that there are no trade restrictive practices or technology issues which can be attributed to the cause of injury to the domestic industry. The productivity of the domestic industry has also gone up and, therefore, has not caused any injurious effect on the financial state of the domestic industry. As regards the competition between the foreign and domestic producers, it has been submitted that the domestic industry

is suffering only on account of unfair trade due to dumped imports from the subject countries. If the imports take place at the fair normal prices, the domestic industry is totally in a position to face the competition from imports. It may be noted that the export sales volume are very little as compared to the domestic sales. Hence, the export performance of the domestic industry in no way has affected the financial and economic situation of the petitioner in the domestic market. In any case, the injury analysis reflected in the preceding section does not include the export sales.

Retrospective Application of Anti-dumping Duties

89. The product under consideration is not only being dumped by the subject countries in the present case but has also been dumped by the subject countries in the previous investigation. The subject goods have been continuously dumped for the past 3-4 years. The domestic industry, therefore, requests the Authority to kindly impose the provisional anti-dumping duties retrospectively at the earliest. In this connection, the attention of Authority has been drawn to the section 9A (3) of the Custom Tariff Act and Rule 20 of the Indian Anti-dumping Rules read with section 9A (2) and Rule 13 providing for the imposition of retrospective duties and the circumstances under which retrospective duties can be imposed. The section 9A (3) and Rule 20 (b) read as under

“9A(3). If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

Rule 20(2)(b). in the circumstances referred to in sub-section (3) of section 9A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty:

Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.”

90. It is clear from the above that for retrospective imposition of anti-dumping duties, there is a history of dumping which caused injury to the domestic industry. In the instant case also, there is a history of dumping and the injury to the domestic industry has been caused. The Designated Authority has also concluded in the previous investigation that the dumping and injury has been caused to the domestic industry. It can be seen that the imports from subject countries have gone up significantly from 1610 MT to 39137 MT since 2004-2005. At the same time, the imports (in % terms) have almost doubled in the POI as compared to the immediately preceding year. It is significant to note that the imports have gone up significantly in absolute as well as relative terms subsequent to the imposition of anti-dumping duties on certain countries clearly indicating that the injury is caused by massive dumping in a relatively short time. In the present case also the imports from China, Thailand and Vietnam account for 89.64% of the total imports in the period of investigation rising from 4.83% in the base year.

E.2 Examination by the Authority

Cumulative assessment of injury

91. The Annexure II (iii) of the Anti Dumping Rules requires that where imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that

- I. The imports from individual countries are above de minimis or cumulatively account for more than 7% of imports:
- II. The dumping margin against individual countries are above 2%; and
- III. 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

92. The Authority notes that the dumped imports are entering the Indian market simultaneously from several countries, including the subject countries. Therefore, the issue of cumulative assessment of the injury caused to the domestic industry due to dumped imports from these sources has been examined with respect to the above parameters and it was observed that:

- i) The margins of dumping of individual products from each of the subject countries are more than the de minimis limit;

- ii) The volume of imports of individual products from each of the subject countries/territories is more than the de minimis;
- iii) The domestic product and product supplied by producers in various countries are like articles;
- iv) Imports from the subject countries are significantly undercutting the prices of the domestic industry in the market;

93. The Authority holds that cumulative assessment of injury is appropriate in this case since the exports of individual products from the subject countries are directly competing amongst themselves as well as with the like goods offered by the domestic industry in the Indian market.

94. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that

“A determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.”

95. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states:

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

Volume and market share in dumped imports

96. Imports volume from subject countries and other countries has been as under:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Imports from Subject Countries (MT)	1610	13252	31397	39137
Total Imports (MT)	33368	33438	56953	43659
% Share	4.83%	39.63%	55.13%	89.64%

97. The data shows that share of imports from the subject countries has increased from 4.83% in April 04-March 05 to 89.64% during the period of investigation. It has also been seen that during the POI, imports from the subject countries have increased to almost 24 times of the imports for the year April 04-March 05. During the same period imports from other countries declined from 31757 MT to 4522 MT in POI i.e. 14.23% from base year indicating that imports from subject countries have captured share of imports from other countries after imposition of anti dumping duty on some countries.

Market share in demand

98. The demand has been calculated by addition of sales of Domestic Industry, other producers (estimate provided by DI) and imports from all countries. The data shows that the demand has increased by 74% in POI from base year. In quantitative terms the demand has increased by 81033 MT. The share of domestic industry has increased from 37.8% in base year to 51.6% in POI. In quantitative terms, the DI and other producers have increased the sale by 70742 MT against increase in demand of 81033 MT. The subject countries have increased share in demand from 1.5% in base year to 20.5% in POI where as share of other countries declined from 29% to 2.37% in the same period. The share of total imports in demand has declined from 30.4% to 22.88%.

99. The demand has also been calculated by taking into account the captive consumption and exports. The share in demand of DI, other producers, imports from subject countries, imports from other countries and total imports shows similar trends.

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Demand				
Sales of domestic industry	36043	43161	78940	98365
Trend	100	120	219	273
Sales of other producers	40355	41569	48647	48774
Trend	100	103	121	121
Total Import(MT)	33368	33438	56953	43659
Total Demand	109765	118168	184541	190798
Trend	100	108	168	174
Market Share In Demand				
Sales of domestic Industry (%)	32.84	36.53	42.78	51.55
Sales of other producers	36.76	35.18	26.36	25.56
Subject countries	1.46	11.21	17.01	20.51

Other countries	28.93	17.08	13.85	2.37
Total Imports	30.40	28.30	30.86	22.88

100. Imports from the subject countries in comparison to the total demand in India have increased from 1.46% during April 04-March 05 to 20.51 % during the period of investigation.

Imports in relation to production of the domestic industry

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Imports from Subject Countries (MT)	1610	13252	31397	39137
Production (MT)	37227	51928	84403	99479
% Share	4.33%	25.52%	37.20%	39.34%

101. The data shows that imports as percentage of production of domestic industry has increased from 4.33% in the base year to 39.34% in the POI.

102. The data shows that the imports from the subject countries have increased not only in absolute terms but also as a share to total imports into India, market demand and domestic production.

Capacity, production & capacity utilization

103. Capacity, Production and Capacity Utilization of the domestic industry is given in the following table:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Capacity (MT)	44869	55194	95290	101346
Trend	100	123	212	229
Production (MT)	37227	51928	84403	99479
Trend	100	139	227	267
Capacity Utilization%	82.97%	94.08%	88.57%	96.87%

104. The capacity of the domestic industry has increased from 44869 MT in 2004-05 to 101346 MT in the POI i.e. increased by 56477 MT(126%). The production during the same period increased from 37227 MT to 99479 MT i.e. by

62252 MT (167%). The capacity utilization (enhanced) increased from 82.97% in base year to 98.16% in the POI. It has been explained the capacity would change depending upon the change in composition of the product. The capacity for the subject goods is dependent upon various factors. For example, the high denier would result into higher production as compared to lower denier. Therefore the capacity utilization may not be correct indication of unutilized capacity of the domestic industry.

Sales

105. Sales Volume of the domestic industry is given in the following table:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Sales of domestic Industry	36043	43161	78940	98365
Trend	100	120	219	273
Sales of other producers	40355	41569	48647	48774
Trend	100	103	121	121

106. The data shows that sales of domestic industry has increase from base year to POI by 62322 MT and other producers by 8420MT as against the increase in demand by 81033 MT. The sales of domestic industry (including captive consumption and export) increased by 71094 MT and other producers by 8420 MT against demand increase of 83163 MT.

107. The profitability, profits and cash flow of the domestic industry are given in the following table:-

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Cost of sales	***	***	***	***
Cost Rs/kg	***	***	***	***
Trend	100	96	102	99
Net Sales Realisation(in lacs)	***	***	***	***
NSR Rs/kg	***	***	***	***
Trend	100	96.50	99	95
Profit/ loss in Rs/ kg	***	***	***	***
Trend	100	100	6	-15
Profit/Loss	***	***	***	***
PBIT	***	***	***	***
Trend	100	116	105	70

Cash profit	***	***	***	***
Trend	100	109	107	97

108. The data of the domestic industry shows that the cost of sale per unit has declined to 99 (indexed) in POI as compared to 100 of base year. In terms of value the cost of sale declined by Rs. *** per kg. During the same period the net sales of realization of the domestic industry declined to 95 (indexed) in POI as compared to 100 of the base year. In terms of value the sale price declined by Rs. ***per kg. The profit per kg. turned to loss from 100 (indexed) in the base year to -15 in the POI.

109. The data on profits show that the profit deteriorated from base year to 2006-07 and turned to losses during POI.

Cash Flow

110. Authority notes that both the constituents of the domestic industry are multi products, multi-location companies. None of the companies maintain separate Information regarding cash flow of the product under consideration. Authority, therefore, determined cash profit situation of the domestic industry, which shows that cash profit improved from base year to 2005-06 and again decrease during 2006-07 and POI. In indexed form, from 100 in base year it became 97 in POI.

Factors affecting domestic prices

111. During the injury period the basic custom duty declined from 20% in 2004-05 to 10% in 2006-07 and 7.5% from March 07 onwards in the POI. The cost of sale from base year in 2004-05 declined by Rs. 0.69 /kg in POI. The landed value from subject countries though, increased in 2005-06 and 2006-07. However it declined sharply in the POI. The undercutting of selling prices of the domestic industry by imports from subject countries were significant during injury period.

Price Undercutting

112. The impact on the prices of the domestic industry on account of imports from the subject countries have been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, weighted average Net Sales Realisation(NSR) and the Non-Injurious Price(NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject countries.

113. A comparison for subject goods during the period of investigation was made between the weighted average landed value of dumped imports and the

domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, the rebates, discounts and commission offered by the domestic industry have been adjusted.

114. It has been noted that the price undercutting by imports from subject countries continued throughout the injury period. During the POI the undercutting from subject country was in the range of 10-25%.

Price Undercutting

	Subject Countries			
	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Average Net selling price of the domestic industry	***	***	***	***
Landed Value	***	***	***	***
Undercutting	***	***	***	***
Undercutting in %	***	***	***	***

	Subject countries	China	Thailand	Vietnam
Average Net selling price of the domestic industry	***	***	***	***
Landed Value	***	***	***	***
Extent of Undercutting	***	***	***	***
% of Undercutting	***	***	***	***

Price Underselling

115. 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 evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI. The analysis shows that the landed values of subject goods from subject countries were much below the non-injurious price determined for the domestic industry during the period of investigation. The underselling margin was within a range of 20-33% for subject goods from subject countries during the POI.

Price Underselling

	Subject countries	China PR	Thailand	Vietnam
NIP	***	***	***	***
Landed Value	***	***	***	***
Underselling	***	***	***	***
% of Underselling	***	***	***	***

Return on capital employed

116. The Information regarding return on capital employed is given in the table below:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Net Fixed Assets Rs. Lacs	***	***	***	***
Working Capital Rs. Lacs	***	***	***	***
Capital Employed Rs. Lacs	***	***	***	***
Indexed	100	181	255	236
PBIT Rs. Lacs	***	***	***	***
Return on Capital Employed – NFA %	***	***	***	***

117. The data shows that the capital employed has increased by 136% in POI as compared to base year. The capital employed has increased on account of capacity addition and increase in working capital. The return on capital employed decreased from base year to POI. The return on capital employed (NFA basis) remained positive, however, it declined from base year to POI. In indexed form, it declined from 100 in the base year to 30 in the POI.

Employment and Wages

118. Employment & Wages levels of the domestic industry is given in the following table:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
No of Employees	***	***	***	***
Index	100	119	187	197
Wages Total (Rs. Lacs)	***	***	***	***
Index	100	109	140	168

119. The data shows that number of employees increased by 97% in POI as compared to base year. The wages to employees increased by 68% during the same period.

Productivity

120. Productivity of the domestic industry, as reflected in terms of production per employee, is given in the following table

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Production(MT)	***	***	***	***
Employees	***	***	***	***
Production / Employee	***	***	***	***
Index	100	118	122	136

121. The productivity of the domestic industry i.e. production per employee improved by 36% during POI as compared to base year.

Growth

122. The demand, capacity, production and sales show positive growth. The cost of sale and selling price shows declining trend. The profitability (profit per unit) PBIT and return on capital employed shows negative growth.

Inventory

123. The inventories of the domestic industry have increased clearly showing the difficulty being faced by the domestic industry to sell the subject goods during the period of investigation.

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-Oct 06 to Sep 07
Inventories Average Stock (MT)	***	***	***	***
Trend	100	65	155	310
Sales per day	***	***	***	***
Avg stock in terms sales days	***	***	***	***

Ability to raise capital/investment

124. That the ability of the domestic industry to raise capital investment for any further expansion of capacity is not feasible in view of the low returns during the period of investigation

F. Conclusion

125. The production of goods have increased by 167%(62252 MT) in POI as compared to base year. The sales have also increased by 173% (62322 MT) against increase in demand of 173% (81033 MT). The sales of other producers (the estimate provided by DI) have also increased. The average inventory of stock in terms of sale deals remains almost same during POI in comparison to base year. In this period the share in demand of the domestic industry has increased from 32.84% to 51.55% in POI. The share of subject countries increased from 1.46% to 20.51% in POI, however share of imports from other countries declined sharply from 28.88% to 2.36%. Consequently the share of total imports fell from 30.34% to 22.83% in POI. The data indicates that the domestic industry has been able to take advantage of increase in demand by increasing the sales, production, capacity utilization and share in demand.

126. The cost of sales has declined from 100(indexed) in the base year to 99 in POI i.e. by Rs. *** per kg., the selling price however declined to 95 (indexed) i.e. by Rs. ***per kg. the domestic industry was earning profit (per unit) in the base year and continued to earn profit during the injury period except in POI when there was a loss. The loss per unit in POI declined to -15 (indexed) from -100 in the base year. The PBIT however remained positive during injury period. The return on capital employed which was ***% during 2005-06 came down to ***% in POI.

F.1 Causal Link and Other Factors

Volume and Prices of imports not sold at the dumped prices

127. From the details of the imports given in the foregoing paragraphs, it is clear that the imports of subject goods from sources other than China, Indonesia, Korea, Thailand and Vietnam are *de minimis* during the period of investigation. The imports from Indonesia and Korea are subject to anti-dumping duty. Therefore, only the imports from the subject countries are being made at dumped prices and are above the *de minimis* limits causing material injury to the domestic industry. The imports from all other countries are below *de minimis*.

Trade restrictive practice and competition between the foreign and domestic producers

128. The Authority did not find any trade restrictive practices followed by the domestic industry or other Indian producers.

Contraction in demand or Changes in the pattern of consumption

129. It is noted that there is no contraction in the demand during the period under consideration. On the contrary, the overall demand has increased by 36% over the injury period. Therefore, possible decline in demand is not a factor which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor has investigation shown possible changes in consumption pattern.

130. The demand in the period of investigation has increased over the injury investigation period. Hence, the decline in demand is not a cause of injury to the domestic industry.

Developments in Technology, Export performance and productivity of the Domestic Industry

131. None of the interested parties have raised any issue that these factors could have caused injury to the domestic industry. Further, the investigation has not revealed that technology for production of the subject goods has undergone any significant change. Domestic industry does not have significant exports except 2002-03, nor has export performance of the domestic industry declined. In fact, after 2002-03, exports by the domestic industry declined significantly in 2003-04 and increased thereafter.

Causal Link

132. On the subject goods Anti Dumping Duty was imposed in 2006 on imports from Indonesia, Korea ROK, Malaysia and Chinese Taipei. After imposition of Anti Dumping Duty on these countries, the imports declined significantly, however the imports from other countries increased substantially. In POI the subject countries have captured 89.64% share in the total imports. The undercutting by imports from subject countries continued in the range of 10-25% and underselling in the range of 18-30% indicating that the selling price of the domestic industry continued to be under pressure by dumped imports from subject countries. Consequently the improvement in 2005-06 in profitability and profits did not sustain and performance started declining in 2006-07 and POI. As compared to base year the profits (PBIT) improved, however return on capital employed after turning positive in 2005-06 started declining. The return on capital employed remained low.

133. The domestic industry continue to gain share in market by increasing its production, sale and capacity utilization, however the improvement in volume after imposition of Anti Dumping Duty on some countries did not result in improving the financial performance. The losses per unit except in 2005-06 continued. Similarly ROI also remain low except in 2005-06 when it showed improvement.

134. The above analysis indicate that imports from subject countries continued to put pressure on performance of domestic industry by undercutting its selling price indicating the casual link between dumped imports and performance of the domestic industry.

G. Conclusions

135. The Authority has, after considering the foregoing, come to the conclusion that:

- a. The subject goods have been exported to India from the subject countries below its normal value;
- b. The domestic industry has suffered material injury;
- c. The injury has been caused by the dumped imports from subject countries.

H. Indian Industry's Interest & Other Issues

136. 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.

I. Recommendations

137. In view of the above, the Authority considers it necessary and recommends definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder

138. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, Definitive antidumping duty equal to the amount indicated in Column-9 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central

Government, on all imports of subject goods originating in or exported from the subject countries.

Duty Table

SN	Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measurement	Currency
1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	5402.47	All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester (non-textured and non – POY)	Any	China PR	China PR	TONGKUN GROUP CO.LTD.	TONGKUN GROUP CO.LTD.	240	MT	USD
2	-do-	-do-	-do-	China PR	China PR	TONGKUN GROUP HENGSHENG CHEMICAL FIBRE CO.LTD	TONGKUN GROUP HENGSHENG CHEMICAL FIBRE CO.LTD	247	MT	USD
3	-do-	-do-	-do-	China PR	China PR	JIANGSU HENGLI CHEMICALS FIBRE CO.LTD	JIANGSU HENGLI CHEMICALS FIBRE CO.LTD	256	MT	USD
4	-do-	-do-	-do-	China PR	China PR	Any other than combination at Sr. no. 1 to 3 above		547	MT	USD
5	-do-	-do-	-do-	China PR	Any other than China PR	Any	Any	547	MT	USD
6	-do-	-do-	-do-	Any country other than countries attracting anti dumping duties	China PR	Any	Any	547	MT	USD
7	-do-	-do-	-do-	Vietnam	Vietnam	Any	Any	350	MT	USD
8	-do-	-do-	-do-	Vietnam	Any other than Vietnam	Any	Any	350	MT	USD
9	-do-	-do-	-do-	Any country other than countries attracting anti dumping duties	Vietnam	Any	Any	350	MT	USD
10	-do-	-do-	-do-	Thailand	Thailand	Indorama Polyester Industries Public Company Limited (formerly Indo Poly (Thailand) Ltd.)	Indorama Polyester Industries Public Company Limited (formerly Indo Poly (Thailand) Ltd.)	80	MT	USD
11	-do-	-do-	-do-	Thailand	Thailand	Any other than combination at Sr. no. 10 above		490	MT	USD

12	-do-	-do-	-do-	Thailand	Any other than Thailand	Any	Any	490	MT	USD
13	-do-	-do-	-do-	Any country other than countries attracting anti dumping duties	Thailand	Any	Any	490	Kg	Rs.

139 Subject to the above, the Authority confirms the preliminary findings dated 23th January, 2009, however duty recommended in para 138 above would be applicable from the date of imposition of provisional anti dumping duty as per Section 9A(2) of the Custom Tariff Act 1975.

140. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(R. Gopalan)
Designated Authority