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**Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Jeevan Tara Building, 5, Parliament Street
New Delhi 110001**

Date: 22nd September, 2015

Notification

Final Findings

Subject: Sunset Review (SSR) anti-dumping investigation concerning imports of ‘All Fully Drawn or Fully Oriented Yarn / Spin Draw Yarn / Flat Yarn of Polyester (non-textured and non-POY) and other yarns' originating in or exported from China PR and Thailand.

A. Background of the Case

1. F. No. 15/03/2014-DGAD:- Whereas having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof, the Designated Authority, in the Ministry of Commerce and Industry, Department of Commerce, Govt. of India, appointed under the Rules supra, (hereinafter referred to as “the Authority”), vide Notification No. 14/3/2008-DGAD dated 6th May 2008, initiated an anti-dumping investigation concerning import of " All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester (hereinafter referred to as "Subject Goods") ", originating in or exported from China PR, Thailand and Vietnam. The Preliminary Findings were issued by the Authority, vide Notification No. 14/3 /2008-DGAD dated 23rd January, 2009 and provisional duty was imposed by the Central Government, vide Notifications No. 29/2009-Customs dated 26th March, 2009. The Final Findings were issued by the Authority, vide Notification No. 14/3/2008-DGAD dated 29th September, 2009. On the basis of the recommendations made by the Authority in the final findings, definitive anti-dumping duties were imposed by the Central Government, vide Notifications No. 124/2009-Customs dated 11th November, 2009 effective from the date of

imposition of the provisional duty on the imports of the of the above goods, originating in or exported from the subject countries.

2. And whereas M/s Reliance Industries Ltd., M/s Wellknown Polyesters Ltd., M/s Garden Silk Mills Ltd. and M/s Alok Industries Ltd., the major domestic manufacturers of the subject goods in India, filed a duly substantiated application before the Authority, on behalf of the domestic industry, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the above goods, originating in or exported from subject countries and consequent injury to the domestic industry in the event of cessation of duty, and requested for a review of the same for continuation and enhancement of the anti-dumping duties imposed on the imports of the subject goods originating in or exported from the subject countries.

3. And whereas on the basis of the duly substantiated application filed on behalf of the domestic industry and in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated a sunset review investigation, vide Notification No. 15/3/2014 -DGAD dated 24th March, 2014, to review the need for continued imposition of the duties in respect of subject goods, originating in or exported from China PR, Thailand and Vietnam, and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. However, Authority noted that there have been no imports from Vietnam during the entire injury period, neither is there any data or evidence indicating the prices from Vietnam to other countries. Therefore, Vietnam has been excluded from the scope of the current investigation. Accordingly, the countries involved in the present Sunset Review investigation are China and Thailand (hereinafter referred to as “subject countries”). The validity of the anti-dumping duty on the imports of the subject goods from the subject countries was extended by the Central Government up to and inclusive of 25th day of March 2015, vide Notification No. 18 /2014-Customs (ADD) dated 9th May, 2014.

4. On the request of the Authority, Central Government extended the time for completion of the Investigation up to 23rd September, 2015, in terms of Rule 17 of the AD Rules.

5. The scope of the present review covers all aspects of the original investigation concerning imports of the above goods, originating in or exported from the subject countries.

B. Procedure

6. The procedure described below has been followed with regard to the subject investigation:

- i. The embassies of the subject countries in New Delhi were informed about the initiation of the investigations in accordance with Rule 6(2).
- ii. The Authority provided copies of the non-confidential version of the application to the known exporters and the embassies of the subject countries in accordance with Rules 6(3) supra. A copy of the non- confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
- iii. The Authority forwarded a copy of the public notice to the following known manufacturers/exporters in the subject countries (whose names and addresses were made available to 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 Rules 6(2) & 6(4):

China PR

- i. Tongkun Group Co. Ltd
- ii. WuXi Godsheep Industrial (Group) Co., Ltd.
- iii. Jiangsu Hengli Chemical Fiber Co.
- iv. Zhejiang Flame Retardant Co. Ltd.
- v. Zhejiang Huaxin Chemical Fiber Co. Ltd
- vi. Shaoxing Yifeng Fancy Yarn Co.Ltd
- vii. Zhejiang Cifu Import And Export Co.Ltd
- viii. Shandong Wantonggda Fiber Co.Ltd
- ix. Yibin Grace Co.Ltd

Thailand

- i. Thai Polyester Company Limited

7. Following producers/exporters has filed the exporter's questionnaire response from the subject countries.

China PR

- i. M/s Jiangsu Hengli Chemical Fiber Co. (hereinafter referred to as “M/s Jiangsu”)

Thailand

- i. M/s Thai Polyester Company Limited
- ii. M/s Indorama Polyester Industries

8. China being a Non-Market Economy country, a Market Economy Treatment (MET) questionnaire was also forwarded to all the known producers/exporters in China PR and the Embassy of China PR with the request to provide relevant information to the Authority within the prescribed time limit. While for the purpose of initiation the normal value in China was considered based on the cost of production of the subject goods in India, duly adjusted, the Authority informed the known producers/exporters from China PR that it has examined 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 were, therefore, requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of Annexure I referred above to enable the Authority to consider whether market economy treatment can be granted to the cooperative exporters/producers in that country. However, M/s Jiangsu hasn't claimed MET and has only filed exporter questionnaire response.

9. The Authority forwarded copies of the public notice to the following known importers/consumers of subject goods in India (whose names and addresses were made available to the authority) and advised them to make their views known in writing within forty (40) days from the date of issue of the letter in accordance with the Rule 6(4):

- i. M/s Coral India
- ii. M/s Baid Narrow Feb Pvt. Ltd.
- iii. M/s Soft Touch Fabrics Pvt. Ltd.
- iv. M/s Ashu Impex
- v. M/s C K Lace
- vi. M/s Kinsum Industries
- vii. M/s Shubham Marketing
- viii. M/s Sujata Synthetics
- ix. M/s M. D. Rayon
- x. M/s Jai Raghuvir
- xi. M/s Tanya Synthetics
- xii. M/s Murlidhar Textiles
- xiii. M/s Meena textiles
- xiv. Yogeshwer Twisters
- xv. M/s Sahas Syntheics

10. No response to the prescribed questionnaire has been submitted by any of the importers

and/or user industry.

11. Transaction-wise imports data procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) has been used in macro-analysis in present SSR investigation. Further, the Authority has also examined the Post-POI (October 2013 - March 2014) import data and World Trade Atlas data to analyze the trends for the purpose of likelihood assessment. The Authority has also verified the data of M/s Indorama Polyester Industries on various aspects of quantum of exports, Normal Value, Export Price, Cost of Production and likelihood parameters.

12. Exporters, producers, importers and other interested parties, who have neither responded to the Authority nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties by the Authority.

13. The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6(7).

14. The Authority has examined the information furnished by the domestic producers to work out the cost of production and determined the non-injurious price of the subject goods in India, as per its consistent practices, so as to ascertain whether anti-dumping duty, lower than the dumping margin, would be sufficient to remove injury, if any, to the domestic industry.

15. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 16.02.2015. The interested parties were requested to file written/rejoinders submissions of their views expressed orally. However, subsequently, there was a change of the Designated Authority, which necessitated that another public hearing be held by the new DA as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers Association (ATMA) vs. Designated Authority, delivered by a Division Bench in Civil Appeal No. 949 of 2006 on 7-12-2011. The second oral hearing was, therefore, conducted by the new Designated Authority on 20.08.2015. All the interested parties attending the hearing were again requested to file written submissions/rejoinders of the views expressed orally.

16. Written submissions and rejoinder submissions has been filed by the following interested parties:

- a) Domestic Industry
- b) M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China
- c) M/s Indorama Polyester Industries PCL, Thailand (hereinafter referred to as “M/s Indorama”)

17. The submissions made by the interested parties during the course of the investigation and to the extent considered relevant by the Authority, have been appropriately addressed in this finding.

18. Verification of the information and data submitted by the participating domestic producers was carried out to the extent deemed necessary. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim in accordance with rules/ practice. The Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

19. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has used "best information available" and has treated such parties as non-cooperative.

20. The Authority disclosed the essential facts of the case to all interested parties in the form of a disclosure statement on 11th September, 2015. The interested parties were given an opportunity to comment on various aspects of the investigations disclosed in the statement by 16th September, 2015. The comments received from the interested parties have been considered to the extent they are relevant and have been appropriately addressed in this finding.

21. In this Final Findings, “****” represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

22. The exchange rate for the POI has been taken by the Authority as Rs.56.90 = 1 US\$.

C. Scope of Product under consideration and like article Submissions made by the Domestic Industry

23. Following are the submissions made by the domestic industry with regard to product under consideration and like article:

- i. Current investigation is a sunset review investigation. Accordingly, scope of the product under consideration in the present investigation should remain the same as in the original investigation.
- ii. The product under consideration includes 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.
- iii. The product in commercial market parlance is generally known as ‘Fully Drawn Yarn’ and is used for manufacture of apparel / household textiles, and other industrial textiles.
- iv. Technical specifications of the subject goods are defined in terms of their deniers, tenacities, lustres, colours etc.

Submissions by producers/exporters/importers/other interested parties

24. No submission has been made by the producers/exporters with regard to the scope of the product under consideration (PUC) and like article.

Examination by the Authority

25. The product under consideration in the present application, as also defined in the original investigation, is All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester (non-textured and non-POY) (hereinafter also being referred to as “product under consideration/subject goods”). The product in commercial market parlance is generally known as “Fully Drawn Yarn” (FDY). The subject goods are used for manufacture of apparel/household textiles, and other industrial textiles. Technical specifications of the subject goods are defined in terms of their deniers, tenacities etc.

26. The product under consideration is classified under the category “Man made filaments” in Chapter 54 of the Customs Tariff Act, 1975 and further under 5402.47 as per Customs Classification. However, Customs classification is indicative only and is in no way binding on the scope of the present investigation. The Authority notes that the subject goods are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, functions or end-uses of the imports and the domestically

produced subject goods. The two are technically and commercially substitutable and therefore, the subject goods produced by the petitioner is being treated as 'like article' to the subject goods being imported from the subject countries for the purpose of the present review investigation.

27. The Authority holds that present investigation being a sunset review investigation, the scope of the product under consideration in the present investigation remains the same as that of the original investigation.

D. Domestic Industry and Standing

Submissions by the Domestic Industry

28. Domestic industry has submitted that applicant producers account for 52% share in the total domestic production and therefore, have a clear standing in terms of the Anti-dumping Rules.

29. Condition of "standing" is not applicable to sunset review investigation, as Rule 5 has not been made applicable under Rule 23(3).

30. There is no law under which there is any restriction on the change of the composition of the domestic industry in the subject investigation *vis-à-vis* earlier investigations. Further, the interested parties have not produced even an iota of evidence to demonstrate that the applicant domestic producers are not representative of the domestic industry.

Submissions by producers/exporters/importers/other interested parties

31. M/s Jiangsu submitted that there are changes in the composition of the domestic industry in present sunset review investigation as compared to the original investigation. In the original investigation, there were 4 producers namely M/s Reliance Industries Ltd., M/s Nova, M/s Petrochemicals Ltd., M/s Gupta Synthetics Ltd, and M/s Chiripal Petrochemicals Ltd, which have been petitioners. In the current sunset review investigation, the information is being provided by 4 petitioners namely M/s Reliance Industries, M/s Alok Industries, M/s Garden silk Mills and M/s Wellknown. There are no reasons on record as to why the producers namely M/s Nova, M/s Petrochemicals Ltd., M/s Gupta Synthetics Ltd, and M/s Chiripal Petrochemicals Ltd, which were the petitioners in the previous investigation, have not provided any information in the current investigation. M/s Jiangsu therefore requested the Authority to obtain the information from the said 3 producers with a view to examine the effect of imposition of anti-dumping duties on them.

Examination by Authority

32. The Authority notes that Rule 2(b) of the Anti-dumping Rules provides as follows:

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

33. The Authority notes that the application was filed by M/s Reliance Industries Ltd., M/s Wellknown Polyesters Ltd., M/s Garden Silk Mills Ltd. and M/s Alok Industries Ltd. The application has been duly supported by M/s JBF Industries Ltd and M/s Sumeet Industries Ltd.

34. The Authority therefore holds that on the basis of the production, the applicant producers constitute a major proportion i.e., 52% in the Indian production and, therefore meet the standing requirement has been complied with. The production figures of the domestic producers are as under:

Production	2010-11	Share	2011-12	Share	2012-13	Share	POI	Share
Reliance	***	19%	***	15%	***	16%	***	15%
Alok	***	4%	***	11%	***	11%	***	9%
Garden	***	13%	***	14%	***	14%	***	12%
Wellknown	***	11%	***	10%	***	10%	***	15%
Total								
Petitioner	182966	47%	204803	49%	224709	50%	244843	52%
JBF	***	9%	***	10%	***	10%	***	10%
Sumeet	***	3%	***	3%	***	7%	***	8%
Supporters	44243	11%	55107	13%	76121	17%	82628	17%
Indorama	***	2%	***	1%	***	1%	***	1%
Nova/Chiripal	***	6%	***	5%	***	3%	***	3%
Nova/Gupta	***	5%	***	5%	***	1%	***	0%
Subhalakshmi	***	5%	***	6%	***	4%	***	4%
Bhilosa	***	3%	***	6%	***	5%	***	5%

Raj Rayon	***	4%	***	4%	***	3%	***	2%
Gujarat Polyfil	***	5%	***	4%	***	3%	***	3%
Welspun	***	1%	***	2%	***	1%	***	1%
Others	***	10%	***	5%	***	10%	***	11%
Other producers	158831	41%	154180	37%	144954	33%	145395	31%
Total Production	386039	100%	414090	100%	445783	100%	472866	100%

E. Confidentiality

Submissions by the Domestic Industry

35. Domestic industry submitted that the exporters have not provided a meaningful summary of the various Appendices enclosed in the non-confidential version of the response; and that, almost in all of the above appendices, the information even in the indexed form has not been provided.

36. The details regarding the production, exports to India, domestic sales and capacity have also been claimed as confidential by the exporters from the subject countries. The Authority was requested to disclose the absolute numbers of the exports, production and capacities of the exporters considering the consistent practice of the Authority.

37. The domestic industry claimed confidentiality on their business sensitive information with adequate reasons in accordance with the legal provisions and the guidelines prescribed by the Authority. The reasons and grounds for claiming confidentiality have been given in the non-confidential version of the application.

38. The domestic industry has provided in the application, names of all major producers in India including the names of applicants and supporters. It is only for the remaining 11% of the total Indian production that the names are not mentioned in the application as these units are very small and scattered. The Domestic Industry cannot be expected to give the names of all the producers particularly when it has no bearing on its own standing nor will it affect the investigation in any manner whatsoever.

Submissions by the producers/exporters/importers/other interested parties

I. Submission by M/s Jiangsu:

39. M/s Jiangsu submitted that the non- confidential version of the application of the domestic industry is highly deficient. The domestic industry has kept lots of information as confidential without assigning any reasons on record. In addition, M/s Jiangsu has pointed out following loopholes on the part of the domestic industry in connection with confidentiality:

- i. **Non-confidential Application not serially numbered:** As per Trade Notice No. 1/2013 dated 9th December 2013, the non-confidential version of the application has to be a replica of the confidential application. Since the non-confidential version of the application is not serially numbered, it cannot be said to be exact replica of the confidential application submitted by the domestic industry. We also invite kind attention of the Authority to relevant para in the said Trade Notice and the same is reproduced below for the ready reference of the Authority:

“Para 2 (iii): The non-confidential version is required to be a replica of the confidential version with the confidential information indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed....”

In view of the above guidelines issued by the Authority, the non-confidential version of the application fails to meet the requirement relating to its being replica of the confidential version.

- ii. **Names of other domestic producers in India not provided:** The domestic industry has not disclosed the names of category “other domestic producers”. It may be seen that as per the submission of the domestic industry in the public hearing, there are more than 25 producers of the subject goods in India. However, they have chosen not to give the information of the category of more than 11 other producers. It may also be seen that the production of these other producers is substantial at 11% in the total domestic production and it appears that they even have not been informed or put to notice by the Hon’ble Authority as the domestic industry has also not provided the contact details of those other producers.
- iii. The domestic industry has also not provided the complete names and contact

details of most of the domestic producers listed by them in the production details table provided in response to question No. 3 of Section 2. We are not able to appreciate as to under what provisions they have been authorised to withhold even the names and contact details of the domestic producers. It is vital information and must be shared with the Hon'ble Authority and those domestic producers ought to be provided an opportunity to make their views known in the investigation. In the absence of such details, the standing of the domestic industry cannot be considered as correct.

- iv. **Soft and Hard copy of Original/Raw import data from ICL:** The domestic industry has not provided a soft copy in excel file of the raw/original import data received by it from ICL along with the application nor it has indicated that the same has been provided to the Authority. In the absence of this information to Authority and to us, we are handicapped to our offer comments on the correctness of the sorted import data by the petitioners provided along with the petition. It is submitted that the domestic industry is under an obligation to provide the raw import data obtained from ICL to all interested parties including us and that it cannot be kept as confidential as per Trade Notice No. 1/2013 dated 09.12.2013. The relevant excerpts from the said Trade Notice are reproduced below for the ready reference of the Hon'ble Authority:

*“4 (iv) to Annexure I: A claim of confidentiality shall not be accepted by the Authority on the grounds of commercial restrictions, for example, in case the information is available in the public domain and can be obtained by any party after payment of fee, etc. **information/data procured from a private source as IBIS shall not be treated as confidential and the party submitting the same should submit a letter of permission for its disclosure from the party supplying the same before being accepted.**(Emphasis added)”*

- v. Thus, in view of the explicit guidelines issued by the Authority, the domestic industry is under an obligation to provide a copy of the raw import data as part of the non-confidential version. **And, in the absence of its disclosure, the data submitted by the domestic industry cannot be relied upon.**

- vi. **Soft Copy of Sorted Import Data:** The domestic industry has also not provided a soft copy in excel file of the sorted ICL import data for the periods April 10-March 11, April 11-March 12, April 12-March 13 and October 2012 to September 2013. It may be appreciated that the raw/original ICL import data as well as sorted import data is necessary for us to make comments on the correctness of the import data considered by

the domestic industry in its application.

vii. **Stock and No. of Employees:** The petitioners have also kept stock volume figures and number of employees figures as confidential. We are yet again not able to appreciate as to how the said information can be kept as confidential.

viii. **Annual Reports:** The petitioners have even not provided the copies of the annual reports of the petitioners along with the non-confidential version of the application nor the same have been placed in the public file. It is submitted that the same are required to be provided as part of the non-confidential version and cannot be withheld by them. In this connection, we once again invite the kind attention of the Hon'ble Authority to sub-para (i) to para 2 of Trade Notice No. 1 of 2013 dated 9th December, 2013 which lays down that the domestic industry is required to submit both the confidential version and non-confidential version in soft copy along with the hard copies and the same is reproduced below for the ready reference of the Authority:

“Para 2 (i): Any submission made without such marking shall be deemed as non-confidential. Soft copy of both the versions will be required to be submitted along with the hard copies, to the authority.”

ix. It may be seen from the above that since the domestic industry failed to submit the non-confidential version as required under the law, the information submitted by them cannot be relied upon and therefore, the current investigation is required to be terminated on this ground also.

40. The domestic industry has made generalized statements for all exporters participating in the investigation. They have not pointed out any specific deficiency in the response of Jiangsu. In the absence of specific comments, the submissions of the domestic industry are requested to be rejected by Jiangsu. Besides, Jiangsu submitted that it has provided a meaningful summary in the Appendices 1, 2, 2A, 3, 4, 7, 8, 8A and 9 in its non-confidential response and claimed the information confidential in these appendices to the extent permissible.

41. There are four domestic producers who are petitioners in the current investigation and none of the four domestic producers has given any separate information for themselves and only the combined information is given for the domestic industry as a whole. It has therefore

requested the Authority to insist for separate information from each of the constituent of the domestic industry before they should be allowed to make such a claim. Further, that the domestic industry has also not cited the relevant provisions in support of their claim, as a result, there is no merit in the submissions of the domestic industry and the same are required to be rejected.

42. Further, disclosure of the quantitative information of the individual exporters would be commercially disadvantageous and may give competitive advantage to their competitors.

Submission by M/s Indorama:

43. Domestic Industry has claimed excessive confidentiality with respect to the following issues which has hindered the Respondent's ability to make meaningful comments on the petition:

- a. Copy of mail from CCFEI regarding capacities in China PR
- b. Information pertaining to production process;
- c. Information pertaining to Costing which could have been provided in indexed form;
- d. Brief write-up of policies; and
- e. Annual reports of the Applicant Domestic Producers.

44. The Authority must evaluate the claim for confidentiality of information and not designate information as confidential without a proper examination. The decision of the Hon'ble Supreme Court of India in *Sterlite Industries (India) Ltd. v. Designated Authority 2003 (158) E.L.T. 673 (S.C.)* is relevant in this regard, where the Hon'ble Court held that confidentiality was not to be granted automatically and was to be based on thorough scrutiny.

45. M/s Indorama has submitted a duly filled up Exporters Questionnaire Response as well as a Sunset Review Questionnaire Response, and has claimed confidentiality only on business proprietary information which has been accepted by the Authority to be confidential in nature. Also, that it has provided the meaningful summary of various appendices as per past practice of the Authority.

46. M/s Indorama denies the allegation of the domestic industry that it disclosed the absolute number of export in number of investigation conducted by the Authority. It therefore requested the Authority to policy a decision in this regard rather than adopting a case to case

basis for the purpose of disclosure of export, production and capacity of participating exporters.

Examination by the Authority

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

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

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

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

48. The Authority has examined the confidentiality claims of the interested parties in light of its consistent practice and rules and after satisfying itself made available only the non-confidential version of submissions/evidences submitted by various interested parties for inspection was placed in the public file as per Rule 6(7).

F. Completeness of Import Data

Submissions made by the producers/exporters/importers and other interested parties

49. M/s Indorama submitted that the Domestic Producers, while disclosing the import data of the subject goods into India, have furnished only the refined data and not the raw data. Therefore, it is now impossible to verify the correctness of the import data.

50. The Domestic Producers have procured the import statistics from a private source: Immortal Computer Lab Pvt Ltd. Clause 4(iv) of Annexure 1 to Trade Notice No. 1/2013 dated 9th December 2013 clearly states that “..information/data procured from a private source as IBIS shall not be treated as confidential and the party submitting the same should submit a letter of permission for its disclosure from the party supplying the same before being accepted”. Therefore, as per Trade Notice No. 1/2013, the Applicant Domestic Producers are required to disclose the import statistics and cannot claim confidentiality over the raw import data.

51. The application submitted by the Applicant Domestic Producers is incomplete as it does not contain the name and address of Indorama as a “known exporter” despite the fact that Indorama participated in the original investigations. As a result, the Applicant Domestic Producers fails the standards set in Article 5.3 of the WTO Anti-Dumping Agreement read with Rule 5(3) of AD Rules, which require the Authority to examine the “accuracy and adequacy” of the petition submitted by the Applicant Domestic Producers before initiating an investigation.

52. As per the application format issued by the Authority, the domestic industry is required to provide complete information with respect to names and addresses of known exporters of the alleged dumped goods in India (Question 7, Part I of the application format).

G. Miscellaneous Submissions

Submissions by the domestic industry

53. The export sales to India of the so-called cooperating exporters should be reconciled with the DG Systems Data so as to verify the correctness of the data submitted by the exporters considering the consistent practice of the Authority. The Authority has adopted the same approach in many cases including Graphite Electrode from China PR (No.14/02/2013-DGAD dated 19th November, 2014).

54. Only the subject goods reported in HS Code of the product concerned i.e., 5402470 should be considered as the subject goods exported to India. Product concerned reported in other HS Codes should not be taken on record as the sole purpose of clearing the goods in the other HS Code is either to evade the anti-dumping duty levied by the Authority or to undervalue the goods for the purpose of payment of the custom duties.

55. Adopting the exchange rate of the POI for calculating Normal Value, Non-injurious Price etc. is the standard practice being followed by the anti-dumping Authorities that are based on sound economic and accounting rationale and logic. Considering the standard practice of the Authority, the same has been adopted by the domestic industry for the purpose of calculating Export Price, Normal Value etc. Further, the interested parties have not pointed out any legal or logical infirmity in the said approach.

56. The likely landed value of the subject goods to India has been calculated after adjusting the freight as chargeable from China PR to India and not from China PR to Korea PR/Turkey.

57. Sunset review against imports of Fully Drawn Yarn originating in or exported from Thailand, Korea RP, Malaysia and Chinese Taipei was a *suo moto* initiation of the investigation in accordance with the legal position prevailing at the relevant time. Subsequent to the *suo moto* initiation, the Authority asked the Domestic Industry to provide necessary information to establish that there is a likelihood of dumping / injury. Since the prevailing international prices from these sources and other market conditions at that point of time did not warrant continuation of duties, the investigations were closed.

Submissions by producers/exporters/importers of the subject goods and other interested parties

58. The exchange rate for USD that has been adopted by domestic industry is 56.90. However, the prevailing rate of USD, as per RBI currently is Rs. 62.24. It is also predicted that the rupee will not appreciate once again and may get depreciated further. This means that imports into India currently are priced significantly higher than what they used to be during the POI.

59. Domestic producers have computed the likely landed value of the subject goods to India based on the price at which they are exported from China PR.

60. Interested parties have argued that the Authority had terminated an earlier sunset review of anti-dumping duties against imports of Fully Drawn Yarn originating in or exported from Thailand, Korea RP, Malaysia and Chinese Taipei vide Final Findings No. 15/26/2010 dated 16th August, 2012 on account of the fact that the domestic industry itself was not interested in seeking the extension of the period for imposition of original duties. Therefore, the subject investigation must also be terminated because the domestic industry is suffering at best, the

same level of injury as it did in the earlier anti-dumping investigation and at worst, substantially lesser level of injury as compared to what it suffered in the earlier anti-dumping investigation.

61. The Authority in the Initiation Notification stated that it was excluding Vietnam from the scope of the sunset review as there were no exports of Fully Drawn Yarn made from Vietnam during the POI. However exporters fail to understand why the Authority has continued the investigation against China PR and Thailand when the imports from these countries are miniscule in quantity and form only 0.02% of the total demand in India.

62. The Authority may reconcile its export sales data with the DG Systems data.

Examination by the Authority

63. The Authority has reconciled the import data by referencing the transaction wise data of DGCI&S & the responses filed by the exporters from the subject countries. The Authority adopted the same in the present Final Findings.

64. The Authority, noting the claims made by various interested parties on import data's correctness, has analysed the DGCI&S data primarily on the basis of the description of the product under consideration as also stipulated in paras 24 & 25 of the disclosure statement, as per its consistent practice.

65. The Authority has considered the exchange rate for the period of investigation and determined in accordance with its consistent practice. The Authority finds that no case has been made out by the interested parties which could even remotely suggest that the consistent approach of the Authority suffers from any kind of legal or logical infirmity.

H. Assessment of Dumping - Methodology and Parameters

SUBMISSIONS BY THE DOMESTIC INDUSTRY

A. Normal Value

i. Normal Value for China, PR:

66. Jiangsu Hengli Chemical Fibre Co. Ltd, China ("M/s Jiangsu") has not filed the questionnaire response of its wholly owned subsidiary, Jiangsu Deli Fibre Co., Ltd. which is involved in the product concerned. The incomplete information filed by exporters impedes the investigations and prevents the Authority from verifying the factual position of the

exports/domestic sales made by them and their respective related parties. Accordingly, the response filed by M/s Jiangsu should be rejected outright and individual dumping margin should also not be granted to them considering the standard practice of the Authority which has also been followed in the recent case of MDF from Malaysia, Sri Lanka, China & Thailand [Final Findings F. No. 15/28/2013-DGAD dated 17th August, 2015].

67. Thai Polyester Co. Ltd., Thailand ("M/s TPC") sold the product concerned to one of its related parties but did not file the questionnaire response of the said related party. The incomplete information filed by M/s TPC impedes the investigations and prevents the Authority from verifying the factual position of the exports/domestic sales made by them and their respective related parties. Accordingly, response filed by the M/s TPC should be rejected outright, and individual dumping margin should also not be granted to them considering the standard practice of the Authority which has also been followed in the recent case of MDF from Malaysia, Sri Lanka, China & Thailand [supra].

68. M/s Indorama Polyester Industries PCL, Thailand ("M/s Indorama") claimed that it has not sold the product concerned to any of its related parties. However, in the Annual Report of Indorama Ventures for the year 2013 it has been categorically stated that M/s Indorama has sold the product concerned to one of its related party i.e., PT. Indorama Synthetics Tbk. ("PTIRS") which has a number of sales branches including the one located in Thailand. Accordingly, it is amply clear that M/s Indorama has not filed the questionnaire response of its related party i.e., PTIRS and concealed this fact from the Authority. The incomplete information filed by exporters impedes the investigations and prevents the Authority from verifying the factual position of the exports/domestic sales made by them and their respective related parties. Accordingly, response filed by the M/s Indorama should be rejected outright and individual dumping margin should also not be granted to them considering the standard practice of the Authority. The decision of the Hon'ble Authority in the recent case of MDF from Malaysia, Sri Lanka, China & Thailand [supra] is fully applicable in this case also.

69. Further, China being a non market economy, normal value of the subject goods in that country cannot be determined on the basis of price prevailing in that country and therefore, needs to be constructed.

70. Market economy status cannot be granted to a country unless the responding exporter/company and its group as a whole make a claim. In the present case, there is no claim for market economy treatment by Chinese exporters.

71. The Normal Value in China can be determined on the basis of: (a) price in India; and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit in case when no response has been filed by the exporter. Normal Value in China should be determined based on the cost of production in India, duly adjusted.

72. The Normal Value in China may be constructed by considering international price of the raw material and adopting the consumption norms and conversion cost as per the best information available, including that of the domestic industry.

ii. *Normal Value for Thailand:*

73. Only two exporters have filed the questionnaire response i.e., M/s Thai Polyester Co. Ltd., Thailand (M/s TPC) and M/s Indorama Polyester Industries PCL, Thailand (M/s Indorama). These exporters have not filed the questionnaire response of their related parties. In the absence of such full response, responses filed by these exporters cannot be accepted considering the standard practice of the Authority, and therefore, normal values for Thailand cannot be based on the incomplete information filed by them. Therefore, normal values for Thailand should also be constructed by considering international price of the raw materials and adopting the consumption norms and conversion cost as per the best information available, including that of the domestic industry.

74. Domestic industry has submitted evidence for the deductions made under the categories of ocean freight, marine insurance, port handling, inland freight, sales commission and bank charges with regard to computation of export price which is reasonably available to it.

SUBMISSIONS BY PRODUCERS/ IMPORTERS/ EXPORTERS AND OTHER INTERESTED PARTIES

A. Normal Value

75. The Domestic Producers have constructed the normal value for Thailand on the basis of international prices of the raw material and the best norms of the domestic industry. They used the constructed normal value established for China PR for Thailand as well, which is

erroneous as it is inconsistent with the relevant provisions contained in Section 9A of the Act, Annexure I to the AD Rules and Article 2.2 of the WTO ADA. As a result, such normal value constructed by the Domestic Industry is to be rejected.

76. One can resort to constructed normal value only in the following circumstances:

- a. Where there are no sales of the like article in the domestic market of the exporting country; or
- b. When because of the particular market situation or low volume of sales in the domestic market of the exporting country such sales do not permit a proper comparison. [Explanation (c)(ii), Section 9A(1) of the Customs Tariff Act 1975]

77. The Domestic Producers have not proved anywhere that either of the above two conditions existed, thus necessitating the construction of normal value. The two conditions specified in the relevant provisions do not include “non-availability” of data relating to domestic selling prices as a ground for construction of normal value. The basis stated in the application for resorting to constructed normal value is thus erroneous.

78. The Domestic Producers calculated the cost of the subject goods on the basis of the international price of the raw material but have provided no evidence for the same. Such information is therefore required to be disclosed along with the petition in order to prove the veracity of the prices adopted for the computation of normal value.

79. The Domestic Producers have not adopted the correct principles for construction of the normal value. Rule 4 of Annexure I of the AD Rules mentions that the amounts for administrative, selling and general costs and profits shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. It is not stated anywhere in Annexure I to the AD Rules that the ‘experience of the Domestic Industry’ or the costs incurred by the domestic industry may be used to construct the normal value. The Domestic Producers have on the other hand equated all relevant costs required for the computation of normal value for Indorama with the cost of the Domestic Producers when the Domestic Producers and Indorama are completely different entities functioning in India and Thailand respectively.

80. Even the construction of normal value for China PR, which has been used as the normal value for Thailand, has not been done in accordance with the AD Rules. Rule 7 of Annexure I of the AD Rules deals with the computation of normal value for non-market economy countries. The abovementioned Rule 7 states that the normal value for imports from non-market economy countries is required to be determined on the basis of:

- a. The price or constructed value in a market economy third country; or
- b. The price from such a third country to other countries, including India; or
- c. Where the above options are not possible, the normal value may be constructed on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted and including a reasonable profit margin.

81. Thus, the twin requirements involve (i) the submission of Domestic Producers on prices prevailing in a market economy third country; and (ii) the evaluation by the Authority of such submission. Neither of these requirements has been satisfied in the present matter.

82. The Domestic Producers should have first considered the price or constructed value in a market economy third country and if this option is not possible, considered the price from such a market economy third country to other countries. Only when these two options are not possible can they resort to construction of the normal value on any other reasonable basis. However, in the present case, the Domestic Producers have not attempted the first two options and have directly constructed the normal value on “any other reasonable basis”. Therefore, the construction of normal value carried out by them is inconsistent with the relevant provisions contained in Section 9A of the Act, Annexure I to the AD Rules and Article 2.2 of the WTO ADA. As a result, such a normal value constructed by the Domestic Producers is to be rejected.

B. Export Price

83. The Applicant Domestic Producers have not provided any evidence for the deductions made under the categories of ocean freight, marine insurance, port handling, inland freight, sales commission and bank charges. Moreover, certain adjustments are grossly inflated and liable to be rejected. For instance, marine insurance is normally 0.125% of 110% of the CIF value and it is never as high as 0.5% of CIF.

84. Ocean freight from China and Thailand has been arbitrarily delineated as USD 50/MT without providing any evidence in support of the same. The adjustment for ocean freight has been estimated as USD 50/MT for both China PR and Thailand when the distance from Thailand (Bangkok Terminal) to India (Jawaharlal Nehru Port Terminal) is 6039 km and the distance from China PR (Zhenjiang Terminal) to India (Jawaharlal Nehru Port Terminal) is 8792 km.¹ The difference in distance serves to highlight that in any case, the same figure for ocean freight cannot be adopted for both countries.

85. M/s Jiangsu submitted that the stand of the domestic industry in the current case is contradictory as on the one hand, they state for non-determination of dumping margin for the exporters or for injury in view of the meager imports and on the other hand the domestic industry has heavily contended that

a. Injury to the domestic industry in terms of low profitability, selling prices, increase in closing stock, significant dumping margin due to so-called meagre imports from subject countries (Para Nos. 14-18 of the written submissions of the domestic industry).

b. Price undercutting and price underselling due to so-called meagre imports from subject countries (Para 13 of the written submissions of the domestic industry).

c. Likelihood of price undercutting, injury margin / price underselling on the basis of so-called meagre imports from subject countries (Para Nos. 23-26 of the written submissions of the domestic industry).

d. Likelihood of dumping margin analysis on the basis of so-called meager imports from subject countries (Para Nos. 27-28 of the written submissions of the domestic industry).

e. Likely impact on the profitability and other growth parameters on the basis of so-called meager imports from subject countries (Para Nos. 29-30) of the written submissions of the domestic industry).

86. Thus, in view of the above glaring contradictions in the submissions of the domestic industry, the case of the domestic industry is liable to be rejected as has been done in the case of SSR Anti-dumping investigation concerning import of MDF Board from China, Malaysia, Thailand and Sri Lanka [Para 107(i)] when the Hon'ble Authority rejected the

¹Distance adopted from <http://www.searates.com/reference/portdistance/> (last visited on 19th February 2015).

claim/response of the exporter for individual dumping margin on the basis of contradictions in their submissions.

87. Further, it also submitted that even in the POY case cited by the domestic industry, the Authority determined the dumping margin and therefore, there is no merit in the submissions of the domestic industry.

88. Therefore, in view of the said contradiction, M/s Jiangsu requested the Hon'ble Authority for not to consider the submissions of the domestic industry with regard to determination of dumping margin and likelihood of dumping margin and injury margin and to terminate the current investigation.

89. In addition, Jiangsu contended that it has submitted all the details in the exporters' questionnaire for the determination of dumping margin and the information as required in the Part II to Exporters' Questionnaire. It once again requests the Hon'ble Authority for carrying out the verification visit for its data for the determination of dumping margin and to carry out the analysis of the export figures submitted by it on the basis of DG Systems data.

90. Jiangsu has further opposed the contention of the domestic industry that it has not submitted the response of its related company, i.e. M/s Jiangsu Deli Fibre Co., Ltd. on the ground that the related company has not exported the subject goods to India in the period of investigation. It submitted that the submission of the domestic industry in the present investigation are misplaced and misdirected as the facts in the case of *SSR Anti-dumping investigation in the case of MDF Board from China, Malaysia, Thailand and Sri Lanka* were totally different.

91. In that case, the product manufactured by one company is exported by another company and all the details of complete value chain of the goods exported were not there. Besides, there were also contradictions in the submissions of the exporter. It is due to this reason the Hon'ble Authority did not determine their individual dumping margin. Whereas in our questionnaire response, we clearly clarified that our related company did not export the subject goods to India in the period of investigation and there is no contradictions in our submissions. In fact, it is for the first time, the domestic industry after expiry of as high as about 17 months for the first time raised concerns over the response of our related company

which is not tenable. Thus, there is no merit in the submissions of the domestic industry and the same are required to be rejected.

92. With respect to the calculation of Dumping Margin, Indorama opposed the submission of the domestic industry that meager quantity should not be considered for the determination of injury and dumping margin. Indorama quoted the following investigations in support of it:

a. Sunset review anti-dumping investigation concerning nylon filament yarn originating in or exported from China PR, Malaysia, Indonesia, Taiwan, Korea and Thailand (final finding issued on 19th November, 2011): The co-operating exporters from Indonesia (PT Susilia Indah Synthetic Fiber Industries) had exported only three consignments to India during POI at quite high prices which made him get the lowest dumping margin in Indonesia.

b. Mid-term review anti-dumping investigation concerning phenol originating in or exported from Korea (final finding issued on 23rd February, 2012), The co-operating producer from Korea (Kumho P&B Chemicals Inc) had exported only two consignments to India during POI (one through Humade Co. Korea and the other through Chemoil Co. Korea) at quite high prices which made him get negative dumping margin for one combination and 0.9% dumping margin for the other combination.

c. Sunset review anti-dumping investigation concerning phenol originating in or exported from European Union, Singapore and South Africa (final finding issued on 4th August, 2008): The co-operating exporter from Singapore [Mitsui & Co. Ltd. (Asia Pacific) Pte. Ltd.] had exported only two consignments to India during POI at quite high prices because of which the dumping margin worked out to be negative.

EXAMINATION BY AUTHORITY

A. Normal Value

i. Normal Value for M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China ("M/s Jiangsu"), Producer/ Exporter from China, PR:

93. M/s Jiangsu has filed the Exporter's Questionnaire Response Part I & II, and has not claimed MET. The Authority observes that M/s Jiangsu Deli Fibre Co Ltd. which is a wholly owned subsidiary of M/s Jiangsu has not exported the subject goods to India during the POI.

94. In view of the fact that M/s Jiangsu, the producer/exporter of the subject goods, has exported directly and has not claimed MET, the Authority has referenced the Normal Value for the producer/exporter by adopting international prices of main raw materials, best consumption norms achieved by the domestic industry, cost of utility and consumables incurred by the least NIP plant of the domestic industry and providing a normal profit on the constructed cost as per its consistent practice. Accordingly, the Normal Value of the subject goods in China, PR is considered as *** US\$/MT.

95. **For non- cooperative/ residual producers/exporters in China, PR**, the Authority has adopted the constructed Normal Value as stated above at *** US\$/MT in accordance with the Rules for all producers/exporters in China, PR including the cooperative exporter i.e. M/s Jiangsu.

i. Normal Value for Producers/ Exporters from Thailand

- **Normal Value for M/s Indorama Polyester Industries PCL, Thailand (“M/s Indorama”):**

96. M/s Indorama filed the questionnaire response and also Part-II response on SSR. The Authority undertook an on-site verification of the data filed in the questionnaire at the exporter’s premises and verified the data on domestic sales, cost of production, ex-factory export prices and other aspects related to the production- process, etc. The Weighted Average Cost of various grades of the product under consideration has been evaluated on the basis of financial records and in accordance with the GAAP.

97. The Authority applied the significant quantity test as well as the ordinary course of trade test (80:20 test) and verified various adjustments claimed on domestic sales. Adjustments on packing charges, commission, inland transportation, credit cost and insurance are allowed to an extent of ***US\$/MT, ***US\$/MT, ***US\$/MT, ***US\$/MT and ***US\$/MT respectively. Accordingly, the Authority has considered the ex factory Normal Value as ***US\$/MT.

- **Normal Value for Thai Polyester Co. Ltd., Thailand (“M/s TPC”):**

98. The Authority had sent an email dated 27.01.2015 to M/s TPC, one of the producers of the subject goods, regarding data verification. However no response was received by the

Authority from M/s TPC. The Authority had also sent emails dated 30.01.2015 and 07.08.2015 to M/s TPC regarding public hearings to be held on 15.02.2015 and 20.08.2015 respectively. But there was no response from M/s TPC nor did it attend the oral hearings nor made any submissions during the investigations including at the stage of filing response to the disclosure statement. It was further noted that M/s TPC exported the subject goods through M/s Global Trade Well Pte Ltd., Singapore during the Period of Investigation. Questionnaire response was filed by M/s TPC but not by M/s Global Trade Well, Singapore. The incomplete and unverified information of value chain has thus prevented the Authority from verifying the factual position of the export sales made by the exporter. The Authority, therefore, as per its practice, has not determined the individual Dumping Margin in respect of M/s TPC and adopted the Dumping Margin determined for residual category.

• **Normal Value for Residual/ Non Cooperative producers/ exporters of Thailand:**

99. For all Residual/Non Cooperative producers/ exporters of Thailand, the Authority has referenced the average domestic selling price of the cooperative exporter, i.e. M/s Indorama without any adjustments on the same. The normal value is referenced as *** US\$/MT.

B. Ex- Factory Export Price

i. *Export Price for M/s Jiangsu, Producer/ Exporter from China, PR:*

100. The Authority notes the submissions made by the Domestic Industry as well as by the producer/exporter of the subject goods regarding non- filing of questionnaire response by M/s Jiangsu in light of the Designated Authority's recent *SSR Anti-dumping investigation in the case of MDF Board from China, Malaysia, Thailand and Sri Lanka* [Final Findings F. No. 15/28/2013-DGAD dated 17th August, 2015]. The Authority notes that the facts in the instant case are different from that of the MDF case. In the instant case, the producer/ exporter's subsidiary has not exported subject goods to India during the period of investigation and therefore the issue of causing any impediment to evaluate the entire value chain, does not arise.

101. The Authority notes that M/s Jiangsu has exported *** MT only of the subject goods to India during the Period of Investigation. The Authority referencing the CIF export price, i.e. ***US\$/MT as correlated with import evidence and allowing adjustments of overseas freight, bank charges, credit cost, inland freight & port handling charges to an extent of ***US\$/MT, ***US\$/MT, ***US\$/MT and ***US\$/MT respectively as per the

response/evidence filed by the producer/exporter and duly correlated with the import data, notes that the net ex factory export price is ***US\$/MT, and the **Dumping Margin** is accordingly de minimis. However, the quantity of exports is too meager and has not been treated as realistic and therefore not adopted for individual Dumping Margin evaluation.

ii. ***Export Price for Producers/ Exporters from Thailand***

- **Export Price for M/s Indorama:**

102. The Authority notes the submissions made by the Domestic Industry as well as by the producer/exporter of the subject goods regarding non- filing of questionnaire response in light of the Designated Authority's recent *SSR Anti-dumping investigation in the case of MDF Board from China, Malaysia, Thailand and Sri Lanka* [Final Findings F. No. 15/28/2013-DGAD dated 17th August, 2015]. The Authority notes that the facts in the instant case are different from that of the MDF case. The Authority's has in fact conducted an onsite verification of the exporter's data wherein no sales of Product under Consideration to M/s Indorama's related party, i.e. M/s PTIRS during the Period of Investigation were observed.

103. The CIF export price of M/s Indorama is determined as *** US\$/MT. In order to calculate the ex-factory export price for M/s Indorama, the Authority considers the adjustments of inland transportation, ocean freight, insurance, port handling charges, commission, credit cost, bank charges and duty drawback to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT respectively to evaluate the ex factory exported price. The ex factory export price is determined as *** US\$/MT, and accordingly the **dumping margin** is considered to be *** US\$/MT (0-10%)

- **Export Price for M/s Thai Polyester Co. Ltd., Thailand ("TPC"):**

104. The Authority had sent an email dated 27.01.2015 to M/s TPC, one of the producers of the subject goods, regarding data verification. However no response was received by the Authority from M/s TPC. The Authority had also sent emails dated 30.01.2015 and 07.08.2015 to M/s TPC regarding public hearings to be held on 15.02.2015 and 20.08.2015 respectively. But there was no response from M/s TPC nor did it attend the oral hearings nor made any submissions during the investigations including at the stage of filing response to the disclosure statement. It was further noted that M/s TPC exported the subject goods

through M/s Global Trade Well Pte Ltd., Singapore during the Period of Investigation. Questionnaire response was filed by M/s TPC but not by M/s Global Trade Well, Singapore. Such incomplete and unverified information of value chain has thus prevented the Authority from verifying the factual position of the export sales made by the exporter. The Authority, therefore, as per its practice, has not determined the individual ex factory export price in respect of M/s TPC.

• **Export Price for Residual/ Non Cooperative producers/ exporters of Thailand:**

105. For ex factory export price for all residual/ non- cooperative producers/ exporters from Thailand including M/s TPC, the Authority has referenced the weighted average CIF export price of M/s Indorama, i.e. *** US\$/MT duly adjusted with the adjustments of Inland Transportation, Ocean Freight, Insurance, Port Handling Charges, Commission and Bank Charges to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT respectively as claimed by the petitioners and in accordance with the consistent practice of the Authority in such cases. The weighted average ex factory export price for such producers/exporters accordingly comes to *** US\$/MT. Accordingly the dumping margin is considered as *** US\$/MT (15-25%).

106. Dumping Margin during the Period of Investigation is tabulated as below:

Sr. No.	Producer/ Exporter	Normal Value (US\$/MT)	Ex- Factory Export Price (US\$/MT)	Dumping Margin (US\$/MT)	Dumping Margin %	Dumping Margin range%
1.	M/s Indorama Polyester Industries, Thailand	***	***	***	***	0-10%
2.	Other Producers/ Exporters from Thailand	***	***	***	***	15-25%

3.	M/s Jiangsu Hengli Chemical Fibre Co. Ltd., China	***	***	De minimis	De minimis	De minimis
4.	Other Producers/ Exporters from China.	***	***	De minimis	De minimis	De minimis

- The Authority further notes that there are no exports by M/s Jiangsu and other producers/ exporters from China, PR to India during post POI. Therefore, the likely Dumping Margins on the basis of third country exports made by producers/ exporters from China during one year post POI is tabulated as below:

Sr. No.	Producer/ Exporter	Normal Value (US\$/MT)	Ex- Factory Export Price (US\$/MT)	Dumping Margin (US\$/MT)	Dumping Margin %	Dumping Margin range%
1.	M/s Jiangsu Hengli Chemical Fibre Co. Ltd., China*	***	***	***	***	0-10%
2.	Other Producers/ Exporters from China**	***	***	***	***	10-20%

* As per the exporter's questionnaire response.

** As per the World Trade Atlas.

I. Methodology for Injury Determination and Examination of Injury and Causal Link

SUBMISSIONS BY THE DOMESTIC INDUSTRY

107. The domestic industry has made the following submissions with regard to the injury and causal link:

- Performance of the domestic industry in terms of profits, cash flow, inventory and

capacity utilization has deteriorated in the current Period of Investigation.

- ii. The demand of the product under consideration has shown a growth throughout the injury period. Hence, the contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- iii. Since the pattern of consumption with regard to the product under consideration has not undergone any change. Change in pattern of consumption is unlikely to contribute to the injury to the domestic industry.
- iv. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- v. Technology for production of the product has not undergone any change nor are there any likely changes in coming future. Developments in technology are therefore, not a factor of injury.
- vi. The productivity of the domestic industry has remained almost at the same level during the entire period of injury. Hence, productivity is not a factor of injury.
- vii. Dumping margin and injury margin are negative. However, this being a sunset review, the prices offered to India cannot be considered as reliable considering the fact that only a negligible quantity of 27 MT has been exported to India during the period of investigation.

SUBMISSIONS BY PRODUCERS/EXPORTERS/IMPORTERS OTHER INTERESTED PARTIES

108. M/s Indorama Polyester Industries PCL (“Indorama”) submitted as follows:

A. Termination of earlier sunset review against imports of Fully Drawn Yarn originating in or exported from Indonesia, Malaysia, Korea RP and Taiwan

The Designated Authority had terminated an earlier sunset review of anti-dumping duties against imports of Fully Drawn yarn originating in or exported from Indonesia, Korea RP, Malaysia and Chinese Taipei vide Final Findings No. 15/26/2010 dated 16th August 2012 (hereinafter referred to as the “earlier anti-dumping investigation”) *on account of the fact that the domestic industry itself was not interested in seeming the extension of the period for imposition of original duties*. The petition in the earlier anti-dumping investigation had been filed by the Association of Synthetic Fibre Industry on behalf of four producers namely M/s Wellknown Polyesters Limited, M/s JBF Industries Limited, M/s Garden Silk Mills Limited and M/s Reliance Industries Limited.

The comparison of injury indicators in the subject anti-dumping investigation and the earlier anti-dumping investigation pertaining to Indonesia, Korea, Malaysia and Taiwan reveals that *many of the injury indicators of the domestic industry in the earlier and subject anti-dumping investigation follow a similar trend; and therefore* the present sunset review must be terminated as well.

The movement of injury parameters in the earlier and subject anti-dumping investigation is summarized in the following manner:

- (i) In the earlier anti-dumping investigation, production increased from 85631 MT in 2007-08 to 86599 MT in 2008-09, 109727 MT in 2009-10 and 158783 MT in POI. In the subject anti-dumping investigation, production increased from 182966 MT in 2010-11 to 204803 MT in 2011-12, 224917 MT in 2012-13 and 245638 MT in the POI;
- (ii) In the earlier anti-dumping investigation, sales of the domestic industry as a percentage of demand remained steady at 42% in 2007-08, 43% in 2008-09, 47% in 2009-10 and marginally increased to 52% in POI. In the subject anti-dumping investigation, sales of the domestic industry as a percentage of demand followed a similar trend; it remained steady at 46% in 2010-11, 48% in 2011-12, 50% in 2012-13 and 51% in POI;
- (iii) In the earlier anti-dumping investigation, imports marginally increased from 396 MT in 2007-08 to 379 MT in 2008-09, 1438 MT in 2009-10 and 2365 MT in POI. In the subject anti-dumping investigation, imports decreased from 566 MT in 2010-11 to 96 MT in POI;
- (iv) In the earlier anti-dumping investigation, imports from subject countries as a percentage of total demand marginally increased from 0.2% in 2007-08 to 0.84% in POI. In the subject anti-dumping investigation, imports from subject countries as a percentage of total demand decreased from 0.2% in 2010-11 to 0.02% in POI;
- (v) In the earlier anti-dumping investigation, losses increased from (100) indexed points in 2007-08 to (545) indexed points in POI. In the subject anti-dumping investigation, the domestic industry remained in profits even though profits decreased from 100 indexed points in 2010-11 to 26 indexed points in POI.

109. A comparison of the data relating to major injury parameters in the earlier anti-dumping investigation and subject anti-dumping investigation may be expressed by way of the

following table:

Particulars	Trend in Earlier AD Investigation	Trend in Subject Investigation
Sales of the domestic industry as a % of Demand	Share was lower in the earlier anti dumping investigation	Share is higher in the subject investigation as compared to the earlier anti-dumping investigation
Imports	Increase of 497%	Decrease of 83%
Profits/Losses	Losses increased by 445%	Profit decreased by 74%
Imports as % of Demand	Increased from 0.2% to 0.84%	Decreased from 0.2% to 0.02%

110. On an overall analysis, it is clear that the *domestic industry was operating under worse conditions in the earlier anti-dumping investigation than in the subject investigation. Yet, the earlier investigation was terminated while the present investigation is being continued.*

Particulars	POI in Original Investigation (Oct 06—Sep 07)	POI in Sunset Review (Oct 12—Sep 13)
Sales of Domestic Industry	98365 MT	220967 MT
Market Share of All Domestic Producers in Demand	77.11%	99.98%
Production of Domestic Industry	99479 MT	245638
Capacity of Domestic Industry	101346 MT	322460

111. The domestic industry has received adequate protection from the Authority since the imposition of anti-dumping duty in the original investigation. The domestic industry has flourished after such imposition and the volume of imports are now so low as to be considered negligible. Hence, the Respondent requests the Authority not to extend the anti-dumping duty for a further period of 5 years.

A. No Current Injury Sustained by the Domestic Industry

Injury Factors:

112. The Applicant Domestic Producers have exhibited positive and exceptional movement in almost all the factors of injury. The same is detailed herein:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Capacity	MT	214290	286460	289460	322460
Production	MT	182966	204803	224917	245638
Sales	MT	154434	183420	207243	220967
Capacity Utilization	%	85%	71%	78%	76%
Employees	Indexed	100	104	116	133
Production/Employee	Indexed	100	108	106	101
Wages/Employee	Indexed	100	123	125	120
Profit	Indexed	100	-11	13	26
Cash Flow	Indexed	100	39	50	53
ROCE	Indexed	100	64	79	99
Imports from Subject Countries	MT	566	1080	174	96
Imports as % of Total Demand	%	0.2	0.3	0.04	0.02

113. From the above, it is clear that the Applicant Domestic Producers are not suffering any injury at present due to the exhibited positive movement in capacity, production, sales, capacity utilization, employees, productivity and wages throughout the injury period as well as the POI.

114. Indorama submitted that the ROCE of the Applicant Domestic Producers is still quite impressive. Furthermore, in any case, it is unclear as to how the Applicant Domestic Producers propose to link ROCE with subject imports as the two indicators are entirely separate. An increase or decrease in imports has no effect on the ROCE on the domestic industry and it is an absurd proposition for the same to be considered. In any case, imports cannot lead to a reduction in ROCE as they only constitute 0.02% of the demand.

115. With regard to the profitability and cash flow of the Applicant Domestic Producers, it is clear that the profits and cash profits of the Applicant Domestic Producers are quite reasonable. It may be noted that the subject imports cannot be linked with a reduction in the above factors as the subject imports are so low that they only constitute 0.02% of the market, and they cannot have any influence on the pricing of the goods in India. On the other hand, the domestic industry controls 99.98% of the market. In such a situation, it is clear that the domestic industry, if it is suffering any injury, has intrinsic issues that are the cause of such injury and not the subject imports.

B. No Likelihood of Recurrence of Injury to the Domestic Industry

116. Volume of imports

(i) Domestic Selling Price and Export Price to Third Countries:

During the public hearing, the Applicant Domestic Producers raised the contention that Indorama is likely to shift its exports of the subject goods to India in the future, thus establishing that there is a likelihood or recurrence of dumping and injury to the Applicant Domestic Producers. Indorama disagreed with the said contention on the ground that its domestic selling price of the subject goods in Thailand as well as its export price of the subject goods to third countries is higher than the export price of the subject goods to India.

(ii) Capacity available with the Respondent:

In Appendix 4 of the Exporters Questionnaire Response, it can be seen that Indorama's installed capacity is ***MT. In the POI, it produced ***MT of Fully Drawn Yarn, thereby operating at a capacity utilization rate of ***%. Therefore, Indorama is operating at an optimum rate of capacity utilization and has very little unutilized capacity left i.e. only ***%. Hence, the chances of Indorama increasing its exports to India are extremely slim, as it is already operating at optimal capacity utilization.

Even if Indorama chooses to export its unutilized capacity to India, which is about *** MT, these exports will still constitute only about *** % of the total demand in India. Therefore, even assuming that Indorama operates at 100% capacity utilization and diverts its unutilized capacities to India, it will not have any effect on the domestic industry in India.

(iii) Negligible Volume of Imports:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Imports from Subject Countries	MT	566	1080	174	96
Imports from other countries	MT	9	0	0	24
Total Imports	MT	574	1080	174	120
Total Production of Domestic Industry	MT	182966	204803	2241917	245638
Total Demand	MT	339152	378448	412475	431643
Total Domestic Sales of all Domestic Producers	MT	338577	377368	412301	431523
Imports as % of Total Production	%	0.3	0.5	0.008	0.04
Imports as % of Total Domestic Sales	%	0.2	0.3	0.04	0.02
Imports as % of Total Demand	%	0.2	0.3	0.04	0.02

117. It is a settled practice of the Authority to terminate an anti-dumping investigation against a subject country when the volumes of imports from that country are extremely low. It may be noted that in *Final Findings dated 25th March 2011 in sunset review of anti-dumping duty against imports of Pentaerythritol originating in or exported from China PR and Sweden, the Authority observed that imports from Sweden were entering India in very low volumes and with negative dumping and injury margin. Due to such a reason, the Authority revoked the anti-dumping duty against imports of Pentaerythritol originating in or exported from Sweden.*

118. Furthermore, in Final Findings dated 20th May 2013 in sunset review of anti-dumping duty against imports of Dry Cell Batteries originating in or exported from China PR, the Authority held that the anti-dumping duty may be revoked due to low volume of imports. The observations of the Authority are extracted below:

“80. After analyzing this case, it is noted that imports of the product under consideration are insignificant and constitute less than 0.5% of the demand of the subject goods in the country. It is also noted that imports of the subject goods from subject country constitute less than 0.5% of the demand during the entire injury period of the review investigation.

Further, there are 3 major producers of subject goods in the country and their performance has significantly improved during the review period. Hence, it is considered appropriate to hold that there is no likelihood of injury to the domestic industry if anti dumping duties is not extended.

81.Overall analysis therefore reveals clearly that against a total demand of 1.7 billion pieces, imports from China PR are to the tune of only 7 million pieces. Once anti dumping duty is removed, the likelihood of import becoming steep is not borne out by facts and circumstances of this case. The three producers who constitute domestic industry have a complete grip on the domestic market. However, it is also noted that if there is a tremendous surge in the dumped imports from the subject country after the present anti dumping duty is not extended in this case, the domestic industry can always file application for initiation of fresh anti dumping investigation. But duty cannot be extended on the basis of surmise above.”

119. The above finding of the Authority applies squarely to the facts of the subject investigation. The Respondent reiterates once again that the **imports as a percentage of the total demand constituted a mere 0.02% in the POI.**

120. The principle that anti-dumping duty should not be continued when there are negligible exports from a subject country in a likelihood analysis was applied by the European Commissions in its Council Regulation (EC) No 1074/96 of 10 June 1996 as regards definitive anti-dumping duties on imports of polyester yarn originating in Taiwan and Turkey wherein the Commission terminated the sunset review for goods originating from Taiwan due to the extremely low volume of imports. The relevant observations of the Commission are extracted herein:

“Import of Taiwanese POY regressed from 2812 tonnes in 1991 (2,4% market share) to 1117 tonnes in 1992 (0,9 % market share), to 551 tonnes in 1993 (0,5 % market share) and to 448 tonnes during the investigation period (0,4 % market share). It should be noted in this respect that the three major Taiwanese producers were not subject to any anti-dumping duty. When excluding the imports from these three producers, which are not concerned by the review investigation, the Community market share held by the remaining imports from Taiwan amounts to 0.1 % only. Information available suggests that the Taiwanese producers have re-oriented their exports to other third countries geographically closer where a steady growth for POY is being registered. Furthermore, these producers have apparently moved

to a greater extent into the downstream product, PTY. Consequently, there is no reasonable indication that the expiry of the anti-dumping measures on imports of POY originating in Taiwan would lead to a recurrence of injury or threat of injury to the Community industry.”

121. In the present case, it is thus clear that the volume of imports is so low that there exists no likelihood of recurrence of injury to the domestic industry by the volume of subject imports.

b. Price Effect:

122. The price data with regard to the subject goods is presented below:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Landed Value	Rs/ MT	98086	109481	106576	82663
Trend	Indexed	100	112	109	84
Domestic Selling Price	Indexed	100	112	119	121

From the above, it is also discerned that the domestic selling price of the subject goods was highest when the landed value was the lowest, thus proving that there is no link between the landed value of imported goods and the domestic selling price.

(ii) Likely Injury Margin:

The Applicant Domestic Producers have also made submissions regarding the likely injury margin of imports originating from China PR, and adduced evidence of prices of the subject goods from China PR to Korea RP and Turkey. However, it is once again pertinent to note that the Applicant Domestic Producers have not made any submissions with regard to Thailand and any injury margin/price underselling that may arise as a result of imports from Thailand. The Respondent submits that there is no likely injury margin submitted by the Applicant Domestic Producers as a result of imports from Thailand.

(iii) Likely price undercutting:

The Applicant Domestic Producers have also made claims and submissions on likely price undercutting with regard to landed values and prices of the subject goods exported from China to third countries. There is no sufficiently detailed claim with regard to any price undercutting occurring as a result of imports from Thailand.

c. No likelihood analysis for Thailand:

123. It is also to be noted that the analysis carried out by the Applicant Domestic Producers in terms of likelihood of recurrence of injury widely pertains only to China. There are no submissions which have been made with regard to the likelihood of injury due to imports from Thailand for the following factors:

- i. Surplus capacities in the countries of export: The Applicant Domestic Producers submitted that China possesses surplus capacity to the extent of 34 times the capacity of the domestic industry and have made such submission in support of extension of anti-dumping duties. ***However, it is glaring to note that no submission whatsoever has been made regarding any surplus capacities with regard to exporters based in Thailand.*** From the data submitted by the Respondent to the Authority, it can be seen that it does not possess any great surplus capacity for the subject goods. On this basis, the Respondent submits that the Authority must disregard all claims of excess capacities made with regard to the Respondent.
- ii. Additionally, in respect of the claim of surplus capacities, it is submitted that mere existence of surplus capacities is not sufficient to establish likelihood of recurrence of injury. Any proof of existence of surplus capacities is required to be accompanied by the presence of low priced imports, which has not been established in the present instance. It has been held in the case of *Indian Spinners Association v. Designated Authority* 2004 (170) E.L.T. 144 (Tri. - Del.) that the “existence of surplus production capacity cannot be taken as posing a clearly foreseen and imminent threat of injury.” Furthermore, the Authority itself has come to this conclusion in other investigations. In the sunset review investigation on Aniline from USA and Japan, the Authority has held in its final findings dated 17th January 2012 as follows:
“73...The objective of the business is to earn and maximize profits but not to incur or increase losses. **The fact of a mere availability of surplus capacity does not in itself sufficient to conclude a finding that the dumping from a subject country, USA in the present case, would recur or continue and cause injury to the domestic industry in case of withdrawal of duties...**”
- iii. Likely Injury Margin: The Applicant Domestic Producers have also made submissions regarding the likely injury margin of imports originating from China PR, and adduced evidence of prices of the subject goods from China PR to Korea RP and Turkey. However, it is once again pertinent to note that the Applicant Domestic Producers have not made any submissions with regard to Thailand and any injury margin/price underselling that may arise as a result of imports from Thailand. The Respondent submits that there is no likely

injury margin submitted by the Applicant Domestic Producers as a result of imports from Thailand.

- iv. The Applicant Domestic Producers have also made claims and submissions on likely price undercutting with regard to landed values and prices of the subject goods exported from China to third countries. There is no sufficiently detailed claim with regard to any price undercutting occurring as a result of imports from Thailand.

d. **Incorrect Calculation of Likely Landed Value to India:**

124. The Applicant Domestic Producers have computed the likely landed value of the subject goods to India based on the price at which they are exported from China PR. For this purpose, the Applicant Domestic Producers have adopted the CIF price from China PR to Korea RP and Turkey respectively. For the computation of the same, the Applicant Domestic Producers have considered the ocean freight from China PR to Korea RP and Turkey respectively. It is the submission of the Respondent that the computation of landed value in India of the subject goods exported from China PR will be incorrect in such a situation.

125. The reason for the above is that the correct landed value of the subject goods must include the freight as chargeable from China PR to India and not from China PR to Korea RP/Turkey. Such a calculation is incorrect and required to be rejected by the Authority.

a. **Factors other than dumped imports**

126. While examining injury to the domestic industry, Annexure II to the AD Rules stipulates that any factors other than dumped imports should be segregated from the injury analysis. Para (v) of Annexure II to the AD Rules provides in pertinent part as follows:

“.... The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports.”

127. In the facts of the present case, Applicant Domestic Producers have failed to address the following additional factors. The Authority is requested to take into account these factors, while examining injury to the Applicant Domestic Producers:

a. **Exchange Rate Considerations:**

128. It is relevant to note that during the POI, the exchange rate for USD that has been adopted by domestic industry is Rs. 56.90. However, the prevailing rate of USD, as per the RBI currently is Rs. 62.24. It is also predicted that the Rupee will not appreciate once again and may get depreciated further.

129. **M/s Jiangsu** submitted that there is no likelihood of dumping and injury in the present investigation as may be seen from the following:

a. **Negligible Imports from China:** It is submitted that throughout the injury investigation period the imports from China are very negligible. The imports from China in absolute terms are merely 21 MT in base year 2010-11 and 48 MT in POI October 2012-September 2013 and in comparison to total demand and total domestic production are 0.01% both in the base year and in the POI. It indicates that in case of discontinuance of duties the imports from China are not likely to spurt.

b. **No Dumping Margin for the exporter from China:** It is submitted that there is no dumping margin for the exporter represented by us. It indicates that there is no likelihood of dumping from the exporter represented by us or from China.

c. **No injury to the domestic industry from Imports:** It is submitted that there is no injury to the domestic industry from the imports from China or from other subject countries. Their lower level of profitability and their inability to increase prices to fully recover their increase in costs indicates that the cause of injury to the domestic industry lies somewhere else. The reasons for injury may be due to inter se competition among domestic producers, high cost of production, inefficiency etc. Thus, the injury to the domestic industry is not likely due to the imports from China or any other subject country.

d. **No Excess Capacity in China:** With regard to capacity in China, Jiangsu submitted that the domestic industry has not provided any evidence along with the non-confidential version of the application. The domestic industry has given details of the capacity in China. However, they have not given details of the excess capacity available in China. The likelihood analysis is carried out on the basis of excess capacity available but not on the basis of name plate capacities as it will lead to misleading conclusions. It is the excess capacities which may allow the exporters to export their production but not otherwise. As per the

information with the exporter, there are no excess capacities available with the Chinese producers which will be directed to Indian market in case of discontinuance of duties.

In view of the above, thus, Jiangsu submitted that there is no likelihood of injury to the domestic industry from imports from the subject countries as well as dumping from the subject countries. Thus, the present case is a fit case where the Hon'ble Authority may be pleased to terminate the investigation and discontinue the anti-dumping duties in the current sunset review investigation in the interest of justice.

130. The interested parties have submitted that there is no injury and causal link on account of the subject imports as its volume is miniscule.

Examination by the Authority

131. The Authority has taken note of various submissions of the interested parties on consequent injury to the domestic industry and has analyzed the same considering the facts available on record and applicable law. All relevant issues concerning the facts and figures are addressed *appropriately* in the injury analysis.

132. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

133. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

134. The present investigation is a sunset review of anti-dumping duties in force. Rule 23 provides that provisions of Rule 11 shall apply, *mutatis mutandis* in case of a review as well. The Authority has, therefore, determined injury to the domestic industry considering, *mutatis*

mutandis, the provisions of Rule 11 read with Annexure II. Further, since anti-dumping duties are in force on imports of the product under consideration, the Authority considers whether the existing anti-dumping duties on the imports of subject goods from subject countries are required to be considered while examining injury to the domestic industry. The Authority has examined whether the existing antidumping measure is sufficient or not to counteract the dumping which is causing injury.

135. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

136. For the purpose of current injury analysis, the Authority has examined the volume and price effect of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between the dumping and injury. The volume and price effect of dumped imports have been examined as follows:

VOLUME EFFECT:

Volume effect of dumped imports and impact on domestic industry demand and market share

137. The Authority has determined the demand or apparent consumption of the product in the country as the sum of domestic sales of the Indian producers and imports from DGCI&S. The demand so assessed can be seen in the table given below. The Authority on the basis of the response from cooperating exporters, notes that imports of PUC under other heads are also at best around 0.5% of the demand. The Authority notes that the demand for the subject goods in the country has increased during POI as compared to the base year. However, the imports from the subject countries are small and quite insignificant due to the existence of anti-dumping duties with the current market share of imports being low.

Year	2010-11	2011-12	2012-13	POI
Imports from subject countries (MT)	731	726	89	27
Imports from other countries (MT)	11	27	64	18
Total Imports (MT)	741	753	153	45
Total demand (MT)	339319	378121	412384	430994
Domestic Industry Sales (MT)	154434	183420	207173	220393

Import Volume & market share

138. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or in relative terms. Information on the imports volume and the market share are provided in the table given below.

Year	2010-11	2011-12	2012-13	POI
Imports from subject countries (MT)	731	726	89	27
Imports from other countries (MT)	11	27	64	18
Total Imports (MT)	741	753	153	45
Total demand (MT)	339319	378121	412384	430994
Share of subject countries in demand	0.22%	0.19%	0.02%	0.01%
Share of domestic industry in demand	99.78%	99.80%	99.96%	99.99%

139. The volume of imports is small rather negligible as the anti-dumping duties have been in existence of the subject goods. Even if exports by subject countries as reported by cooperating exporters under different heads of chapter 54 are included, the share of imports from the subject countries increases by 0.5% only thus being at a low level.

PRICE EFFECT

Price effect to dumped imports and impact on domestic industry

140. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject countries have been examined with reference to price undercutting, price underselling, price suppression and price depression. For the purpose of

this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject countries. A comparison for subject goods during the period of investigation was made between the landed value of the imports from the subject countries and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission incurred by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry in terms of the principles outlined in Annexure III by appropriately considering the cost of production for the product under consideration during the POI. The authority has accordingly evaluated these parameters for the cooperating and non-cooperating exporters in the following sections.

Price Undercutting

141. The Authority notes that it is required to consider whether there has been significant price undercutting by the imports from the subject countries when compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

142. The Authority notes that price undercutting for China PR and Thailand is negative, on the basis of DGCIS data. As per DGCIS data, the total quantity from the subject countries is 27 MT under the customs head 540247. The imports from China are about 21 MT whereas imports from Thailand are only about 6 MT. Since it is a case of sunset review, the quantum of imports along with likelihood of dumping and injury is to be examined. The Authority has referenced the response of the cooperating exporters, to correlate exports and thereby analyze the Price Undercutting and Price Underselling in the POI, and likelihood analysis based on the world trade data, submissions of various interested parties viz domestic industry and cooperating exporters.

143. The above approach applies equally to the price underselling analysis as well. The negative price underselling for China PR and Thailand is to be seen along with the likelihood analysis for cooperative/other producers/exporters of subject countries.

Price Suppression and Depression

144. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of sales. The data given below shows that the domestic industry's selling price has not grown in tandem with the increase in the cost during the POI vis-à-vis base year.

Particulars	2010-11	2011-12	2012-13	POI
Cost of sales Rs/MT	***	***	***	***
Trend	100	118	124	124
Net Selling Price Rs/MT	***	***	***	***
Trend	100	112	119	120

Examination of other economic parameters of the domestic industry

145. Annexure II to the Anti- dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the imports from the subject countries on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments .An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

Production, capacity and capacity utilization

146. The Authority notes from the table below that the capacity utilization of the product under consideration has decreased from 83.23% in the base year to 75.20% in the POI. However, it is also noted that there is an increase in the capacity utilization level when compared to the year 2011-12. The level has remained more or less constant when compared to the immediately preceding year. The Authority also notes that there had been an increase in the capacity of the Domestic Industry considering the increase in demand.

Year	2010-11	2011-12	2012-13	POI
Capacity (MT)	219840	289610	292610	325610
Trend	100	132	133	148
Production PUC only (MT)	182966	204803	224709	244843
Trend	100	112	123	134
Capacity utilization (MT)	83.23%	70.72%	76.79%	75.20%
Trend	100	85	92	90

Sales of the Domestic Industry

147. From the information given below, the Authority notes that the domestic sales of the domestic industry have increased in the POI as compared to base year as there is increase in the demand during the POI *vis-à-vis* the base year. Sales have increased even when compared to the immediately preceding years.

Particulars	2010-11	2011-12	2012-13	POI
Domestic Sales (MT)	154434	183420	207173	220393
Trend	100	119	134	143

Profit/loss, Return on Investment and Cash Flow

148. The return on investment, profitability per unit and cash profit are as shown in the table below:

Year	2010-11	2011-12	2012-13	POI
Domestic selling price Rs/MT	***	***	***	***
Trend	100	112	119	120
Cost Rs./MT	***	***	***	***
Trend	100	118	124	124
Profit Rs/MT	***	***	***	***
Trend	100	-13	16	39
Cash Profit Rs/MT	***	***	***	***
Trend	100	40	53	63
ROCE (%)	***	***	***	***
Trend	100	59	81	105

149. The Authority notes that profits of the domestic industry declined in the period of investigation. The increase in selling price is lower than the increase in the level of costs. It has been further noted that the cash profits has increased in POI as compared to the last two years but declined when compared to the base year. Further, the return on capital employed has increased marginally in the POI as compared to the base year.

Inventories

150. The data given in the table below shows that the inventory levels with the domestic industry have increased significantly in the POI as compared to the base year.

Year	2010-11	2011-12	2012-13	POI
Closing stock (MT)	***	***	***	***
Trend	100	100	93	121

151. From the table given below, the Authority notes that employment have shown improvement in the injury period as compared to the base year. The Authority also notes that the wages per employee increased in the POI as compared to the base year on account of the annual increase in wages.

Year	2010-11	2011-12	2012-13	POI
Employees	***	***	***	***
Trend	100	104	116	133
Wages/employee (Rs)	***	***	***	***
Trend	100	124	122	115

Productivity

152. The Authority notes from the table below that the productivity of the domestic industry has increased in the POI as compared to the base year.

Year	2010-11	2011-12	2012-13	POI
Production (MT)	182966	204803	224709	244843
Employees	100	112	123	134
Production/employee	***	***	***	***
Trend	100	108	106	101

Magnitude of Dumping Margin

153. The Authority notes that the dumping margin of the imports of the subject goods from the subject countries is negative on the basis of the overall DGCI&S data. However, the same is evaluated for cooperating exporters separately and referenced appropriately for individual cooperating exporters.

Growth

154. The Authority notes that the growth has also followed the same trend as followed by profitability, cash flow and inventory.

Factors Affecting Domestic Prices

155. The imports from the subject countries are though small and negligible, the Authority is of the view that the same need to be seen in the overall context of data submitted by cooperating exporters and likelihood of dumping and injury analysis as per the best available data.

Ability to raise Capital Investment

156. The Authority notes that after the imposition of the antidumping duties against the subject goods from the subject countries, capacities have added in India. The Authority has analyzed the impact on these in event of withdrawal of anti-dumping duty.

a. Causal Link

157. The Rules mandates the Authority to examine the causal link between the imports from the subject countries and the injury caused to the domestic industry on account of the imports from the subject countries. The Authority has therefore highlighted the following known factors could have caused injury to the domestic industry as follows:

- i. Contraction in Demand:- The Authority notes that the demand of the subject goods in the country has grown consistently from base year to POI.
- ii. Imports from Third Countries:- The Authority notes that insignificant quantities have been imported from countries other than the subject countries.
- iii. Pattern of consumption:- It is noted that none of the interested parties has made any submission about the change in the pattern consumption of the subject goods causing injury to the domestic industry.
- iv. Export performance of the domestic industry:- The export performance of the domestic industry is not relevant since the Authority has considered only the domestic performance of the Domestic Industry for injury analysis.
- v. Conditions of competition:-The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.
- vi. Developments in technology:- The Authority notes that the investigation has not shown that there was any significant change in technology which could have caused

injury to the domestic industry.

Conclusion on Material Injury and Causal Link

158. In view of the fact that the present case concerns sunset review investigations, the injury in the POI on various parameters such as market share of the domestic industry in the total demand, sales, production, ability to increase its selling price matching the level of the increase in the cost, profitability of the domestic industry in the POI as compared to the injury period, cash flows has been evaluated. Further, the Authority notes that the absence of price undercutting, underselling and dumping margin on the overall import data has to be viewed considering the fact that only meagre quantity i.e., 27 MT have been imported from the subject countries under the head 54024700. Therefore, the prices offered to India by cooperating exporters are considered as acceptable or reliable for the purpose of calculating the price undercutting, underselling and the dumping margins.

J. Likelihood of continuation/recurrence of dumping and injury

Submissions by the domestic industry

159. Following are the submissions made by the domestic industry:

- i. China is the largest producer of FDY and it also has the greatest number of FDY manufacturing enterprises. From the information provided in the table given below, it is amply clear that the capacity in China of the subject goods is 34 times (3411%) of the capacity of the Domestic Industry. Further domestic industry has submitted that Chinese capacity of the subject goods is 25 times (2548%) and 44 times (4478%) of the demand in India and production of the Domestic Industry respectively. Accordingly, it can be clearly seen that there is every likelihood of continuance or recurrence of dumping and injury to the Domestic Industry once the anti-dumping duty levied by the Authority are withdrawn.

Particulars	
Chinese capacity (MT)	11000000
Capacity of domestic industry (MT)	322460
Demand in India (MT)	431643
Production of Domestic industry (MT)	245638
Sales of Domestic industry (MT)	220967
Chinese capacity as a % of capacity of domestic industry (%)	3411%
Chinese capacity as a % of demand in India (%)	2548%
Chinese capacity as a % of production of domestic industry (%)	4478%
Chinese capacity as a % of sales of domestic industry (%)	4978%

- ii. Domestic industry has submitted that M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China has increased the capacity of the product concerned from 100 (Indexed) in the year 2010 to 150 (Indexed) in the year 2013. This fact is clearly reflected on Page No. 21 of the response filed by it. Accordingly, there is clear likelihood that Indian market will be flooded with dumped goods in case anti-dumping duty levied by the Authority has been withdrawn.
- iii. The decline in imports post imposition of anti-dumping duty implies likelihood of dumping in the event of withdrawal of duty and in itself justifies extension of anti-dumping duty.
- iv. Domestic industry has argued that M/s Indorama Polyester Industries PCL, Thailand have categorically admitted in Para 42 of its written submissions that the domestic prices within Thailand and to the rest of the world are higher than the prices to India. Hence, they have no incentive to abandon their domestic market sales as well as exports sales to third countries and divert these sales to India. The statement by the said exporter is a categorical and unambiguous admission of current as well as likely dumping into India.
- v. Domestic industry has submitted that there is positive and significant injury & dumping margin when calculated based on the prices from the subject countries to countries other than India. The domestic industry has provided copies of sample invoices and contract of exports from China PR to countries other than India to demonstrate the prices of the subject goods from the subject countries to other countries. Details of the likely injury and dumping margin based on these prices are provided in the table given below:

Injury and dumping margin based on prices from China to other countries

Likely Dumping Margin	Prices to Korea		Prices to Turkey	
Particulars	Rs/MT	\$/MT	Rs/MT	\$/MT
Normal Value	119281	2096	119281	2096
Export Price	81821	1438	78307	1376
Dumping Margin	37459	658	40973	720
Dumping Margin %	46%	46%	52%	52%
Dumping Margin (Range)	45-50	45-50	50-55	50-55

Likely Injury Margin	Prices to Korea		Prices to Turkey	
Particulars	Rs/MT	\$/MT	Rs/MT	\$/MT
NIP	***	***	***	***
Landed Value	96073	1689	92146	1620
Injury Margin	***	***	***	***
Injury Margin %	***	***	***	***
Injury Margin (Range)	25-30	25-30	30-35	30-35

vi. As regards Thailand, the Domestic Industry submits that it is for the Thai exporters and the Thai government to provide all the necessary details to the Authority for carrying out the likelihood analysis. It is important to note that that full information regarding the current and future capacities and the surplus over demand has not been made available by any of the interested parties including the Thai government. The onus to prove that there is no likelihood of dumping and injury is on the interested parties making such a claim. It is important to note that the likelihood analysis can be done only if the cooperating exporters give sufficient information with regard to the exports to other countries and also establish that there is no likelihood of dumping or injury when a proper grade-wise price analysis is carried out. In the absence of any such information, there is no reason not to continue the duties against Thailand.

vii. Revocation of anti-dumping duty shall imply continuation of dumping and injury to the domestic industry. Cessation of anti-dumping duty is likely to have significant suppressing and depressing effect on the prices of the product under consideration in the market.

160. In view of the above, domestic industry has submitted that there is every likelihood of continuation or recurrence of dumping and injury once the duties are withdrawn, as withdrawal of the anti-dumping duties will provide a free access to the manufacturers/exporters of the subject goods from the subject countries to dump the subject goods in India.

Submissions by producers/exporters/importers/other interested parties

161. Imports from China over the injury investigation period are very negligible and very close to no imports in absolute terms as well as in comparison to total domestic production and the total demand in India. Therefore, considering the level of imports from China which are very negligible and similar to the situation of no imports from Vietnam, the current

investigation may please be terminated against China as there is no likelihood of dumping and injury in the present investigation.

162. There is no present or future injury in terms of price of the subject imports and the imports are not capable of influencing the domestic selling price.

163. M/s Indorama Polyester Industries PCL Thailand ("M/s Indorama ") has argued that that they are already operating at optimal capacity utilization level. Hence, very little unutilized capacity is left.

164. No submissions have been made by the Domestic Industry with regard to the likelihood of injury from Thailand.

Examination by the Authority

165. The present investigation is a sunset review of anti-dumping duties imposed on the imports of subject goods from China PR and Thailand. Under the Rules, the Authority is required to determine whether continued imposition of anti-dumping duty is warranted. In the present investigation while there are continued imports of the subject goods in small quantity from the subject countries, the Authority notes that it is required to examine whether revocation of duty is likely to lead to continued dumping of the product concerned. However, considering the fact that the dumping margin in the original investigation was significant and that there are favourable market conditions in the Indian market as far as demand of the subject goods is concerned, dumping may recur if the AD duty is revoked.

166. The following analysis shows about the likelihood of dumping and further injury to the domestic industry in the event of cessation of anti-dumping duties.

(i) Level of dumping margin

167. The level of dumping margin in the original investigation was significant. As far as the dumping margin in the current period of investigation is concerned, the authority has evaluated the same for M/s Indorama and other non cooperative exporters based on the best available information. The authority notes that the Dumping margin for China based on DGCIS data is negative and that the response by M/s Jiangsu also depicts a negative Dumping Margin. However the exports quantity by M/s Jiangsu being small, the authority has not considered the same realistic and has examined the likelihood of dumping in case of

revocation of AD duty.

(ii) Level of injury and dumping margin based on prices and surplus capacity utilization from subject countries to other countries

168. The Authority notes that the injury and dumping margin estimated on the prices from the subject countries to other countries is positive and significant. Therefore, the Authority notes that withdrawal of the anti-dumping duties will encourage manufacturers/exporters of the subject goods from the subject countries to dump the subject goods in India, and thus, there is a possibility of continuation or recurrence of dumping and injury once the AD duties are withdrawn.

(iii) Attractiveness of the Indian Market

169. The demand of subject goods has been rising in India. The withdrawal of ADD is likely to encourage exports to third countries at prices lower than India to get diverted to India on one hand and utilization of surplus capacities to restore exports to India.

(iv) Surplus capacities in the subject countries

170. The Authority notes that China holds significant capacities of the product concerned which is almost 34 times of the capacity of the domestic industry, 25 times of demand in India and 44 times of the production of the domestic industry. Further, the Authority notes that all the exporters who have filed the questionnaire response, hold surplus capacities to increase exports to India. In such circumstances, there is every possibility of continuation or recurrence of dumping and injury once the duties are withdrawn.

171. For instance, M/s Jiangsu's capacity of the subject goods is *** MT, with utilization of 83%. Its global exports of about *** to ***MT are at prices lower than that to India. Its exports to India though have declined in recent past years including the POI, it was of an order of almost *** MT in 2009. Thus, there is a likelihood of recurrence of dumping in the event of withdrawal of ADD on account of better prices availability in India and the available surplus capacity with the producer/exporter.

172. The Authority further notes that as per the World Trade Atlas data, out of the total exports of *** MT of the subject goods from China, PR globally during the Period of Investigation (POI), 56% of the subject goods exported are found to be dumped and 54% as injurious to the Indian industry if analysed on the basis of the constructed Normal Value of the subject goods for China, PR and Non Injurious Price (NIP) for Domestic Industry in the

POI. For the purpose of evaluating, the ex- factory export price in China, PR and Landed Value of the subject goods in India, the response of the cooperating exporter has been referenced for various adjustments on freight, insurance and other logistic charges etc.

173. The Authority notes that one year post- POI, the total exports of the subject goods from China, PR to third countries is *** MT. On the basis of Normal Value, NIP and adjustments as stated in the preceding para, the dumped and injurious exports came to more than 90% of the total exports. This therefore implies that there is a likelihood of these goods being exported in the event of cessation of Anti- Dumping Duty (ADD) on the subject goods.

174. As regards Thailand, the Authority notes that as per the World Trade Atlas data, the total exports of the subject goods from Thailand globally are in the range of *** to *** MT in the POI and post POI. By referencing Normal Value, as computed for residual exporters in Thailand, adjustments on FOB price for ex- factory Export Price and Landed Value in India, 14% of Thailand global exports would be dumped and injurious to the Domestic Industry in India. In post- POI, the value of dumped imports increases to 17%. Therefore, there is a **likelihood** of some diversion in exports of these dumped and also injurious subject goods to India in the event of cessation of the existing ADD duty on the subject goods.

175. In case of M/s Indorama, a producer/exporter of the subject goods from Thailand, the Authority notes that despite the imposition of ADD, the exports by M/s Indorama to India constitute about ***% of its production during the POI. A surplus capacity of ***% is also available with the producer/exporter. The Dumping Margin and Injury Margin are both positive in POI for the producer/ exporter.

176. The Authority has evaluated the injury margin during the POI for the producers/ exporters of the subject goods as follows:

Sr. No.	Producer/Exporter	Landed Value (US\$/MT)	Non Injurious Price (US\$/MT)	Injury Margin	Injury Margin %	Injury Margin Range %
1.	M/s Indorama Polyester Industries, Thailand	***	***	***	***	10-20%
2.	Other Producers/ Exporters from Thailand	***	***	***	***	10-20%
3.	M/s Jaingsu Hengli Chemical Fibre Co. Ltd., China	***	***	De minimis	De minimis	De minimis
4.	Other Producers/ Exporters from China	***	***	De minimis	De minimis	De minimis

- Since in the post POI there are no exports to India by M/s Jiangsu and other producers/ exporters from China, PR, the likely Injury Margin in the event of the diversion of exports of third countries to India is evaluated as follows:

Sr. No.	Producer/ Exporter	Non Injurious Price (US\$/MT)	Landed Value (US\$/MT)	Injury Margin (US\$/MT)	Injury Margin %	Injury Margin range%
1.	M/s Jiangsu Hengli Chemical Fibre Co. Ltd., China*	***	***	***	***	0-10%
2.	Other Producers/ Exporters from China**	***	***	***	***	0-10%

* As per the exporter's questionnaire response.

** As per the World Trade Atlas.

K. Post-Disclosure Comments

177. The following are the post-disclosure comments/submissions made by the domestic industry and other interested parties:

Domestic Industry

178. Key submissions on the Disclosure Statement dated 11.09.2015 on behalf of Domestic Industry are as follows:

A. Individual dumping margin not to be granted to M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China and M/s Indorama Polyester Industries PCL, Thailand-

179. M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China and M/s Indorama Polyester Industries PCL, Thailand have not filed the questionnaire response of their respective related parties and, therefore, are not entitled to be considered as cooperating exporters. Details of each of these so-called cooperating exporters and their respective related parties are as follows:

a) M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China (hereinafter referred to as

"Jiangsu") has mentioned on page no. 3 of the questionnaire response filed by Jiangsu that is its wholly owned subsidiary i.e., Jiangsu Deli Fibre Co., Ltd and is involved in the product concerned. However, Jiangsu has not filed the questionnaire response of its related party Jiangsu Deli Fibre Co., Ltd.

b) M/s Indorama Polyester Industries PCL Thailand (hereinafter referred to as "M/s Indorama"): M/s Indorama has claimed on page no. 4 of its questionnaire response that it has not sold the product concerned to any of its related party. However, it is amply clear from the Annual Report of Indorama Ventures for the year 2013 that M/S INDORAMA has sold the product concerned to one of its related party i.e., PT. Indorama Synthetics Tbk. (hereinafter referred to as "PTIRS"). Relevant pages of the Annual Report are enclosed as Annexure 1 to the written submissions dated 24th August, 2015 filed with the Authority. Same are not enclosed again for the sake of brevity. Further, it is also submitted that PTIRS has a number of sales branches located in Sri Lanka, India, Thailand, Turkey, and Nepal, and administrative offices in United Kingdom, Hong Kong and Singapore. Annexure 2 is enclosed to the written submissions dated 24th August, 2015 filed with the Authority to substantiate our claim in the context of sales branches of PTIRS. Same are not enclosed again for the sake of brevity.

180. In view of the above, domestic industry humbly prays that the response filed by the Jiangsu and M/S INDORAMA should be rejected outright as they have not filed the response of their related parties. The incomplete information filed by exporters impedes the investigations and prevents the Authority from verifying the factual position of the exports/domestic sales made by them and their respective related parties. Accordingly, individual dumping margin should also not be granted to them considering the standard practice of the Authority. In this context, kind attention of the Authority is invited to Para 37 of the Final Findings (SSR Investigation - No.15/28/2013-DGAD dated 17th August, 2015) in the case of Plain Medium Density Fibre Board originating in or exported from China PR, Malaysia, Thailand and Sri Lanka wherein Authority has categorically mentioned that M/s Dongwha MDF (M) Sdn. Bhd. has mentioned in its questionnaire response that M/s Dongwha Fibreboard Sdn. Bhd. (DFB) is also indulged in domestic sales. DFB, a related company of DMM, has not filed any questionnaire response. The Authority, therefore, as per its practice, did not determine the individual dumping margin in respect of M/s Dongwha MDF (M) Sdn. Bhd., Malaysia and M/s Dongwha Global Sales Sdn. Bhd., Malaysia. In view

thereof, Domestic Industry reiterates that the very same grounds exist in this case also and, therefore, the Authority may kindly follow the same principle as laid down in the MDF case. The fact that the exporter's response may have been rejected in that case for other reasons also is not material factor which would allow a departure from the uniform and non-discriminatory application of the principle and practice.

B. Meagre quantities sold to India should not be considered for the determination of injury and dumping margin-

181. Meagre quantities exported by the subject countries (i.e., 27 MT) cannot be considered as a base for the determination of individual injury or dumping margin during sunset review investigations considering the consistent practice of the Authority. Same view has been taken by the Authority in the case of POY from China PR (SSR Investigation - No.15/27/2010-DGAD dated 10th February, 2012).

182. It may kindly be appreciated that the basic premise for not accepting meagre quantities for the purpose of determining dumping margin in a SSR is the fact that the exporters are aware of the precise Period of Review which allows them to manipulate their export prices during that particular period. With respect, it is submitted that this practice is followed universally around the world.

C. Export sales to India of the so-called cooperating exporters should be reconciled with the DG System Data-

183. Export sales to India of the so-called cooperating exporters should be reconciled with the DG System Data so as to verify the correctness of their claim considering the consistent practice of the Authority. The Authority has adopted the same approach in many cases including Graphite Electrode from China PR (No.14/02/2013-DGAD dated 19th November, 2014). Relevant excerpts from the Final Findings of Graphite Electrode are reproduced below for the perusal of the Authority.

During verification of the response of the exporter M/s Anssen, it has been noted that their exports of subject goods to India did not match with the DG systems record which has been procured from the Directorate General of Systems & Data Management which show transaction wise information of subject goods to India. In particular, it is noted from the response of the exporter that information submitted by the exporter did not tally with the importers data. It is also noted that payments received from Indian importers to the company as per information received from Indian importers and also data received from DG systems

does not tally with the payments shown by the company from their records in many transactions. In particular, payments made by Alloy Steel Plant SAIL, as per the importers questionnaire and also data as per DG systems differ with the payments shown by the exporters in their documents in many transactions.

In view of the above, export price claimed by the exporter on account of subject goods procured from two cooperating sampled producers i.e. M/s Fushun oriental and M/s Fangda have been rejected by the Authority and no individual dumping margin has been determined for the exports made by M/s Anssen on account of export subject goods.

D. Exports in HS Code other than 5402470 should not be considered for grant of individual dumping margin-

184. Only the subject goods reported in HS Code of the product concerned i.e., 5402470 should be considered as the subject goods exported to India. Product concerned reported in other HS Codes should not be taken on record as the sole purpose of clearing the goods in other HS Code is to evade the anti-dumping duty levied by the Authority.

185. The exports made by the exporters in HS Code other than 540247, if any, are only with the purpose to evade the anti-dumping duties in force. Therefore, exporters should not be rewarded with individual dumping margin for evading the duties.

E. Continuation of the duty levied in the Original Investigation –

186. The Authority is requested to continue the duty levied in the Original Investigation considering the following facts:

a) Incomplete information has been filed by M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China and M/s Indorama Polyester Industries PCL, Thailand that cannot be based for calculation of dumping and injury margins considering the standard practice of the Authority.

b) Meagre quantities have been exported from the subject countries due to the anti-dumping duties in force, and therefore, cannot be based for calculation of dumping and injury margins considering the standard practice of the Authority.

c) Exports have been made in HS Code other than HS Code of the product concerned i.e., HS Code 5402470 with the only purpose to avoid anti-dumping duties in force. Our claim is evidenced from the fact that in the POI of the Original Investigation 39,137 MT has been reported in the HS Code 5402470 while in the POI of the Current Investigation only 27 MT has been reported as exports from the subject countries. Therefore, in such circumstances

domestic industry humbly request the Authority not to award them with the individual dumping margin.

d) The decline in imports from 39,137 MT (POI of Original Investigation) to 27 MT (POI of Current Investigation) implies clear likelihood of dumping in the event of withdrawal of duty and in itself justifies extension of anti-dumping duty.

e) M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China has increased the capacity of the product concerned from 100 (Indexed) in the year 2010 to 150 (Indexed) in the year 2013. This fact is clearly reflected on Page No. 21 of the response filed by it. Accordingly, there is clear likelihood that Indian market will be flooded with dumped goods in case anti-dumping duty levied by the Authority has been withdrawn.

f) Exporters in the subject countries have surplus capacities of the product concerned. Details of the same have already submitted in our earlier communications, and therefore, not been repeated herein for the sake of brevity.

g) M/s Indorama Polyester Industries PCL, Thailand has categorically admitted in Para 42 of its written submissions that the domestic prices within Thailand and to the rest of the world are higher than the prices to India. The statement by the said exporter is a categorical and unambiguous admission of current as well as likely dumping into India.

h) Positive and significant likely injury & dumping margin when calculated based on the prices from the subject countries to countries other than India. Details of the same have already submitted in our earlier communications, and therefore, not been repeated herein for the sake of brevity.

F. Disclosure of absolute numbers of exports, production and capacities of the so-called cooperating exporters as done in other investigations –

187. The Authority is requested to disclose the absolute numbers of the exports, production and capacities of the exporters considering the consistent practice of the Authority. Kind attention of the Authority is invited to the following decisions of the Authority:

(i) Plain Medium Density Fibre Board originating in or exported from China PR, Malaysia, Thailand and Sri Lanka (SSR Investigation - No.15/28/2013-DGAD dated 17th August, 2015) - Para 37; and

(ii) DI Pipes from China PR (SSR Investigation - No. 15/1006/2012-DGAD dated 4th

September, 2013) - Para 76

188. The Designated Authority invariably insists the domestic industry to provide actual numbers of their production, capacity and domestic sales in absolute terms even in the non-confidential version of the application filed with the Authority. The actual numbers of their production, capacity and domestic sales of the domestic industry are subsequently disclosed in the findings of the Authority. Same approach has been taken by the Authority in this case also. In view thereof, it is submitted that the exporter is also under an obligation in terms of the Rules and the Trade Notices issued to provide us with the meaningful summary of the confidential response filed by them with actual absolute quantities of their capacity, production and exports sales to India during the POI and preceding 3 years.

189. Only due to the timely protection provided by the Authority in the form of anti-dumping duties against the dumped imports from the subject countries not only the state of the domestic industry in existence during the Original Investigation has improved significantly but also significant capacities have been added in India. In order to support the above claim details are provided in the table below:

Particulars	Unit	Original POI (Oct 06 - Sep 07)	SSR POI (Oct 12 - Sep 13)
Indian Capacity	MT	149038	628851
Indian Capacity	Trend	100	422
Demand in India	MT	190798	430994
Demand in India	Trend	100	226
Indian Production	MT	146293	472866
Indian Production	Trend	100	323
Domestic sales of Indian Producers	MT	147139	430949
Domestic sales of Indian Producers	Trend	100	293
Market Share of Indian Producers in demand	%	77.11	99.99
Profit/Loss - Domestic (Rs/MT)	Index	-15	39
Profit/Loss - Domestic (Rs/MT)	Trend	-100	260

****Figures of the current POI are based on final figures post verification***

190. From the information provided in the above table, the following fact emerges:

a) Significant increase in the capacity – Considering the increasing demand in this country with a CAGR of ***% over the years coupled with the protection against dumped imports from the subject countries, the Domestic Industry was in a position to increase its capacity to cater to the increasing demand in India. As mentioned earlier, the demand increased also on account of the new applications for the PUC. Accordingly, the capacity of the Indian Industry increased from 1,49,038 MT in the POI (Oct 06 - Sep 07) of Original Investigation to 6,28,851 MT in the POI (Oct 12 - Sep 13) of this Review Investigation. The Domestic Industry submits that withdrawal of the duties at this stage would be a serious blow to the industry's performance and prospects which is poised for growth.

b) Significant increase in the production –The production of the Indian Industry increased from 1,46,293 MT in the Original POI to 4,72,866 MT in the Review POI which was commensurate with the increasing demand in the country and the fact that the imports from the subject countries were virtually non-existent proving the fact that they were not competitive if sold at non-competitive prices.

c) Significant increase in the sales - The sales of the Indian Industry also saw the same trend as capacities and production and increased from 1,47,139 MT in the Original POI to 4,30,949 MT in the Review POI. Thus, it is proved beyond doubt that the Indian industry can cater to the increasing demand and respond to the market growth positively if it is protected against the dumped imports.

d) Significant increase in the market share - The market share of the Indian Producers in demand increased significantly from 77.11% in the Original POI to 99.99% in the Review POI. As mentioned earlier, the dumped imports were not competitive and that is the reason as to why virtually no imports had taken place during the POI. However, there are indications that the unscrupulous exporters and importers may have imported the subject goods under different customs headings to avoid the anti-dumping duties. Accordingly, we humbly request the Authority that product concerned reported in other HS Codes should not be taken on record as the sole purpose of clearing the goods in the other HS Code is either to evade the anti-dumping duty levied by the Authority or to undervalue the goods for the purpose of payment of the custom duties. We once again request the Authority to kindly look into this aspect for appropriate action as it may deem fit.

e) Increase in the profit per unit - The profit per unit of the domestic Industry increased from -15 (Indexed) in the Original POI to 39 (Indexed) in the Review POI. However, this profit is still below the optimum profit which the industry is entitled to get. Withdrawal of the anti-dumping duties would certainly lead to serious impact on the financial performance of the industry.

191. In view of the submissions advanced above, domestic industry humbly request the Authority not to grant the individual dumping & injury margin to the exporters from the subject countries and continue the duties levied in the Original Investigation as revocation of the duties will jeopardize the huge investments made by the Indian producers and a to the interest of the Indian Industry.

Interested Parties

(i) **M/s Indorama Polyester Industries Public Company Limited (hereinafter , “M/s Indorama”):**

M/s Indorama has the following comments on the disclosure statement issued by DGAD:

A. DGCI&S, World Trade Atlas and other information not provided

192. The Authority has relied upon the DGCI&S import data, World Trade Atlas and other information for the purpose of likelihood analysis for Thailand. M/s Indorama submits that the information relied upon by the Authority was neither provided to it, nor kept in the public file so that interested parties could access it. In light of this fact, M/s Indorama submits that no decision must be taken by the Authority in this matter before the following information is provided to M/s Indorama and M/s Indorama has sufficient time to analyze and make meaningful comments on the same:

- a) DGCI&S import data
- b) World Trade Atlas data
- c) Methodology adopted by the authority for identifying the subject goods from World Trade Atlas data
- d) Computation of Normal Value
- e) Computation of Ex-Factory Export price
- f) Landed Value
- g) Adjustments considered by the Authority

193. Further, the Authority has not made any justifiable reason to claim the above information as confidential. The Hon'ble Supreme Court of India in *Reliance Industries Vs Designated Authority* [2006 (202) ELT 23 (SC)] has stated that the Authority has no right under Rule 7 of the under Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumping Articles and for Determination of Injury) Rules, 1995 (hereinafter referred as "Antidumping Rules, 1995") to claim confidentiality. The relevant extract from the decision of the Supreme Court is reproduced below:

In our opinion, Rule 7 does not contemplate any right in the DA to claim confidentiality. Rule 7 specifically provides that the right of confidentiality is restricted to the party who has supplied the information, and that party has also to satisfy the DA that the matter is really confidential. Nowhere in the rule has it been provided that the DA has the right to claim confidentiality, particularly regarding information which pertains to the party which has supplied the same. In the present case, the DA failed to provide the detailed costing information to the appellant on the basis of which it computed the NIP, even though the appellant was the sole producer of the product under consideration, in the country. In our opinion this was clearly illegal, and not contemplated by Rule 7.

194. Therefore, the Authority is required to disclose the information on which it will base its analysis and decision. Non-disclosure of the information would amount to a direct contravention of the obligations imposed on it under Rule 7 of Antidumping Rules. The non-disclosure of above information has adversely affected the right of defense of M/s Indorama.

195. Moreover, the Hon'ble Supreme Court of India in its decision in *Sterlite Industries (India) Ltd Vs Designated Authority* [2003 (158) ELT 673 (SC)] has stated as follows:

".. under Rule 7(3) the Designated Authority can come to the conclusion that confidentiality is not warranted it may, in certain cases, disregard that information. It must be remembered that not making relevant material available to the other side affects the other side as they get handicapped in filing an effective appeal."

196. Furthermore, CESTAT has explicitly ruled in its decision in *Birla Ericsson Optical Vs Designated Authority* [2004 (167) ELT 163 (Tri-Del)] that "*confidentiality applies only to specific factual, commercial data of a party*". It may be noted that the DGCIS and World Trade Atlas Data pertains to exporters and is collected by an agency/government authority. Therefore, it does not relate to any specific commercial data of the domestic industry. In view of the same, there was no basis on which confidentiality could

have been claimed on World Trade Atlas Data.

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B. Non Consideration of improvement of performance of domestic industry in present investigation vis-a-vis earlier sunset review Indonesia, Malaysia, Korea RP and Taiwan (Terminated)

197. Reference is being made to the Authority's observation in paras 141, 145, 146, 148, 152 & 157 of the disclosure statement.

198. The observations made in the above cited paras indicate a substantial improvement in the performance of domestic industry along with absence of price undercutting, underselling and dumping margin on the basis of the overall DGCIS data. These observations substantiate the fact that domestic industry is not suffering injury due to imports from subject country, especially Thailand.

199. The Authority had terminated an earlier sunset review of anti-dumping duties against imports of Fully Drawn yarn originating in or exported from Indonesia, Korea RP, Malaysia and Chinese Taipei vide Final Findings No. 15/26/2010 dated 16th August 2012 (hereinafter referred to as the "earlier anti-dumping investigation") **on account of the fact that the domestic industry itself was not interested in seeking the extension of the period for imposition of original duties**. The petition in the earlier anti-dumping investigation had been filed by the Association of Synthetic Fibre Industry on behalf of four producers namely M/s Wellknown Polyesters Limited, M/s JBF Industries Limited, M/s Garden Silk Mills Limited and M/s Reliance Industries Limited.

200. M/s Indorama has compared the injury indicators in the subject anti-dumping investigation and the earlier anti-dumping investigation. This comparison reveals the following facts:

- i. ***Many of the injury indicators of the domestic industry in the earlier and subject anti-dumping investigation follow a similar trend;***
- ii. If the Applicant Domestic Producers are claiming that they are suffering injury now, then they were suffering ***substantially more injury in the earlier anti-dumping investigation than it is allegedly suffering now***. Consequently, it follows that if the earlier sunset review was terminated, the present sunset review must be terminated as well.

201. M/s Indorama is contending that the subject investigation must also be terminated because ***the domestic industry is suffering at best, the same level of injury as it did in the earlier anti-dumping investigation and at worst, substantially lesser level of injury as***

compared to what it suffered in the earlier anti-dumping investigation.

202. The injury indicators in the *earlier and present anti-dumping investigation* may be summed up by way of the following table:

Particulars	Unit	2007-08 (for earlier investigation)/ 2010-11 (for present investigation)	2008-09 (for earlier investigation)/ 2011-12 (for present investigation)	2009-10 (for earlier investigation)/ 2012-13 (for present investigation)	Jan – Dec '10 (POI) (for earlier investigation)/ Oct '12 – Sep '13 (POI) (for present investigation)
Sales of Domestic Industry in Earlier Anti-Dumping Investigation	MT	83195	88478	106908	144669
Sales of Domestic Industry as % of Demand in Earlier Anti-Dumping Investigation	%	42%	43%	47%	52%
Sales of Domestic Industry in Subject Anti-Dumping Investigation	MT	154434	183420	207173	220393
Sales of Domestic Industry as % of Demand in Subject Anti-Dumping Investigation	%	46%	49%	50%	51%
Profit in Earlier Anti-Dumping Investigation	Indexed	(100)	(217)	(770)	(545)
Profit in Subject Anti-Dumping	Indexed	100	(13)	16	39

Investigation					
Imports from Subject Countries in Earlier Anti-Dumping Investigation	MT	396	379	1438	2365
Imports from Subject Countries in Subject Anti-Dumping Investigation	MT	731	726	89	27
Demand in Earlier Anti-Dumping Investigation	MT	195961	207534	229050	278583
Demand in Subject Anti-Dumping Investigation	MT	339319	378121	412384	430994
Imports from subject countries as % of Total Demand in Earlier Anti-Dumping Investigation	%	0.2%	0.18%	0.62%	0.84%
Imports from Subject Countries as % of Total Demand in Subject Investigation	%	0.22%	0.19%	0.02%	0.01%

203. Overall, the movement of injury parameters in the earlier and subject anti-dumping investigation may be summarized in the following manner:

- i. In the earlier anti-dumping investigation, production increased from 85631 MT in 2007-08 to 86599 MT in 2008-09, 109727 MT in 2009-10 and 158783 MT in POI. In the

subject anti-dumping investigation, production increased from 182966 MT in 2010-11 to 204803 MT in 2011-12, 224709 MT in 2012-13 and 244843 MT in the POI;

- ii. In the earlier anti-dumping investigation, sales of the domestic industry as a percentage of demand remained steady at 42% in 2007-08, 43% in 2008-09, 47% in 2009-10 and marginally increased to 52% in POI. In the subject anti-dumping investigation, sales of the domestic industry as a percentage of demand followed a similar trend; it remained steady at 46% in 2010-11, 49% in 2011-12, 50% in 2012-13 and 51% in POI;
- iii. In the earlier anti-dumping investigation, imports marginally increased from 396 MT in 2007-08 to 379 MT in 2008-09, 1438 MT in 2009-10 and 2365 MT in POI. In the subject anti-dumping investigation, imports decreased from 731 MT in 2010-11 to 27 MT in POI;
- iv. In the earlier anti-dumping investigation, imports from subject countries as a percentage of total demand marginally increased from 0.2% in 2007-08 to 0.84% in POI. In the subject anti-dumping investigation, imports from subject countries as a percentage of total demand decreased from 0.22% in 2010-11 to 0.01% in POI;
- v. In the earlier anti-dumping investigation, losses increased from (100) indexed points in 2007-08 to (545) indexed points in POI. In the subject anti-dumping investigation, the domestic industry remained in profits even though profits decreased from 100 indexed points in 2010-11 to 39 indexed points in POI.

204. A comparison of the data relating to major injury parameters in the earlier anti-dumping investigation and subject anti-dumping investigation may be expressed by way of the following table:

Particulars	Trend in Earlier AD Investigation	Trend in Subject Investigation
Sales of the domestic industry as a % of Demand	Share was lower in the earlier anti-dumping investigation	Share is higher in the subject investigation as compared to the earlier anti-dumping investigation

Particulars	Trend in Earlier AD Investigation	Trend in Subject Investigation
Imports	Increase of 497%	Decrease of 96%
Profits/Losses	Losses increased by 445%	Profit decreased by 61%
Imports as % of Demand	Increased from 0.2% to 0.84%	Decreased from 0.22% to 0.01%

205. *The above table reveals that in injury indicators such as profits and losses, the domestic industry was performing substantially worse in the period of injury analyzed in the earlier anti-dumping investigation than in the subject investigation. M/s Indorama fails to understand in that case why the earlier anti-dumping investigation was terminated while the present investigation is being continued.* Further, in the disclosure statement the authority has not gave any observations on the above submission made by M/s Indorama.

206. **However, despite repeated submissions of M/s Indorama, the authority has failed to examine this critical issue raised by M/s Indorama.** The M/s Indorama requests the Authority to critically examine this important issue and submits that the present anti-dumping investigation must also be terminated at least against Thailand.

C. Separate Examination of Imports from Thailand and China PR:

207. From the disclosure statement, it can be observed that the domestic producers in India control 99.99% of the total demand at present and the imports only a mere 0.01%. M/s Indorama additionally submits that the Authority must undertake a separate examination of imports originating in Thailand and China PR. From the data submitted by M/s Indorama, it is clear that it exports only a miniscule quantity of the subject goods to India.

208. Furthermore, the landed value for POI is Rs 78871 per MT for China PR, and Rs 86456 per MT for Thailand, as per Annexure 12 of the petition filed by the Applicant Domestic Producers. It can be seen that the landed price for Thailand is higher than the landed price for China PR. Additionally, if the Authority analyzes the data of M/s Indorama, it can be seen that the landed price of the subject goods exported by M/s Indorama is higher than the figure provided by the Applicant Domestic Producers for Thailand.

209. It is a practice of the Authority to carry out a country-wise analysis and terminate the investigation against a particular country if imports from that country are of very low volumes. M/s Indorama submits that a separate analysis of imports from Thailand and China PR is fully within the mandate of the Authority, and the Authority itself has carried out many such analyses in the past.

210. In light of the above submissions, M/s Indorama requests the Authority to carry out a separate examination of imports from Thailand and imports from China PR.

D. No Likelihood of continuation / recurrence of dumping and injury

a. Negligible Volume of Imports

211. Thus, the authority has correctly observed in para 136 of the disclosure statement that the imports from subject countries are insignificant. It is submitted that there is no likelihood of recurrence of injury on account of the subject imports from Thailand. **Further, the Authority has not explained how such negligible imports are causing injury to domestic industry.**

212. It is a settled practice of the Authority to terminate an anti-dumping investigation against a subject country when the volumes of imports from that country are extremely low. It may be noted that in *Final Findings dated 25th March 2011 in sunset review of anti-dumping duty against imports of Pentaerythritol originating in or exported from China PR and Sweden, the Authority observed that imports from Sweden were entering India in very low volumes and with negative dumping and injury margin. Due to such a reason, the Authority revoked the anti-dumping duty against imports of Pentaerythritol originating in or exported from Sweden.*

213. Furthermore, in Final Findings dated 20th May 2013 in sunset review of anti-dumping duty against imports of Dry Cell Batteries originating in or exported from China PR, the Authority held in paras 80 & 81 that the anti-dumping duty may be revoked due to low volume of imports.

214. The above finding of the Authority applies squarely to the facts of the subject investigation. M/s Indorama reiterates once again that the **imports as a percentage of the total demand constituted a mere 0.01% in the POI.**

215. The principle that anti-dumping duty should not be continued when there are negligible exports from a subject country in a likelihood analysis was applied by the European Commissions in its Council Regulation (EC) No 1074/96 of 10 June 1996 as regards definitive anti-dumping duties on imports of polyester yarn originating in Taiwan and Turkey wherein the Commission terminated the sunset review for goods originating from Taiwan due to the extremely low volume of imports. The relevant observations of the Commission are extracted herein:

*“Import of Taiwanese POY regressed from 2812 tonnes in 1991 (2,4% market share) to 1117 tonnes in 1992 (0,9 % market share), to 551 tonnes in 1993 (0,5 % market share) and to 448 tonnes during the investigation period (0,4 % market share). It should be noted in this respect that the three major Taiwanese producers were not subject to any anti-dumping duty. **When excluding the imports from these three producers, which are not concerned by the review investigation, the Community market share held by the remaining imports from Taiwan amounts to 0,1 % only. Information available suggests that the Taiwanese producers have re-oriented their exports to other third countries geographically closer where a steady growth for POY is being registered. Furthermore, these producers have apparently moved to a greater extent into the downstream product, PTY. Consequently, there is no reasonable indication that the expiry of the anti-dumping measures on imports of POY originating in Taiwan would lead to a recurrence of injury or threat of injury to the Community industry.**”*

216. In the present case, it is clear that the volume of imports is so low that there exists no likelihood of recurrence of injury to the domestic industry by the volume of subject imports. It is established that the domestic producers in India control 99.99% of the total demand at present and the imports only a mere 0.01%.

217. The Authority has never continued the antidumping duty when imports are very negligible and price undercutting/underselling is negative. Thus M/s Indorama submits that the Authority, in line with its decision to terminate the anti-dumping investigation against imports of Fully Drawn Yarn from Indonesia, Korea, Malaysia and Chinese Taipei, must terminate the present investigation as well.

b. Magnitude of Dumping and injury margin

218. With regard to margin of dumping, the authority has made contradictory observations in Para 152 and 157 of the disclosure statement.

219. In Para 173 of the disclosure statement, the authority made a positive likelihood analysis for Thailand.

220. In Para 152 of the disclosure statement, the authority concluded on the basis of DGCIS that dumping margin is negative. Further in para 157, the authority has concluded that price underselling is absent. However, in Para 173, the authority has relied upon the undisclosed World Trade Atlas data and observed that 14% of Thailand global exports would be dumped and injurious to domestic industry. In this regard, M/s Indorama would like to submit the following:

a. The authority has not provided the World Trade Atlas data to M/s Indorama despite request made by M/s Indorama. Therefore, M/s Indorama is not in position to submit any comments on correctness of World Trade Atlas data relied upon by the Authority for the purpose of analysis.

b. Further, it is not known how authority has separated the information/data related to subject goods from World Trade Atlas Data. No methodology has been mentioned by the Authority in the disclosure statement. Further, no information is provided by the authority how gradewise segregation has been done.

c. The authority has actual data for M/s Indorama and other producers from Thailand. Instead of relying upon the actual verified data, the authority is relying upon unauthenticated source and same is not even disclosed to M/s Indorama. Such approach of authority is unacceptable and without any logic.

d. Further, it should be noted that the subject goods are available in many grades. The prices of these grades vary substantially depending upon denier and filament. Moreover, some grades are of off grade (second quality). The authority has based its present analysis on weighted average basis, which is incorrect method to analyse in view of substantial price variation between different grades. It is well established and known fact that off grade is a lower grade which selling price is not as high as even grade. Further, these grades cannot be interchangeably used by the customers. However, while doing the likelihood analysis the Authority has completely disregarded this crucial fact and all analysis has been done on weighted average basis considering the subject goods as single grade. Therefore, the authority

must analyse which grade are exported to India and what are the prices of the similar grades when exported from Thailand to 3rd countries and domestic market. The authority should do PCN to PCN comparison.

c. Surplus Capacity

221. It is also to be noted that the analysis carried out by the Authority in terms of likelihood of recurrence of injury widely pertains only to China PR. **There are no submissions/evidence which has been examined with regard to the likelihood of injury due to imports from Thailand.**

222. The authority has also not provided and examined any iota of evidence with regard existence of surplus capacities in Thailand. **All analysis has been done taking into account the surplus capacities in China PR.** Further no submission has been made by domestic industry regarding any surplus capacities with regard to exporters based in Thailand. From the data submitted by M/s Indorama to the Authority, it can be seen that it does not possess any great surplus capacity for the subject goods.

223. M/s Indorama would like to reply to the observation made by authority in para 174 of the disclosure statement as under:

i. Domestic Selling Price and Export Price to Third Countries:

224. The domestic selling price of the subject goods in Thailand is higher than the export price of the subject goods to India. In Appendix 2A of the Exporters Questionnaire Response, it can be seen that M/s Indoramas' average domestic selling price is *** THB/KG while its average export price to India is only ***THB/KG. Therefore, M/s Indorama has no incentive to abandon its domestic market sales and divert these sales to India.

225. The export price of the subject goods to third countries is higher than the export price of the subject goods to India. In Appendix 2A of the Exporters Questionnaire Response, it can be seen that M/s Indoramas' average export price to India is *** THB/KG while its average export price to third countries is *** THB/KG. Therefore, M/s Indorama has no incentive to abandon its exports to third countries and divert these sales to India.

226. From the above submission, it is clear that M/s Indorama has no commercial incentive to shift its domestic sales or exports to third countries to India in the event of revocation of

anti-dumping duty by India. The authority has failed to examine this crucial fact and no findings have been given for the same.

ii. **Capacity available with M/s Indorama:**

227. In Appendix 4 of the Exporters Questionnaire Response, it can be seen that its installed capacity is *** MT. In the POI, M/s Indorama produced *** MT of Fully Drawn Yarn, thereby operating at a capacity utilization rate of ***%. Therefore, M/s Indorama is operating at an optimum rate of capacity utilization and has very little unutilized capacity left i.e. only ***%. Hence, the chances of M/s Indorama increasing its exports to India are extremely slim, as it is already operating at optimal capacity utilization.

228. Even if we consider that M/s Indorama chooses to export its unutilized capacity to India, which is about *** MT, these exports will still constitute only about 0.77% of the total demand in India. Therefore, even assuming that M/s Indorama operates at 100% capacity utilization and diverts its unutilized capacities to India, it will not have any effect on the domestic industry in India. It may be noted that the volume of imports of the subject goods are miniscule and occupy only 0.01% (0.5% at best) of the total demand in India. This fact establishes that there is no likelihood or recurrence of dumping and injury to the Applicant Domestic Industries due to imports of the subject goods by M/s Indorama.

229. Additionally, in respect of the claim of surplus capacities, it is submitted that mere existence of surplus capacities is not sufficient to establish likelihood of recurrence of injury. **Any proof of existence of surplus capacities is required to be accompanied by the presence of low priced imports, which has not been established in the present instance.** It has been held in the case of *Indian Spinners Association v. Designated Authority* 2004 (170) E.L.T. 144 (Tri. - Del.) that the “existence of surplus production capacity cannot be taken as posing a clearly foreseen and imminent threat of injury.” Furthermore, the Authority itself has come to this conclusion in other investigations, e.g. the sunset review investigation on Aniline from USA and Japan, (Para 73 of its final findings dated 17th January 2012)

230. Thus, it is clear that M/s Indorama has no surplus capacity which will impact the domestic producers in India. The authority has not given any reason how such surplus capacity is likely to be used for exports to India.

E. Price Suppression and Depression

231. In para 143 of the disclosure statement, the authority observed that domestic industry selling price has not grown in tandem with increase in cost. In this regard, we would like to bring attention of the authority towards significantly low volume of imports from subject countries. Such low volume of imports cannot determine the prices in India. Further, the authority should compare the prices of those grades only which are imported into India from subject countries.

F. Dumping Margin Determination

232. During the period of investigation, M/s Indorama has exported various grades to India. Further these grades of two types (even and off). It is well established and known fact that off grade is a lower grade which is likely to fetch lower price. However, while determining the dumping margin for M/s Indorama, the authority has considered even grade and off grade on the same footing and applied weighted average cost for determining the normal value and all the grades have been considered for determination of dumping margin. In this regard, M/s Indorama submits that authority should do like to like comparison and compare the export price of only those grades which are exported to India with the domestic selling price of each grade for determining the dumping margin.

233. The Authority has done the similar PCN to PCN analysis in para 63 of the original investigation wherein only those PCN was taken into account for determination of dumping margin which was exported to India.

G. Injury Margin Determination

234. Similarly for determination of injury margin and non-injurious price, the authority should separately determine injury margin and non-injurious price for each grade with even and off grade as grades are not comparable to each other. Further, these grades cannot be interchangeably used by the customers. Therefore, the authority must determine separately determine injury margin and non-injurious price for each grade separately as done in the original investigation.

H. Request to mention the complete name

235. We request the authority to kindly mention the complete name of M/s Indorama Polyester Industries Public Company Limited in the final findings in line with original findings.

I. Prayer:

236. In light of the averments made and evidence provided in this submission, M/s Indorama humbly requests the Authority to conclude that the requirements for continuation of anti-dumping duty on imports from Thailand are not fulfilled in the present review investigation.

237. It is prayed that the information not provided to M/s Indorama should be made available to M/s Indorama before proceeding with the investigation and an opportunity of being heard by way of fresh public hearing must be granted to M/s Indorama before any decision is taken against the interest of M/s Indoramas.

238. The present submission has been filed based upon the facts disclosed by the authority. If there is any change in facts communicated by the Authority or the dumping margin, then a hearing may be granted to M/s Indorama and an opportunity may be given to M/s Indorama to make comments before making any determination is made.

(ii) **M/s Jiangsu Hengli Chemical Fibre Co., Ltd. (hereinafter, “M/s Jiangsu”)**

239. **Determination of individual dumping margin for the exporter M/s Jiangsu:** In paragraph 100, it has been observed that “the quantity of exports made by the exporter M/s Jiangsu is too meager and cannot be treated as realistic and cannot be adopted for individual dumping margin evaluation”.

240. It is humbly submitted that the information on exports made by the exporter to India are its actual exports as per the records maintained by the exporter and therefore, the individual dumping margin for the exporter cannot be denied on the ground of low quantity as there is no legal or logical basis. Had it been the intention of the law for not making the determination of dumping margin on account of low quantity of exporters, the related provisions could have been included under the Anti-dumping law. There are no such legal provisions in Section 9A of the Customs Tariff Act, 1975 or Rules 10 and 17 of the Anti-dumping Rules for disregarding the relative or low imports of the subject goods for dumping margin determination.

241. There is nothing in the Indian anti-dumping law wherein individual treatment can be denied to an exporter for the determination of its dumping margin on the ground of low export volumes. Section 9A(6) makes it mandatory that in an anti-dumping investigation the dumping margin for an exporter shall be determined on the basis of information provided for actual exports and records maintained by the exporter or producer. The Hon'ble Authority is requested to draw its attention to the following findings wherein the dumping margin was determined in spite of the low volume of imports from the subject countries by following the provisions as mentioned above:

Sl. No.	Case
1	Float Glass from China PR and Indonesia (SSR)
2	POY from China PR (SSR)
3	Bias Tyres from China PR and Thailand (SSR)
4	Pentaerythritol from Japan & Taiwan (SSR)
5	Nylon Filament Yarn from China, Taiwan, Malaysia, Indonesia, Thailand and Korea (SSR)
6	Phenol from Korea (MTR)

242. The Hon'ble Authority may consider the information of actual exports to India by the exporter for determination of its individual dumping margin.

243. There is no likelihood analysis of the information of the exporter. We would request the Hon'ble Authority for undertaking likelihood analysis of M/s Jiangsu in the current investigation. We would also like to submit as under with regard to the likelihood analysis of the exporter:

- a. Since the dumping margin of M/s Jiangsu is de minimis in the current investigation, there is no likelihood of dumping. Even on the basis of their export prices to other countries, there would not be any dumping.
- b. The main thrust of M/s Jiangsu is in the domestic market where it has increased its sales by more than 73% in the calendar year 2013 as compared to the calendar year 2007. The exporter also increased its sales to other countries by over 47% over the aforesaid period.
- c. Since there is a robust growth in the domestic market for the production of M/s Jiangsu, the exporter would continue to focus on the domestic market and on export to other countries where it has been able to increase its sales.

d. There is no necessary sales distribution channel of M/s Jiangsu in India and that it is a hindrance for the exporter to supply its material in the Indian market.

e. The price undercutting and underselling both on the basis of the export prices of the exporter are negative.

244. In view of the above, it is amply clear that there is no case for imposition of the anti-dumping duties on M/s Jiangsu as there is no current dumping margin nor there is any likelihood of dumping by the exporter.

245. In the disclosure statement in para 170, it has been observed that M/s Jiangsu prices to other countries are lower as compared to Indian prices. It is submitted that such observation does not lead to any conclusion with regard to likelihood of dumping. Therefore, the dumping margin analysis on the basis of the export prices to other countries by the exporter would only lead to such a conclusion not otherwise. Therefore, we would request the Hon'ble Authority for the correction of conclusion made in the aforesaid para. Besides, we would also like to submit that there would not be any dumping even on the basis of export prices by M/s Jiangsu to other countries.

246. With regard to standing and change in the composition of the domestic industry in the present case, our submissions have been included in the disclosure statement. However, the same have not been addressed and there are no reasons and analysis in the disclosure statement for the change in the composition of the domestic industry. We would request the Hon'ble authority for addressing our concerns for reasons and analysis change in the composition of the domestic industry in the final findings.

247. Our concerns relating to excessive confidentiality have been included in the disclosure statement. However, the same have not been addressed. We would request the Hon'ble authority for addressing our concerns confidentiality in the final findings.

248. In view of our submissions above and earlier submissions, there is no case for the continuation of the duties against the exporter represented by us in the current investigation.

Examination by the Authority

249. The post-disclosure comments/submissions made by the domestic industry and other interested parties are appropriately examined below to the extent considered relevant by the Authority:

250. The Authority notes the submissions of various interested parties regarding awarding an individual dumping margin to M/s Jiangsu Hengli Chemical Fibre Co. Ltd, China (hereinafter “M/s Jiangsu”).

251. The Authority noting the submissions of the Domestic Industry regarding non- filing of response by M/s Jiangsu Deli, notes that M/s Jiangsu Deli has not exported the PUC to India during the POI and has therefore referenced the exports reported by M/s Jiangsu in the Questionnaire Response and duly correlated with DGCI&S data.

252. The Authority in the disclosure statement had proposed that the quantity of exports made by M/s Jiangsu being meager, it cannot be considered realistic. The Authority in view of various submissions on this aspect, after broadly correlating the export price of M/s Jiangsu with other sources including the world prices as available from the World Trade Atlas, reiterates that the volume of goods exported in the POI is too small to consider the exports price realistic. Further, as has been stated in the disclosure statement that since M/s Jiangsu has exported much larger volumes earlier in 2009 and has surplus unutilized capacity, there is a likelihood of recurrence of dumping and consequential injury. Further, the exports made by M/s Jiangsu to countries other than India could also get diverted to India if ADD is withdrawn as their exports prices to third countries are lower than India.

253. The Authority notes the submissions regarding awarding of an individual dumping margin to M/s Indorama and reiterates that the evaluation of dumping margin for M/s Indorama has been made on the basis of the questionnaire response filed by the exporter and verified on- site at the exporter’s premises. The Authority notes that M/s Indorama has not sold the product under consideration (PUC) to any of its related parties in their domestic market. As regards the submission of the Domestic Industry to refer the judgment of Plain Medium Density Fiber (MDF) Board originating in or exported from China PR, Malaysia, Thailand and Sri Lanka (SSR Investigation - No.15/28/2013-DGAD dated 17th August, 2015), the Authority holds that the facts of the present case are different from that of the MDF case. The Authority holds that both dumping margin and injury margin have been evaluated on a weighted average basis which has been found to be an appropriate methodology in view of narrow price/cost variations of different PCNs of the PUC as verified for the exporter as well as for the Domestic Industry. The Authority holds that since dumping margin and injury margin for M/s Indorama are positive in the POI despite the imposition of

ADD, the dumping and consequential injury is continuing to the domestic industry due to exports of PUC by M/s Indorama. The Authority also notes the submissions made by the exporter on the overall dumping margin evaluated on the basis of DGCI&S data. Since M/s Indorama has exported the goods under the ITC HS 54023300 and not under 54024700, their submissions referencing the DGCI&S data of 54024700 are misplaced. The working of dumping margin for M/s Indorama has already been provided to the exporter on a confidential basis, which clarified the quantum of exports made by the exporter as adopted during the POI.

254. As regards the likelihood of the recurrence of dumping, the Authority notes that the exporter is having a surplus capacity and with their exports being a sizeable quantity of their production to various countries including India, if the ADD is withdrawn, not only the ongoing dumping would intensify but also the surplus capacity of the producer/ exporter could get offloaded in India on account of growing demand of the subject goods in India.

255. The exporter's premise on insignificant surplus quantities is not tenable since the price undercutting and suppression is inevitable in view of the prices of the exporter in the POI, continuance of which may lead to cascading and spiraling effect on price injury to the domestic industry.

256. The Authority notes the request made by M/s Indorama to provide the World Trade Atlas and DGCI&S data to them. The likelihood analysis for M/s Indorama has been carried out on the basis of the data provided by M/s Indorama itself and verified by the Authority with the verification report shared with the exporter. The World Trade Atlas data has been referenced for China and for the exporters from Thailand other than M/s Indorama, who are not represented by M/s Lakshmikumaran Sridharan. With respect to DGCI&S data, the Authority doesn't consider it appropriate to provide the same in view of the Supreme Court ruling in the case of *Union of India vs. M/s Bharat Solvent & Chemical Corporation* (SLP (C) No. 13583/2015) wherein the apex Court had put a stay on the order of the Delhi High Court in case of *Sandisk International Ltd. vs. The Designated Authority* (WP (C) 744/2015).

257. In the instant case, the exports made by M/s Indorama have been correlated by the Authority with DGCI&S data and quantity of exports accepted as a part of the Authority's investigation process. As it is an internal investigation exercise and the Hon'ble Supreme

Court has stayed the Delhi High Court's order, the Authority doesn't consider it appropriate to provide DGCIS data to the producer/ exporter/ any other interested party.

258. The Authority also holds that since the classification of subject goods is only indicative and not binding as also stated in the Initiation Notification dated 24.03.2014, all exports of PUC under different heads have been examined and taken into consideration for various aspects of this Finding.

259. As regards considering the economic parameters of the Domestic Industry during the earlier SSR of the PUC for other subject countries, the Authority holds that it has evaluated the injury parameters for the instant case under consideration during POI and past 3 years in accordance with the stipulated rules/ its consistent practice. The earlier investigation was terminated on the grounds of withdrawal of request by the domestic industry and no evaluation was undertaken on injury parameters which probably could then have been cited as a reference by the exporter.

260. As regards the issue of a separate assessment of injury for China and Thailand, the Authority has undertaken a cumulative assessment for the two subject countries in accordance with Annexure II, Rule 9(2)(iii) of the AD Rules, 1995.

261. The Authority understands that source of DG Systems data and DGCIS data is same. The Authority further notes the transaction to transaction DGCIS data serves the purpose of reconciliation of exports data quite well in the instant case. Therefore, even if the DG Systems data may be more detailed it would serve the identical purpose in the instant case and the Authority therefore holds that a repeat validation in the instant case is redundant and therefore not warranted.

L. Indian Industry's Interest & Other Issues

262. 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 antidumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.

263. It is recognized that the continued imposition of the anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

M. Conclusion And Recommendations

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

(a) The positive dumping and injury margin of M/s Indorama and other producers/exporters from Thailand in POI despite the existence of AD duty justify the continuance of AD duty as there is a likelihood of continuance or recurrence of dumping and injury if the AD duties are withdrawn from Thailand. The exports from M/s Jiangsu and other exporters from China, PR are not significant but the prices have not been considered realistic for determining dumping margin and injury margin. M/s Jiangsu's export price to third countries as per their response/ submission and that of other producers/ exporters from China, PR as per the World Trade Atlas in post POI evidence a positive dumping margin and injury margin. Further, it is also noted that M/s Jiangsu has surplus unutilized capacity, therefore there is a likelihood of recurrence of dumping and consequential injury. The exports made by M/s Jiangsu to countries other than India could also get diverted to India if ADD is withdrawn as their exports prices to third countries are lower than India.

(b) The demand of subject goods has been rising in India. The withdrawal of ADD is likely to encourage exports of subject goods to third countries to get diverted to India as well as the utilization of surplus capacities to restore exports to India.

(c) Dumping and consequent Injury to the domestic industry is likely to continue or reoccur in the event of cessation of anti dumping duty on imports of subject goods from the subject countries.

265. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters and other

interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established likely dumping and injury in the event of cessation of anti-dumping duty, the Authority is of the view that continued imposition of definitive anti-dumping duty is required to offset likely dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on the imports of the subject goods originating in or exported from the subject countries in the form and manner described hereunder.

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

Duty Table

Sl. No	Customs Tariff Heading	Description of goods	Country of Origin	Country of Export	Producer	Exporter	Amou nt	Unit of Measur ement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	*5402	All Fully Drawn or Fully Oriented Yarn/Spin Draw yarn/Flat Yarn of Polyester non- textured and non – POY)	China PR	China PR	Any	Any	547	MT	USD
2.	-do-	-do-	China PR	Any	Any	Any	547	MT	USD

				country other than China PR					
3.	-do-	-do-	Any country other than China PR	China	Any	Any	547	MT	USD
4.	-do-	-do-	China PR	China PR	Jiangsu Hengli Chemical Fibre Co. Ltd	Jiangsu Hengli Chemical Fibre Co. Ltd	256	MT	USD
5.	-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.)	57.78	MT	USD
6.	-do-	-do-	Thailand	Thailand	Any combination other than mentioned at Sr no. 4 above		248.63	MT	USD
7.	-do-	-do-	Thailand	Thailand	Any	Any	248.63	MT	USD
8.	-do-	-do-	Thailand	Any country other than Thailand	Any	Any	248.63	MT	USD
9.	-do-	-do-	Any country other than Thailand	Thailand	Any	Any	248.63	MT	USD

*** The customs classification is indicative only and is not binding on the scope of this investigation.**

267. Landed value of imports for the purpose of this Notification is the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

N. Further Procedure

268. An appeal against this order, 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.

(A K Bhalla)
Designated Authority