

**TO BE PUBLISHED IN PART 1 SECTION-1 OF
THE GAZATTE OF INDIA- EXTRAORDINARY**
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

Dated: 27th January, 2016

FINAL FINDINGS (SUNSET REVIEW)

**Subject: Sunset Review (SSR) investigation of Anti-Dumping duty on imports of
‘Polypropylene originating in or exported from Singapore.**

No. 15/14/2014- DGAD:- Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter 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 referred to as “the Rules”) thereof;

Background of the Case

1. Whereas, having regard to the Customs Tariff Act 1975, as amended from time to time 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 referred to as “the Rules”) 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. 14/05/2009-DGAD dated 24th February, 2009, initiated an anti-dumping investigation concerning import of Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)” (hereinafter referred to as “the subject goods”) from Singapore, Saudi Arabia and Oman.

2. The Preliminary Findings were issued by the Authority, vide Notification No. 14/05/2009-DGAD dated 15th June, 2009 and provisional duty was imposed by the Central Government, vide Notifications No. 82/2009-Customs, dated 30th August, 2009. The Final Findings were issued by the Authority vide Notification No. 14/05/2009-DGAD dated 23rd August, 2010 (hereinafter referred to as “original Findings”). 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. 119/2010-Customs dated 19th November, 2010 effective from the date of the imposition of the provisional anti-dumping duty i.e., 30th August, 2009 on the imports of the of the above goods, originating in or exported from Singapore, Saudi Arabia and Oman.

3. Pursuant to the order of Hon’ble Tribunal (CESTAT) Misc. Oder AD/M/2-4/-2012-CU (DB) dated 14.5.2012, the Hon’ble Authority gave post-decisional hearing to all the interested parties and issued findings dated 9.8.2012 confirming the conclusions of the final findings dated 23.8.2010.

4. Duties against Saudi Arabia and Oman were revoked vide custom notification no.130/2011 dated 30.12.2011 and Notification No. 32/2013-Customs, dated the 2.12.2013 respectively.

5. On the basis of duly substantiated application filed by the domestic industry, Authority vide Notification No. 15/14/2014-DGAD, dated 28th July 2014, initiated a sunset review of the antidumping duty in force on import of subject goods, originating in or exported from Singapore (hereinafter referred to as “the subject country”) to examine whether the expiry of the duty in force is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The validity of the anti-dumping duty on the imports of the subject goods from the subject country was extended by the Central Government up to and inclusive of 29th day of July, 2015, vide Notification No. 38/2014-Customs (ADD) dated 13th August, 2014.

6. On the request of the Authority, the Central Government extended the time for completion of the Investigation up to 27th January, 2016, in terms of Rule 17 of the AD Rules.

7. 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

country.

8. Producer/ exporter's on spot verification of data filed in respect of M/s ExxonMobil Chemical Asia Pacific (hereinafter referred to as "ExxonMobil"), M/s The Polyolefin Company (Singapore) Pte. Ltd. (hereinafter referred to as "TPC") and M/s Itochu Plastics Pte. Ltd. (hereinafter referred to as "Itochu") was carried out during 23rd- 25th November, 2015 in Singapore.

A. Procedure

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

i. The High Commission of the Republic of Singapore in New Delhi was 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 High Commission of the subject country 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 country (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):

Singapore

1. M/s ExxonMobil Chemical Asia Pacific, Singapore
 2. M/s Itochu Plastics Pte. Ltd.
 3. M/s Marubeni Chemical Asia Pacific PTE Ltd., Singapore
 4. M/s Sumitomo Chemical Asia Pte Ltd., Singapore
 5. M/s Sumitomo Corporation Asia Pte Ltd., Singapore
 6. M/s The Polyolefin Company (Singapore) Pte. Ltd.
 7. M/s Toyota Tsusho (Singapore) Pte Ltd., Singapore
10. In response to the initiation notifications following exporters / producers from subject country has responded:
1. M/s Exxon Mobil Chemical Asia Pacific, Singapore

2. M/s Itochu Plastics Pte. Ltd.
3. M/s The Polyolefin Company (Singapore) Pte. Ltd (TPC)

11. The Authority forwarded copies of the public notice to the following known importers/consumers/associations 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) Organization of Plastics Processors Of India, Mumbai
- (ii) All India Plastics Manufacturers Association, Mumbai
- (iii) All India Flat Tape Mfrs. Association, New Delhi
- (iv) P.P. Products Pvt. Ltd., Kolkata
- (v) Tarajyot Polymers Ltd., Kolkata
- (vi) ITC Ltd., Kolkata
- (vii) Paharpur Cooling Towers Ltd., Kolkata
- (viii) Time Packaging Ltd., Mumbai
- (ix) Petro Plast Industries Limited, Chennai
- (x) The Supreme Group, Mumbai
- (xi) Big Bags (India) Private Ltd., Bangalore
- (xii) Paramount Communications Ltd., New Delhi
- (xiii) Packaging India Pvt Ltd., Chennai
- (xiv) Flex Industries Limited, Noida
- (xv) Bishan Saroop Ramkishan Agro, delhi
- (xvi) Blow Packaging (India) Ltd. , Chennai
- (xvii) Chennai Polypack Private Ltd., Chennai
- (xviii) Hydro S & S Industries Ltd., Chennai
- (xix) Exide Industries Ltd., Kolkata
- (xx) Pentadaewha Auto Parts Ltd., Chennai
- (xxi) Veekay Polycoats Ltd., New Delhi
- (xxii) Machino Plastics Ltd., Gurgaon
- (xxiii) Dow Chemical International Ltd., Mumbai
- (xxiv) Hitech Plast Ltd., Mumbai
- (xxv) General Commodities Pvt. Ltd., Bangalore
- (xxvi) Balmer Lawrie-Van Leer Ltd., Mumbai

(xxvii) Baxter India Pvt. Ltd., Gurgaon

12. No response to the prescribed questionnaire has been submitted by any of the importers/users/other interested parties. Moreover, there was no participation from any of the above importers or users.

13. Transaction-wise imports data procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) has also been relied upon for the analysis in present SSR investigation. Further, the Authority has also examined the Post-POI import data DGCI&S, DG Systems, World Trade Atlas and also that of the producers/exporters from the subject country to analyze the trends for the purpose of likelihood assessment.

14. 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.

15. Information provided by the interested parties on confidential basis was examined with regard to reasonableness of the claim of confidentiality. On being satisfied, 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.

16. Non-confidential versions of the evidence presented by interested parties were made available in the form of a public file kept open for inspection by the interested parties as per Rule 6(7).

17. The Authority has examined the information furnished by the domestic producer 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 to the domestic industry.

18. 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

20.02.2015. The interested parties were requested to file written submissions of their views expressed orally. However, after the oral hearing, because of the sudden administrative necessity, a new officer was appointed as the Designated Authority. This development necessitated that a new 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 7-1-2011. The new 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.

19. The submissions made by the interested parties during the course of the investigations have been addressed in this finding to the extent they are relevant and backed by evidence.

20. Verification of the information and data submitted by the participating domestic producer was carried out to the extent deemed necessary.

21. 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.

22. In accordance with Rule 16 of the 1995 Rules, *supra*, the essential facts under consideration, which form the basis for DA's decision, were disclosed to the known interested parties on 13th January, 2016. The comments received on the same, to the extent considered relevant by the Authority, have been taken into consideration in this Final Findings.

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

24. For the purpose of this investigation, the period of investigation was taken as from 1st April, 2013 to 31st March, 2014 (12 months) and for the purpose of injury investigation data for the period 2010-11, 2011-12, 2012-13 and POI has been considered.

25. The exchange rate for the POI has been taken by the Authority as Rs.60.86 = 1

US\$ wherever the actual rate of conversion was not available.

B. Scope of Product under Consideration (“PUC”) and Like Article

• **Submissions made by the Domestic Industry**

26. The PUC in the present application, as defined in the original investigation is “Polypropylene (i.e., homo-polymers of propylene and copolymers of propylene and ethylene) excluding Expanded Polypropylene Beads (EPP)” conforming to the tariff description of Customs Heading 3902 (hereinafter referred to as “subject goods”). The subject goods are used as woven sacks for cement, food-grains, sugar, fertilizer, bags for fruits & vegetables, TQ & BOPP films, containers etc. The subject goods are classified under the category “Plastics and articles thereof” in Chapter 39 of the Customs Tariff Act, 1975 and further under 39021000 and 39023000 as per Customs Classification. However, Customs classification is indicative only and is in no way binding on the scope of the present investigation.

27. Since the current investigation is a sunset review, the scope of the product under consideration in the present investigation remains the same as in the original investigation as per the consistent practice of the Authority.

28. The domestic industry has, however through letter dated 13.10.2015, submitted that the propylene based elastomers like Vistamax is to be excluded from the scope of PUC on the ground that elastomers like Vistamax have high ethylene content in the range of 15-25% which is very high as compared to the co- polymer of propylene and ethylene produced by the domestic industry. The domestic industry, at the time of initial investigations, had attempted to produce co- polymers with high ethylene content but could not do so on sustainable basis because of technology constraints. Thereafter at the time of the initiation of the present SSR, the domestic industry had removed such grades from the scope of input data and preview of investigation.

• **Submissions made by the Producers/Exporters/Importers and Associations**

29. No submission has been made by the producers/exporters with regard to the scope of the PUC and like article during the public hearing.

• **Examination by the Authority**

30. The PUC in the present investigation is considered the same as that defined in

the original investigation, i.e. Polypropylene (i.e., homo-polymers of propylene and co-polymers of propylene and ethylene) excluding Expanded Polypropylene Beads (EPP) and ter- polymer as stated in paras 33 and 36 of the original Final Findings no. 14/5/2009 dated 23.08.2010. The subject goods are classified under Custom Headings 39021000 and 39023000. However, the Customs classification is indicative only and is in no way binding on the scope of the present investigation.

31. The Authority notes that Rule 2(d) with regard to like article provides as under: - *"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.*

32. The subject goods, which are being imported into India, 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 dumped imports and the domestically produced subject goods. The two are technically and commercially substitutable with each other. As a result, the Authority, reiterating its findings in paras 38 and 39 of the original Final Findings, holds that the subject goods produced by the domestic industry are like article to those imported from Singapore.

33. The Authority also notes that in the original Findings though submissions regarding exclusion of various grades were made, only a few exclusions were accepted as stated in para 33 and 36 of the Findings, keeping in view the cost, price and interchangeability of the subject goods produced by the domestic industry and the PUC exported from the subject country. The Authority in the present SSR also does not alter the PUC and its scope.

C. Domestic Industry and Standing

34. The current application for the sunset review has been filed by M/s Reliance Industries Limited which commands 74% share in Indian production of the subject goods during the Period of investigation. As per the information available with the Authority, there are three other known producers of the product under consideration in the country i.e., M/s Haldia Petrochemicals Ltd, M/s Indian Oil Corporation Ltd and HPCL-Mittal Energy Limited. There is no opposition to the domestic industry's application from any other producer in the country in the present investigation. Therefore, the petitioners

command the standing to file the application and also constitute the domestic industry within the meaning of the term as per the AD Rules for the purpose of injury examination. None of the producers/exporters/other interested parties has made any submissions with regard to scope and standing of the domestic industry.

D. Confidentiality

• **Submission by the producers/ exporters from Singapore:**

35. Domestic Industry has claimed excess confidentiality and also refrained from providing any meaningful summary of information provided by it on confidential basis. In addition, Petitioner has failed to provide a statement of reasons why information provided on confidential basis is not susceptible to summarization. This has restrained the Respondent from making complete analysis of their claims in the petition.

36. Domestic Industry has kept confidential the information relating to grades manufactured by them. Even technical, functional and grade specific specification information has been kept confidential.

37. The Petitioner has claimed confidentiality on the costing information at Section VI of the Petition. Even though the claim of the Petitioner that the disclosure of information may give a significant advantage to the competitors may be correct and not be disputed, yet in such cases, the Petitioner is required to furnish non-confidential summary of such costing information. The petitioner is not at liberty to respond to each question with respect to costing with same brush. Wherever it is possible to provide an indexed version of a submission, the petitioner is bound to provide the same.

38. Petitioner has also failed to provide Production Process, Purchase Policy, Sales Policy, Inventory and Quality Control Procedure etc.

• **Views of the Domestic Industry**

39. The domestic industry has submitted that they have 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. Hence, the claim of certain interested parties alleging excessive

confidentiality is without any substance.

40. The exporters by putting “[]” or “****” at various places in their response have kept the vital information confidential without providing any reasons. The exporters have also not given any summary of the information on which confidentiality has been claimed due to which the Domestic Industry is not in a position to offer its comments and defend its interests.

41. With regard to the information in the various Appendices, it is submitted that the volume related figures in all the Appendices have been kept as confidential whereas the domestic industry has disclosed all volume related information in the non-confidential version.

42. The allocation of costs among different cost centers has been kept confidential by the exporters. Further, whether the inputs consumed for production are purchased or captively produced by the company itself, has also not been disclosed in the non-confidential version.

43. The exporter has not provided their complete sales and distribution channel. In this context, domestic industry expresses its apprehension that this information was specifically withheld to hide the complete supply chain. It is submitted by the Domestic Industry that had the complete supply chain been placed in the non-confidential version, it would have been able to make effective submissions and provide additional information to the Authority which could have led to the rejection of their entire response.

- **Examination by the Designated Authority**

44. Rule 7 of the Anti-dumping Rules provides as follows:-

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

(2) The designated authority may require the parties providing information on confidential

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

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

45. Information provided by various interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. The Authority as per its consistent practice, has accepted the confidentiality claims, wherever warranted, of the domestic industry and opposing interested parties and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

E. Other issues raised by the interested parties

• **Submissions of Exporters/Importers and other interested parties**

a. Principle of Non-discrimination and Termination of anti-dumping measures:

46. The interested parties submitted that the most favoured nation (MFN) treatment obligation in terms of Article I:1 of the GATT 1994, which imposes that any advantage granted to a product originating in a WTO Member be granted equally to like products originating in any other WTO members, applies to the imposition of anti-dumping measures by virtue of Article 9.2 of the AD agreement and Rule 19 of the Tariff rules, and requires that anti-dumping measures be imposed on a non- discriminatory basis on all sources of import found to be dumped and causing injury.

47. That even the Central Government violated Article 9.2 of the AD Agreement and Rule 19 of the Tariff Rules, and failed to comply with its MFN obligations under Article I:1 of the GATT 1994 by maintaining and extending the current anti-dumping

measures only on the subject goods from Singapore although the subject goods from Oman and Saudi Arabia were also found to be dumped and causing injury. It is therefore, requested by the interested parties that the continued imposition of anti-dumping measures on the subject goods from Singapore must be terminated.

b. Other Issues:

48. That the sunset review is required to be terminated because review proceedings cannot be carried on beyond one year period. Section 9A(5) read with Rule 23(2) empowers the Central Government to extend the levy of the anti-dumping duty for a period of one year only and the sunset review is to be concluded before the expiry of that period.

49. That the Domestic Industry has 3 manufacturing units for the subject goods, viz. Jamnagar (DTA), Jamnagar (SEZ) and Hazira. However, in the petition this fact has not been disclosed. Even the exporters shown ignorance about inclusion of SEZ unit while considering standing and other injury parameters.

50. That the Petition did not provide sufficient evidence to justify the initiation of the investigation. It is also submitted by the exporters that most of the injury indicators suggested that the Domestic industry is not suffering material injury.

51. That the current investigations should be terminated against the producers exporters who had awarded zero duty in the original investigation. Since there was no duty against those producers / exporters question of their extension does not arise.

52. That the extension of the duties will be detrimental to interest of Indian plastics goods manufacturers. Even, the Indian user industry would be severely affected by the imposition of anti-dumping measures. According to the exporter Itochu, the downstream industry is much more important in terms of value added and number of jobs.

- **Submissions made by the Domestic Industry**

53. That the responding producers from Singapore has not provided their complete supply chain as their linked exporters have not participated in the current sunset review investigation. It is further submitted by the domestic industry that in the sunset review investigation the Authority is required to conduct the likelihood analysis of dumping and

injury and therefore, it is very important that the exporters/producers provide complete details of their all related parties, subsidiaries and linked exporters/producers related or not related. Exporters had intentionally withheld the information from the Authority only with malafide intention to impede the investigation.

54. That the exporter questionnaire response was filed by M/s Exxon Mobil Chemical Asia Limited who is an exporting (trading) arm of M/s Exxon Mobil Asia Pacific Pte. Ltd., (producer of the subject goods) for which no exporter questionnaire response has been filed by M/s Exxon Mobil Asia Pacific Pte. Ltd., who is the producer of the subject goods. In this context, Domestic Industry has referred to resent conclusions of the DGAD, wherein, the exporter questionnaire response has been rejected in the absence of complete value chain of production and sale of the subject goods claimed to have been exported to India during the POI and requested that the same approach should be taken against M/S Exxon Mobil Chemical Asia Pacific, Singapore for not providing complete questionnaire response of the producer of the subject goods.

55. ExxonMobil also has also failed to file the complete exporter questionnaire response of related companies from whom they are purchasing the raw material and without such crucial information the Authority will not be in the situation determine the real cost of production as it includes cost of raw material also.

56. The exporter TPC has also failed to file the exporter questionnaire response of their related parties involved in the production and sales of the subject goods directly or indirectly in the Singapore but the exporter had very conveniently skipped their responsibility of disclosing full facts to the Hon'ble Authority and fulfilling their obligation to participate in the investigation. TPC also not filed the questionnaire response M/s Sumitomo Chemicals Company, despite the fact that they owns majority of the shares of the TPC. In view of this, the Authority should reject the exporter questionnaire response of TPC in their entirety.

57. The Authority can review all the aspects of the original investigation including scope of the domestic industry, dumping (including dumping margin), existence of injury to the domestic industry, injury margin etc. Therefore, investigation against exporter having nil duty does not stand terminated automatically. On the contrary, the Authority will redetermine the dumping margins and injury margins for all the producers / exporters irrespective of the fact that they got "Nil" duty in the previous investigations. It follows

that in the event any party who had “Nil” duty in the original investigations and who fails to cooperate in the sunset review investigations, would be liable to pay the residual rate of duty.

58. That if the normal value of producers / exporters is not accepted, their export price would also be rejected and they would not be entitled to any individual dumping margin. This is a significant departure from the approach taken by the Authority in previous cases.

59. Domestic Industry requested to re-determine single dumping margin and single specific duty. To support their request, the Domestic Industry referred to the words used in the Annexure I are “exporter or producer” and nowhere in the entire Indian Anti-dumping Rules, the words “exporter and producer” have been used. The expression in the WTO Agreement on Anti-dumping is also “exporter or producer” and not “exporter and producer”. This is beyond any doubt that the dumping margin is to be determined for an individual entity but not for a combination or group.

60. The exporters are giving post-sales discounts and/or rebates. However, the same information is not reflected in the non-confidential version of the response filed by them. Therefore, the Authority should seek a specific declaration and complete details about the post-sales discounts and / or rebates from each of the exporters. A copy of the contracts with the major Indian customers should be called for to ascertain the amount and rate of post sales or year-end rebates to the customers.

61. The Authority should reject the written submissions of ExxonMobil, Itochu and TPC as they have failed to serve the non-confidential version of the written submissions to the interested parties within the prescribed time limits in terms of Trade Notice No. 01/2012 dated January 9, 2012. In this context, the Authority was requested to refer to its letter F. No. 14/7/2012-DGAD dated 10.4.2013 issued in the case of ARW investigations.

62. The exporters had failed to understand or appreciate the relevant provisions relating to non-discrimination. It is apprehended that exclusion of Saudi Arabia and Oman leads to violation of Rule 19 of the Indian Anti-dumping Rules or Article 9.2 of the Anti-dumping Agreement. It is also submitted by the Domestic Industry that the issue was already settled by the Appellate Body that the concept of discrimination under Article (Rule 19) applies only to exporters from within the same country (i.e., intra-country) and

not between different countries (inter-country). To support the said claim, the decision of WTO Appellate Body in the EC- Fasteners case was cited.

63. The mere fact that some of the countries, which were a part of the subject countries in the original investigations, are not a part of the sunset review, is also borne out from the consistent practice of the DGAD. In this context, attention was drawn to the case of Flexible Slabstock Polyol from EU, Japan, Singapore and USA, wherein the Authority initiated the second sunset review investigation only against Japan and USA as the duties against EU and Singapore were dropped. Similarly, in the case of Fully Drawn Yarn Authority did not initiate sunset review investigation against Vietnam despite the fact that it was a part of the subject countries in the original investigation.

64. The Authority is legally bound by the decision of the Hon'ble High Court of Delhi in the matter of Indian Metal and Ferro Alloys Ltd V/s Designated Authority, Writ Petition (Civil) No. 16893 of 2006. Since Domestic Industry had filed a duly substantiated application in terms of Section 9A(5) within the prescribed limits in terms of Trade Notice No. 2/2011 dated 6.6.2011 to fulfill its obligation in terms of Anti-Dumping Rules also the initiation is valid and Authority must reject the issues raised by the interested parties, only with the purpose to obfuscate the investigation.

65. The Article I of GATT (MFN Status) holds no restriction on the Authority to impose or to extend the anti-dumping duties against specific countries. Article 1 of GATT has to be read along with the exceptions created in the very same Agreement. Article VI of GATT 1994 specifically deals with the situation where a member is alleged or found to be causing or threatening to cause injury to a domestic industry, or materially retards the establishment of a domestic industry. The said Article VI read with the Agreement on Anti-dumping permit the member countries to impose anti-dumping and countervailing duties against specific members without affecting the rights and obligations under Article I of the same Agreement.

66. The GATT 1994 sets forth a number of basic principles applicable in trade between Members of the WTO, including the "most favoured nation" principle. Members of the WTO also agreed to the establishment of schedules of bound tariff rates. Article VI of GATT 1994, explicitly authorizes the imposition of a specific anti-dumping duty on imports from a particular source, in excess of bound rates, in cases where dumping causes or threatens injury to a domestic industry, or materially retards the establishment of a

domestic industry. The Anti-Dumping Agreement provides further elaboration on the basic principles set forth in Article VI itself, to govern the investigation, determination, and application, of anti-dumping duties.

67. The Domestic Industry has provided complete information in relation to all its plants including Jamnagar SEZ plant. Therefore, the allegation of the interested parties has no basis and needs to be rejected.

68. On the issue of the timeliness of the investigation process and the importance of adherence to the prescribed procedure, the cases of *United States- Sunset Reviews of Anti-Dumping Measures on oil country tubular goods from Argentina (WT/DS268/AB/R 29 November 2004)* and *Mahavir Mirror Industries vs. Designated Authority [2003 (155) E.L.T. 226 (Mad.)]* were cited.

69. The domestic industry had filed anti- dumping petition on 06.08.2014 against imports of polypropylene from Korea, Kuwait, Saudi Arabia and United Arab Emirates which was withdrawn as considerable time was lapsed and application needed updation. The domestic industry is analyzing the situation of imports from other countries also and also in the process of updating the information for fresh filing.

70. None of the respondents have discharged their obligation by providing proper and meaningful information in sunset review investigation part II questionnaire.

71. The producers/ exporters of subject goods have more than 140% of the production at their disposal. Therefore, in the event duties are withdrawn against Singapore, this excess production will definitely be routed to India given the freight and other advantages they have over the other suppliers.

- **Examination by the Authority**

72. The Authority notes that no representation/challenge was made by the producers/ exporters from Singapore to the withdrawal of anti- dumping duty (ADD) on the imports of the subject goods from Oman or Saudi Arabia before any judicial body when the aforesaid withdrawal was notified. Further, the fact that some of the countries, which were a part of the subject countries in the original investigation, are not always a part of the sunset review, is borne out from the consistent practice followed by the DGAD. In the recent investigations similar approach has been undertaken in the matter concerning

Flexible Slabstock Polyol from EU, Japan, Singapore and USA, and also Fully Drawn Yarn (FDY). The Authority did not initiate sunset review investigation against Vietnam in the FDY case despite the fact that it was a part of the subject countries in the original investigation. In view of Rule 23 of the AD Rules which states that “*the designated authority shall from time to time review the need for the continued imposition of the AD duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, recommend to the Central Government for its withdrawal.*”, the Authority has accordingly undertaken the review of the existing AD duty against the imports from Singapore only which was in force at the time of initiating the present review.

73. Thus initiating a sunset review investigation against some of the subject countries as compared to those in the original investigation is an established and consistent practice of the Designated Authority. The Authority therefore holds that the SSR undertaken in respect of Singapore is as per the consistent practice of the DGAD.

74. In relation to the argument of inclusion of certain plants of the Domestic Industry, the Authority notes that Domestic Industry has provided information in relation to all its five plants including Jamnagar SEZ plant. The records provided by the Domestic Industry were verified and used in analysis. The exporters also had the information about the same as soon as the issue was raised.

75. The Authority reiterates its stand that the Authority can review all the aspects of the original investigation including scope of the domestic industry, dumping (including dumping margin), existence of injury to the domestic industry, injury margin etc. In addition to this, the Authority undertakes an examination of whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The Authority evaluates the dumping margin and injury margin especially in the POI of the SSR which forms the basis of the recommendation of the quantum of AD duty.

76. M/s ExxonMobil Chemical Asia Pacific (EMCAP) has filed the Exporter’s Questionnaire Response Part I & II on SSR as they were subjected to the levy of AD duty as a producer cum exporter in the original final findings dated 23.08.2010. EMCAP is a division & a trading arm exporting the goods produced in the Singapore Chemical Plant of

M/s ExxonMobil Asia Pacific Pte. Ltd. (EMAPPL) and registered as a sole- proprietorship under the Singapore Business Registration Act (Cap. 32). EMCAP is one of the six trading divisions of EMAPPL. The GST Number of EMAPPL and its divisions, including EMCAP is also the same. The export invoices as well mention that EMCAP is only a division of EMAPPL. None of the documents shown, including export invoices show that EMCAP had 'PVT Ltd.' in its name. In the original finding also EMCAP had filed response on behalf of EMAPPL, stating that it was not a separate legal entity from EMAPPL, even though it was a registered proprietorship concern. In view of the above, the response filed by EMCAP, has been considered and the revised appendices were verified on site during producer/ exporter's verification.

77. As regards TPC, the Domestic Industry has pointed out that TPC has a host of related parties within Singapore who are engaged in activities related to the Product under Consideration. The Domestic Industry has supplied information indicating the relationship between TPC and M/s Sumitomo Chemicals Company, Japan. It was also contended that M/s Sumitomo Chemicals Company, Japan, has also not filed the questionnaire response despite the fact that they own majority of the shares of the TPC.

However, during the on- spot verification, it was noted that M/s Sumitomo Chemical Company holds shares in M/s TPC. Exports of the subject goods were made by M/s TPC to India to M/s Sumitomo Corporation India Pvt. Ltd. and not to M/s Sumitomo Chemical Company. M/s TPC exported the subject goods to India only through M/s Itochu and M/s Marubeni. The data on exports through M/s Marubeni has also been provided by M/s TPC. Further M/s Sumitomo Corporation India Private Ltd. is a separate entity and is not related to M/s TPC directly or indirectly. Therefore the only export sales which have been examined for arms length criterion are those made to M/s Inabata India Pvt. Ltd.

78. The Authority notes that in the original investigation, M/s TPC had participated as a producer of the subject goods along with its five exporters. The authority had evaluated five different dumping margins for the said producer- exporter combinations. In the SSR, as only one exporter, i.e. M/s Itochu has cooperated. Therefore, the Authority has evaluated only one combination of the cooperative producer- exporter for individual dumping margin. The producer wise duty could therefore be considered only for one exporter and the rest four exporters and others, if any, would fall in residual category. Neither it will be appropriate to award the same dumping margin to such non- cooperative

exporters nor would it be appropriate to combine cooperative and non-cooperative category of exporters into a single category to evaluate a single producer based dumping margin, especially when in the earlier Final Findings dated 23.08.2010, individual determinations with regard to exporting channels were taken separately.

79. The Authority therefore holds that the present investigation being an SSR and since the producer-exporter combinations who have cooperated and were separately evaluated in the original investigations, would need to be assessed separately on their data in SSR as well.

80. In relation to the submissions of the Domestic Industry regarding post sales discounts and rebates the Authority notes that the data submitted by the producers and exporters does not indicate such post sales discounts and rebates and since no substantive evidence has been provided by the domestic industry, the Authority has considered the admissible adjustments on the export price as per its consistent practice after verification of exporters data on site.

81. All other issues raised by the parties to the investigation have been dealt in the respective sections in this statement to the extent they are relevant.

DETERMINATION OF NORMAL VALUES, EXPORT PRICES AND DUMPING MARGINS FOR SINGAPORE

82. Normal Value has been defined under Section 9A(1)(c) of the Customs Tariff Act, 1975 as follows:

“(c) “normal value”, in relation to an article, means-

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting

country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under subsection(6):

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

83. Section 9A (5) of the 1975 Act, supra provides that:-

“The anti dumping duty imposed under this Section 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;

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.”

84. Accordingly, a sunset review investigation is to examine:

- i. Whether the dumping continues after imposition of the antidumping duty and if so, whether it is likely to continue;
- ii. In cases where dumping did not continue, whether the dumping would recur in the event of revocation of anti dumping duties;
- iii. Whether the domestic industry continued to suffer material injury and if so, whether injury to the domestic industry is likely to continue if the duties are removed;
- iv. In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

85. Thus, continuation of dumping and injury has been examined first and thereafter it has been examined that whether dumping and injury is likely to continue or recur if the anti dumping duty is revoked.

F. Normal Value

(i) *The Polyolefin Company (Singapore) Pte Ltd (“TPC”) (producer) through M/s Itochu Plastics Pte. Ltd. (“Itochu” (exporter)):*

86. M/s TPC has filed the Exporter’s Questionnaire Response Part I & Part II on SSR. The company has exported the subject goods to India during the POI through the following exporting companies:

- a. M/s Itochu Plastics Pte. Ltd., Singapore
- b. M/s Marubeni Chemical Asia Pacific PTE Ltd., Singapore

87. While M/s Itochu has filed the exporter’s questionnaire response, M/s Marubeni Chemical has not filed the same. Therefore, individual dumping margin has not been determined for the combination of the producer with the aforesaid non- responding exporter.

88. M/s TPC has exported homo- polymers and co-polymers of propylene to India through M/s Itochu. The normal value of co- polymers has been determined on the basis of domestic sales in Singapore after applying the ordinary course of trade test (80:20 test) and the significant domestic sales test. The total quantity of co-polymers sold in the domestic market in POI was *** MT out of which *** MT (***) % were sold in the ordinary course of trade. Adjustments of bank charges, insurance, storage, handling and others have been allowed to an extent of *** \$/MT, *** \$/MT, *** \$/MT, *** \$/MT and *** \$/MT respectively. The normal value of co- polymers of propylene is thus adopted as *** \$/MT.

89. The normal value of homo- polymers of propylene for M/s TPC is referenced on the basis of the cost of production after adding appropriate profit as per the AD Rules and in accordance with the Designated Authority’s (“DA”) consistent practice as there are no domestic sales of homo- polymers in Singapore. The normal value of homo-polymers of propylene is considered as *** \$/MT.

90. The weighted average Normal Value of the two grades i.e. copolymer and homo-polymer is considered as *** \$/MT.

(ii) *ExxonMobil Chemical Asia Pacific (“ExxonMobil”)*:

91. M/s ExxonMobil has filed the Exporter’s Questionnaire Response Part I & II on SSR as a producer- cum- exporter of the subject goods in Singapore. The producer-cum-exporter is a division & a trading arm of M/s Exxon Mobil Asia Pacific Pte. Ltd. and registered as a sole- proprietorship under the Singapore Business Registration Act (Cap. 32).

92. It is noted that M/s ExxonMobil directly exported the PUC to India during the POI. Its domestic sales of the PUC in Singapore were not significant under the meaning of the AD Rules during the POI. Therefore the normal value for M/s ExxonMobil is determined on the basis of the weighted average cost of production of the subject goods along with reasonable profits as per the AD Rules and as per the consistent practice of the DGAD. Accordingly, the weighted average normal value of all grades of the subject goods for the producer-cum-exporter is considered as *** \$/MT.

b. *Non- cooperative producers/exporters:*

93. The highest normal value of the subject goods determined from amongst the cooperative producers/ exporters, i.e. *** \$/MT is considered as the normal value for non-cooperative producers/ exporters from Singapore.

G. Export Price

(i) *The Polyolefin Company (Singapore) Pte Ltd (“TPC”) (producer) through M/s Itochu Plastics Pte. Ltd. (“Itochu”) (exporter):*

94. Both M/s TPC and M/s Itochu have submitted data of exports to India. The data of M/s Itochu correlated with that of M/s TPC is adopted for the determination of the export price after adjustments. M/s Itochu exported *** MT and *** MT co- polymers and homo- polymers respectively to India during POI. The weighted average CIF price of the two grades i.e. co- polymers and homo- polymers as per records and as verified on spot is *** \$/MT. Adjustments of Commission, Inland Freight, Insurance, Storage, Handling, Others, Overseas Freight, Overseas Insurance and Shipping Charges are considered to an extent of *** US\$/MT, *** US\$/MT and *** US\$/MT respectively. The said set of adjustments amounts to a total of *** US\$/MT. The weighted average ex- factory export price of the PUC is

considered as *** US\$/MT. The weighted average dumping margin is thus determined as *** US\$/MT.

(ii) *ExxonMobil Chemical Asia Pacific (“ExxonMobil”)*:

95. M/s ExxonMobil has provided details of its exports to India during POI. The adjustments considered are weighted average commission (*** \$/MT), inland freight (*** \$/MT), bank charges (*** \$/MT), ocean freight (*** \$/MT), overseas insurance (*** \$/MT) and credit cost (*** US\$/MT), coming to a total of *** \$/MT. The **ex- factory Export price** and **dumping margin** are thus determined as *** **US\$/MT** and *** **US\$/MT** respectively.

(iii) *Non- cooperative producers/exporters:*

96. For the determination of the ex- factory export price for non- cooperative/ residual producers/exporters, the lowest export price transaction of the cooperative exporters, has been considered with the adjustments as considered for the cooperative exporters. The **ex- factory export price and dumping margin** for non- cooperative exporters are thus determined as ***US \$/MT and *** US\$/MT respectively.

H. Dumping Margins

97. Comparing the Normal Value and the ex- factory Export price as determined above, the Dumping Margin for the producers/exporters from Singapore are as follows:

Sr. No.	Producer/ Exporter	Dumping Margin (USD/MT)	Dumping Margin %	Dumping Margin % Range
1.	M/s TPC through M/s Itochu Plastics Pte. Ltd.	***	***	5-15
2.	M/s ExxonMobil Chemical Asia Pacific	***	***	10-20
3.	Non cooperative producers/exporters	***	***	20-30

ASSESSMENT OF INJURY, CAUSAL LINK AND LIKELIHOOD OF CONTINUATION OF INJURY

98. In a sunset review investigation, with regard to injury examination, the Authority is required to examine:

- Whether the domestic industry continues to suffer injury and if so, whether injury to the domestic industry is likely to continue;
- In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

99. The domestic industry has *inter alia* submitted that there is continued dumping of the product under consideration from the subject country though the volume of dumped imports has remained low as a result of current anti-dumping duties and dumping is likely to intensify should the current anti-dumping duty be revoked.

100. Therefore, the Authority has first examined whether the domestic industry continues to suffer material injury on account of dumped imports from the subject country before proceeding to examine the likelihood of continuation or recurrence of injury to the domestic industry in the event of revocation of the duties from the subject country. Examination of material injury to the domestic industry is in accordance with the Article 3 of the AD Agreement and Annexure II to the AD Rules, 1995.

I. Current Injury to the Domestic Industry and Causal Link

101. 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.

102. It is noted that the application for continuation of anti-dumping duty has been filed by M/s Reliance Industries Limited, who has a major proportion of total production of the subject goods in India. In terms of Rule 2(b) of the Rules, the petitioner has been treated as the domestic industry for the purpose of this investigation. Therefore, for the purpose of this determination the cost and injury information of the petitioner, constituting the domestic industry as defined in Rule 2(b), has been examined.

• **Submission by the Exporters and Importers (Interested Parties):**

103. The interested parties made the following submissions:

- i. That there is no injury on account of the subject imports from Singapore as the volume is very low compared to other countries. Further, the interested parties had submitted that imports from Singapore constitute a very low percentage of the total demand in India.
- ii. That the injury parameters do not show any injury to the domestic industry. Moreover, from the very limited and confidential information provided in the application, it can be clearly inferred that there is no causal link between the imports from subject country and performance of the domestic industry.
- iii. That the subject goods are not dumped and, therefore, there is no justification for continued imposition of anti-dumping duties on producers and exporters from Singapore.
- iv. That the domestic industry has determined non-injurious price and resultant price underselling based on some confidential consideration, without even disclosing the components included. The interested parties further requested the Authority not to consider 22% return on capital employed.
- v. That the import prices of Singapore are more than that of other countries during the period of investigation. Therefore, no injury to the Domestic Industry can be attributed to imports from Singapore in any manner whatsoever.
- vi. That the landed value of imports from Singapore is higher than the selling price of the Domestic Industry in India. Further, as admitted by the domestic industry, there is negative price suppression. It is also submitted that even if the duties are continued on imports from Singapore, the selling price of the Domestic Industry will still be constrained by lower priced imports coming from other sources and the competition from the other domestic producers.

- vii. That any injury suffered by the Domestic Industry cannot be attributed to the subject goods from Singapore and must be attributed to other known factors like internal competition from other domestic producers and low imports from other countries.
- viii. That the causal link established in the original investigation concerned imports of subject goods from Oman, Saudi Arabia, and Singapore taken cumulatively. No specific assessment was made regarding the potential causal link between the subject goods from Singapore and the injury suffered by the Domestic Industry. Since the present review is only against the subject goods from Singapore, the causal link established in the original investigation is no longer valid and thus fresh determination of the causal link from Singapore is required.
- ix. The interested parties have argued that this injury to the domestic industry is on account of other factors and has nothing to do with the imports from Singapore as the volume of imports are very low.

- **Submissions by the Domestic Industry:**

104. The submissions made by the domestic industry with respect to injury and causal link are as follows:
- i. The importance of current imports in the India recedes into background while reaching the conclusion of likelihood. Accordingly, low or negligible imports of the subject goods during POI in the current investigation would be of no consequence. In support of their claim, the Domestic Industry has relied on the consistent practice of the DGAD and of other Authorities wherein little or no weight is given to the current level of imports in the sunset review investigations.
- ii. The domestic industry has provided all the information as per the requirements of the law as and when required by the Authority. It is only after getting satisfied with all the evidence that the Authority has initiated the sunset review investigation. The domestic industry reiterates that the petition fulfills all the requirements of law in terms of Section 9A(5) read with Rule 23. As all the information submitted is duly verified and is as per the prescribed format of the DGAD, the submission of the interested parties is without any merit.
- iii. The domestic industry had filed the anti-dumping petition against import of Polypropylene from some of the countries, which was withdrawn as considerable time had

lapsed and application needed updating. The Domestic industry is analyzing the situation of imports from other countries also and is also in the process of updating the information for fresh filing.

- iv. The exporters from the subject country have not denied the allegation made by the domestic industry that the exporters continue to dump the subject goods. It is a settled principle that continued dumping is a very good indicator of the fact that there is every likelihood of continued dumping in the event duties are not extended.
- v. That no new further information / evidence should be accepted from the interested parties. Even during the verification visit, they should be allowed to give only the back-up or supporting information. In either case, the same should be supplied to the Domestic Industry for its comments before accepting the same.
- vi. That due to presence of continuous dumped and injurious imports from Singapore, the prices of subject goods domestic is significantly suppressed and below the total cost. Moreover, Domestic Industry has submitted that they had never admitted negative price suppression and depression from Singapore.
- vii. That the exporters from the subject country had not provided any volume related information and therefore, domestic industry is handicapped to make any submissions or to assist the Authority in relation to their claims and submissions.
- viii. That the domestic industry has followed the guidelines issued and followed by the Authority while constructing and providing the non-injurious price in the application for the purpose of the initiation of the sunset review investigation. It may also be important to note that the Authority has examined the information supplied by the Domestic Industry thoroughly even at the time of initiation. Therefore, the arguments of the interested parties that the domestic industry has not followed principles followed laid down in Annexure 3 are wrong and contrary to the facts on record.
- ix. That the injury margin, dumping margin and price underselling are positive which is also a clear indicator that the likelihood of continuation of dumped and injurious imports of the subject goods is imminent in the event the Authority reaches a conclusion to

withdraw the Anti-dumping duty.

- x. That the responses of exporters/ producers from Singapore cannot be accepted as they have failed to provide complete information about the linked producer or their complete value chains. Therefore, their responses cannot be said as complete and needs to be rejected.
- xi. That the argument regarding absence of causal link with the imports from Singapore, the domestic industry submits that it is settled jurisprudence that “causal link” is not a mandatory or necessary factor in any sunset review investigations in terms of both section 9A(5) of Indian Anti-dumping Rules as well as under Article 11.3 of WTO.
- xii. That no material, data, information or evidence has been placed on record by the Opposing Parties to even remotely suggest that the causal nexus between dumped imports and injury is broken. In view of the aforesaid, the domestic industry requested the Authority to reject the arguments raised by the opposite interested parties
- xiii. That the claim of interested parties about appropriateness of 22% return on capital employed while arriving at non-injurious price is also without any substance as this issue has been concluded against the such parties by the Appellate Tribunal in the case of Alkali Manufacturers Association of India Vs Designated Authority 2006 (194) E.L.T. 161 (Tri. - Del.). In view of this, Domestic Industry humbly requests the Hon’ble Authority to kindly reject the issue raised by the interested parties in relation to 22% on ROCE.
- xiv. Regarding “dumping need not be the sole cause of injury”, the domestic industry cited Final Finding No. 14/45/2010-DGAD dated 15th January, 2013 against the imports of Gypsum; EC Anti-dumping law – A Commentary on Regulation 384/96 by Dr. Wolf-Gang Muller, Nicholas Khan and Dr. Hans-Adolf Neumann; the case of Malleable Cast Iron Tube or Pipe Fittings from Brazil [WT/DS219/AB/R] and the case of Ceramic Tableware and Kitchenware.
- xv. Regarding “importance of full cooperation by interested parties”, the domestic industry stated that it has been consistently held likelihood analysis is essentially a forward looking exercise. In this regard, the domestic industry cited the Corrosion-Resistant Steel Sunset Review case and *Oil Country Tubular Goods Sunset Review case*, with respect to

the issues of scope of review and nature of evidence required for a likelihood analysis.

xvi. Low or negligible imports of the subject goods during the POI in the current investigation would be of no use. In support of the said claim, (a) *sunset review anti dumping investigation concerning imports of ‘ductile iron pipes’ originating in or exported from China PR, [F No. 15/1006/2012 DGAD dated 4.09.2013]*; (b) *National Tariff Commission (Govt. of Pakistan)- initiation of review of definitive anti- dumping duty levied on dumped imports of Phthalic Anhydride into Pakistan originating in and/ or exported from India*; (c) *U.S. International Trade Commission- Final Findings- investigations no. 731- TA-929-931(Review)- Silicomanganese from India, Kazakhstan and Venezuela*, were cited.

xvii. There is nothing in law or jurisprudence to suggest that there should be affirmative and conclusive evidence even for the purpose of initiating a sunset review investigation. On the contrary, in terms of the Indian jurisprudence, a sunset review investigation is mandatory in terms of the India Metals case.

- **Examination by the Authority**

105. The various submissions of the interested parties and the domestic industry on injury to the domestic industry have been examined as per the information available on record. All relevant issues concerning the facts and figures are addressed in the injury analysis.

106. As regards the issue of low volume of imports from the subject country, the Authority notes that the volumes of imports in case of sunset review investigations could be low due to the existence of AD duty.

107. The Authority has used data and information as verified during the course of investigations to the extent considered necessary.

108. Further, it may be relevant to refer to the following provisions:

(i) **Section 9A (5):**

“The anti-dumping duty imposed under this section 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:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.”

109. The above mentioned provision regarding likelihood of “dumping” implies that anti-dumping duty can be extended even if there are no imports during the period of review, i.e. that there is no dumping during the investigation period. The question of examining causality in such a case would not arise for the reason that causal link examination is not feasible, and is thus trivial. However, as the terms “dumping” and “injury” need to be examined together, it cannot be assumed that injury due to factors other than dumping be not considered or ignored. To this extent, the Authority has to satisfy itself about the cause and effect of continuing or likely injury.

110. The Authority also notes the submissions made by the domestic industry of various case laws on the situation of no dumped imports in POI, dumping not being even a principal factor leave aside being sole factor, assessment of likelihood of dumping and injury in a sunset review in a forward looking prospective mode and on whether causal link needs to be evaluated in an SSR or not? The Authority also notes the provisions of section 9A(5) of the Customs Tariff Act, 1975 on examining “continuation and recurrence of **dumping and injury**” in a sunset review.

111. The Authority notes that in the instant case, as imports of the subject goods have been there in the POI from Singapore, the dumping margin and injury margin have been computed for cooperative producers/ exporters and also for non cooperative producers/ exporters, based on the verified/available data.

112. The Authority notes that the relevant case laws while mentioning about forward looking analysis in a sunset review also highlight the relevance of present and past data as a factual foundation. The fact that case laws state dumping need not be a principal factor for injury in a sunset review does not imply that dumping as a factor loses its importance in entirety.

113. The causal link in a sunset review would no doubt be extremely relevant in

original investigation but in case the situation in the original investigation and the sunset review undergoes such changes which may warrant reestablishing the causal link (as the trade remedy is intended to be provided to counteract injurious aspects of dumping), the same needs to be reestablished. In this regard the Authority has examined the prices of imports of subject goods from other countries who were there in the original investigation but on whom the AD duty was revoked, i.e. Oman and Saudi Arabia. Further, the Authority has evaluated the data for POI and post POI (6 months only) for cooperative producers/ exporters on one hand and non- cooperative on the other, both on the imports of subject goods in India from Singapore and exports of Singapore to third countries as per its consistent practice for a forward looking analysis in a prospective mode.

114. All other issues raised by the parties to this investigation have been addressed in the appropriate places and therefore, not repeated here.

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

116. For the examination of the impact of the dumped imports on the domestic industry in India, 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 or investments have been considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above have been examined as under: -

A. VOLUME EFFECT

(a) Volume effects of dumped imports

117. The Authority has determined demand or apparent consumption of the product in the country as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed can be seen in the table given below. The Authority holds that the demand for the subject goods in the country has increased during POI as compared to the base year.

Import Summary and Demand Analysis

Year	Unit	2010-11	2011-12	2012-13	POI
Imports from subject country (MT)	MT	54676	54159	46912	63773
Trend	Indexed	100	99	86	117
Imports from other countries (MT)	MT	210954	191553	296076	482903
Trend	Indexed	100	91	140	229
Total Imports (MT)	MT	265631	245712	342988	546677
Trend	Indexed	100	93	129	206
Domestic Sales-Applicant	MT	1692668	1912502	1977649	1943684
Trend	Indexed	100	113	117	115
Sales-Other Domestic Producers	MT	370000	525000	700000	910000
Trend	Indexed	100	142	189	246
Total demand (MT)	MT	2328299	2683215	3020637	3400361
Trend	Indexed	100	115	130	146
% Share of subject country in demand	%	2.35	2.02	1.55	1.88
% Share of other countries in demand	%	9.06	7.14	9.80	14.20
% Share of domestic industry in demand	%	72.70	71.28	65.47	57.16
% Share of other domestic producers in demand	%	15.89	19.57	23.17	26.76

118. It is noted from the above Table that the imports of the subject goods from Singapore has increased in absolute terms in POI as compared to the base year i.e., 2010-

11. The imports from Singapore have gone up from 54676 MT in the base year of 2010-11 to 63773 MT during the POI. It is also noted that the imports has increased by 35.94 % in the POI when compared to the immediate preceding year i.e., 2012-13. The imports from Singapore have increased in absolute terms in the injury investigation period despite the existence of anti-dumping duty. A similar trend is seen in respect of imports from other countries and sales of domestic industry.

(b) Import Volume & Market Share

119. It is noted that the imports volume from the subject country has increased in the POI as compared to any of the previous injury period despite the existence of the anti-dumping duty in force. It is important to note that the share of imports from Singapore as a percentage of total imports has however declined. The below-mentioned table provides details of the volume of imports and share of Singapore and other countries in total

Import Share

Year	Unit	2010-11	2011-12	2012-13	POI
Imports from subject country	MT	54676	54159	46912	63773
Imports from other countries	MT	210954	191553	296076	482903
Total Imports	MT	265631	245712	342988	546677
Share of subject country in Imports	%	20.58	22.04	13.68	11.67
% Share of other countries in Imports	%	79.42	77.96	86.32	88.33

imports in India.

B. PRICE EFFECT

120. The impact on the prices of the domestic industry on account of imports of the subject goods from the Singapore has 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 Singapore. A comparison for subject goods during the period of investigation was made between the landed value of the dumped imports 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.

- **Price Undercutting**

121. The Authority notes that it is required to consider whether there has been significant price undercutting by the dumped imports 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.

122. The authority notes that there is negative price undercutting from Singapore in the POI as well as in the three preceding years. The price undercutting calculation can be seen from the table below. The price undercutting is also negative for the two cooperative producers/ exporters, i.e. M/s ExxonMobil (directly) and M/s TPC (through Ms Itochu).

Singapore	Unit	2010-11	2011-12	2012-13	POI
Quantity	MT	54676	54159	46912	63773
Trend	Indexed	100	99	86	117
Net Sales Realization	Rs./MT	***	***	***	***
Trend	Indexed	100	117	131	147
Landed value	Rs./MT	***	***	***	***
Trend	Indexed	100	113	122	142
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	(10) - 0	(10) - 0	(10) - 0	(10) - 0

- **Price Underselling**

123. The landed price of imports is also above the desirable selling price of the domestic industry, resulting in a negative price underselling as can be seen from the table

below. The authority further notes that the weighted average injury margin both for M/s ExxonMobil, the producer cum exporter and for M/s TPC through M/s Itochu are negative, as mentioned in the paras ahead for these producers/ exporters.

Price Underselling – Consolidated

Factors	Unit	Singapore
Quantity	MT	63773
Trend	Indexed	100
Non-Injurious Price	Rs./MT	***
Trend	Indexed	100
Landed value	Rs./MT	***
Trend	Indexed	100
Price Underselling	Rs./MT	***
Price Underselling	%	***
Price Underselling	Range	-(0-10)

b. Price Suppression

124. To examine the price 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 by and large increased to commensurate with the increase in its cost of sales during the POI.

Price suppression

	Unit	2010-11	2011-12	2012-13	POI
Cost of sales	Rs./MT	***	***	***	***
Trend – Indexed		100	116	127	144
Selling Price	Rs./MT	***	***	***	***
Trend – Indexed		100	117	131	147

C. OTHER ECONOMIC PARAMETERS

125. 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 dumped imports** 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 Authority has also examined this in the context of the impact of dumped imports as stated above in this para. The various injury parameters relating to the domestic industry are discussed below.

- **Production, capacity and capacity utilization**

126. The Authority notes from the table below that capacity of the domestic industry has remained same throughout the injury investigation period as compared to the base year. Capacity utilization has decreased as compared to the immediate preceding year. However, the same has increased as compared to the base year. Similarly, production for the product under consideration has also increased from the base year but decreased when compared to the immediate preceding year i.e., 2012-13 despite the fact that during the same period demand has increased.

Capacity Utilization

Particulars	Unit	2010-11	2011-12	2012-13	POI
Installed capacity	MT	26,85,200	26,85,200	26,85,200	26,85,200
Trend	Indexed	100	100	100	100
Production	MT	24,94,413	27,39,976	28,10,245	28,04,699
Trend	Indexed	100	110	113	112
Capacity Utilization	%	93	102	105	104
Trend	Indexed	100	110	113	112

- **Sales of the Domestic Industry**

127. 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* base year. The share of sales of domestic industry in demand in the POI has increased. At the same time while share of subject country has decreased, the share of other countries has increased.

Particulars	Unit	2010-11	2011-12	2012-13	POI
Domestic Sales	MT	1692668	1912502	1977649	1943684
Trend	Indexed	100	113	117	115

- **Profits, Return on Investment and Cash Flow**

128. The return on investment, profit/loss before and after interest and cash profit are as shown in the table below:

Profitability

	Unit	2010-11	2011-12	2012-13	POI
Selling Price	Rs/MT	***	***	***	***
Trend	Indexed	100	117	131	147
Cost	Rs/MT	***	***	***	***
Trend	Indexed	100	116	127	144
Profit	Rs Lacs	***	***	***	***
Trend	Indexed	100	118	69	110
Profit/ Loss	Rs/MT	***	***	***	***
Trend	Indexed	100	104	59	96
Profit before interest	Rs Lacs	***	***	***	***
Trend	Indexed	100	124	62	91
Cash Profit	Rs Lacs	***	***	***	***
Trend	Indexed	100	153	66	151
ROCE	%	***	***	***	***
Trend	Indexed	100	98	59	114

129. The Authority notes that it is a fact that the financial situation of the domestic industry is in bad shape and they are incurring cash losses during the injury investigation period. It is further observed that the increase in selling price is by and large in tandem with the level of costs. The profit before interest has also declined significantly in the POI as compared to the base year and has reached substantial negative levels in the POI. It has been further noted that the return on capital employed has also followed the same trend as of Profit / (Loss) and remained negative in the POI.

- **Inventories**

130. The data given in the table below shows that the inventory levels with the domestic industry have increased significantly by 135% i.e., from *** MT in the base year to *** MT in the POI, despite increase in demand.

	Unit	2010-11	2011-12	2012-13	POI
Average stock	MT	***	***	***	***
Trend	Indexed	100	94	151	235

- **Employment, Productivity and Wages**

131. From the table given below, the Authority notes that the number of employees has decreased during the injury investigation period despite the prospects of increase in demand. Further, it is noted that the wages per employee has remained constant throughout the injury investigation period. Similarly, productivity per employee has also increased in the POI as compared to the base year.

Productivity					
Year	Unit	2010-11	2011-12	2012-13	POI
Production	MT	24,94,413	27,39,976	28,10,245	28,04,699
Trend	Indexed	100	110	113	112
Employees	No.	***	***	***	***
Trend	Indexed	100	91	94	93
Production/employee	MT	***	***	***	***
Trend	Indexed	100	121	120	121
Productivity per day	MT	***	***	***	***
Trend	Indexed	100	110	113	112
Wages/employee	Rs.	***	***	***	***
Trend	Indexed	100	109	96	101

- **Magnitude of dumping**

132. The Authority notes that the dumping margin of the imports of the subject goods from the subject country is positive in POI.

Producers/ Exporters	Dumping Margin	Dumping Margin	Dumping Margin Range
	USD/MT	%	%
TPC through Itochu	***	***	5-15
ExxonMobil	***	***	10-20
Others	***	***	20-30

- **Growth**

133. The Authority notes that there was negative growth of the domestic industry in terms of profits, cash profit as well as ROI in the POI as compared to the base year despite significant increase in demand. The domestic industry has contended that with high capacity utilization and increasing demand, the domestic industry had expected positive growth in profits, comfortable cash flow and increase in return on investments.

Particulars	Unit	2010-11	2011-12	2012-13	POI
Capacity Utilization	Indexed		10	13	12
Profit	Indexed		4	-41	-4
Cash Profits	Indexed		53	-34	51
ROCE	Indexed		-2	-41	14
Inventory	Indexed		-6	51	135

- **Factors affecting domestic prices**

134. The data above indicates that there is an appreciable growth in demand. The dumped imports from the Singapore are though entering the Indian market but not at prices below the non-injurious price of the Subject goods of the domestic industry. The Authority, in view of import prices of the subject goods from countries other than the subject country, holds that the domestic prices appear to be affected by imports from the countries other than the subject country, whose share has also increased in the POI and year before it.

- **Actual and potential impact on Growth**

135. It is noted that there is a healthy growth in demand of the product and the domestic industry has added capacity and increased production and sales. However, the cause of the injury to the domestic industry does not appear to be the imports from the cooperative producers/ exporters from the subject country but possibly due to low landed value- imports from countries other than the subject country which may or may not be dumped.

- **Ability to raise capital investments**

136. It is noted that with the antidumping duty protection against dumped imports from Singapore and with a healthy growth in demand, the domestic industry has submitted that all these investments would be financially jeopardized if the dumped and injurious imports from the subject country are allowed to enter into the country without the anti-dumping duties. The Authority holds that the likely impact of injurious imports has been examined both in the POI and later in analyzing the likelihood of injury aspect. Also since the prices of the subject goods from countries other than Singapore have been lower than the NIP, its impact on the financial health of domestic industry has been a possible factor of injury to the domestic industry.

- **Level of dumping & dumping margin**

137. The margins of dumping of imports of the subject goods from the subject country, as determined in the previous section, are positive even though the volume of imports from Singapore is not very significant.

OVERALL ASSESSMENT OF CURRENT INJURY AND CAUSAL LINK

138. The above analysis of various factors indicate that physical performance of the domestic industry in terms of capacity, production and domestic sales of the subject goods improved during the injury investigation period. However, the financial performance of the domestic industry has deteriorated because of the price pressure of imports mainly from countries other than Singapore. The domestic industry continues to suffer material injury in terms of financial losses and negative return on capital employed.

- **Volume and prices of imports from other sources**

139. The data below shows the volume of imports and their price trends from subject country and other countries:

Particulars	Unit	2010-11	2011-12	2012-13	POI	Post POI
Import Volume						
Imports from Singapore	MT	54676	54159	46912	63773	106866
Trend	Indexed	100	99	86	117	195

Top 6 Countries

Imports

KOREA RP	MT	36865	31689	42817	52030	42106
KUWAIT	MT	19842	14097	18296	31040	36756
SAUDI ARAB	MT	83905	73293	151870	152204	208013
THAILAND	MT	13254	12374	7869	29498	43868
U ARAB EMIRATES	MT	10774	39868	48678	63192	93448
OMAN	MT	10941	10473	12910	12156	16105
Total from Top 6 Countries	MT	175581	181793	282440	340120	440296
Trend	Indexed	100	104	161	194	251
Imports from Other Countries	MT	35373	9760	13636	49727	42607
Trend	Indexed	100	28	39	141	120
Total Imports	MT	265631	245712	342988	453620	589769
Trend	Indexed	100	93	129	171	222
Import Price (CIF Value per MT)						
Imports from Singapore	Rs/MT	67,636	76,252	83,811	98,185	102972
Trend	Indexed	100	113	124	145	152
KOREA RP	Rs/MT	70913	79350	84564	99942	105693
KUWAIT	Rs/MT	61303	70356	77687	92890	88434
SAUDI ARAB	Rs/MT	62646	70679	77541	90248	87772
THAILAND	Rs/MT	70370	79365	87751	100894	97622
U ARAB EMTS	Rs/MT	62976	69345	75438	89013	86923
Oman	Rs/MT	61222	72561	76348	93548	89864
Total Top 6 countries	Rs/MT	64745	72573	78482	92755	90440
Trend	Indexed	100	112	121	143	140
Imports from Other Countries	Rs/MT	62,680	72,422	78,171	95,530	94,476
Trend	Indexed	100	116	125	152	151

140. The above data indicates that the prices of the imports of the subject goods from countries other than Singapore, are lower than those from Singapore. The Authority after examining the export prices trends in POI and post POI from Singapore to India including those to the third countries, holds that import prices of cooperative producers/ exporters from Singapore have not caused injury and also not likely to cause injury to the domestic industry.

- **Contraction in demand and / or change in pattern of consumption**

141. It is noted that the demand of the subject goods in the country has grown consistently from base year to 2011-12 indicating a healthy demand situation in the country. 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. In fact, with the growth in general economic performance the consumption of the subject goods is expected to increase which is reflected in the healthy demand position. Therefore, contraction in demand or change in consumption pattern is not a factor affecting the performance of the domestic industry.

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

142. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the injury to the domestic industry. The Authority rather holds that the landed value of imports from Singapore is higher despite the existence of a preferential duty on imports from Singapore.

- **Development in Technology**

143. 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.

- **Export performance of the domestic industry**

144. 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.

- **Magnitude of injury and injury margin**

145. Having regard to the lesser duty rule followed by the Authority, margins of

injury with respect to the importation of the subject goods from the subject country have also been determined. For determination of injury margin, the Authority has determined the Non-Injurious Price (NIP) for the domestic industry as well as the landed value for exporters from Singapore as per the procedures laid down in Annexure III of the Anti Dumping Rules.

146. The landed value of the subject goods for the exporters from Singapore is as follows:

(i) *The Polyolefin Company (Singapore) Pte Ltd (“TPC”) through M/s Itochu Plastics Pte. Ltd. (“Itochu”):*

147. The weighted average landed value of the subject goods for M/s TPC- M/s Itochu (the producer- exporter combination) has been determined by adopting weighted average CIF of the subject goods in POI and adding 1% handling charge and applicable customs duty. The weighted average landed value is thus computed as *** \$/MT.

(ii) *ExxonMobil Chemical Asia Pacific (“ExxonMobil”):*

148. The weighted average landed value of the subject goods for M/s ExxonMobil has been determined by adopting weighted average CIF of the subject goods in POI and adding 1% handling charge and applicable customs duty. The weighted average landed value is thus computed as *** \$/MT.

(iii) *Non- cooperative producers/exporters:*

149. In order to arrive at the landed value for residual/non- cooperative producers/exporters, 1% handling charge, applicable customs duty have been added to the lowest export price (CIF) from amongst the cooperative producers/ exporters from Singapore. The landed value is thus computed as *** \$/MT.

150. Accordingly, the NIP for the domestic industry and the margins of injury for the product under consideration have been determined as follows:

Particulars	Unit	ExxonMobil	TPC through Itochu	Others
Singapore				
NIP	US\$/MT	***	***	***
Landed Value	US\$/MT	***	***	***
Injury Margin	US\$/MT	***	***	***
Injury Margin	%	***	***	***
Injury Margin	Range	Minus (0-5)%	Minus (0-5)%	Plus (0-10)%

- **Likelihood of Continuation or Recurrence of Dumping and Injury**

151. It is noted that the subject goods continue to enter the Indian market from Singapore at dumped prices though volume of imports which remained constant initially but increased in the POI. Rules require the Authority to examine if the dumping is likely to continue and whether the injury to the domestic industry is likely to continue or recur if the duties are revoked.

- **Views of the Domestic Industry**

152. The domestic industry, in its submissions, has argued that there is continued dumping of the products under consideration from Singapore. The volume of dumped imports has increased, the dumping margin and injury margin is positive. It has been submitted that dumping of the product under consideration is likely to intensify from Singapore should the current anti dumping duty be revoked.

153. That the legal requirement for continuation of anti-dumping duties in terms of Section 9A(5) read with Rule 23(1B) is to ascertain the likelihood of continuation or recurrence of dumping and injury in the event the duties are not extended. With respect to the determination of a likelihood of recurrence or continuation of dumping and injury, the Appellate Body on US – Corrosion-Resistant Steel Sunset Review noted that, as this likelihood determination is a prospective determination, “the authorities must undertake a forward-looking analysis and seek to resolve the issue of what would be likely to occur if

the duty were terminated.”

154. The domestic industry is already suffering injury and revocation of anti-dumping duty shall lead to intensified 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.

155. The producers in subject country maintain huge capacities. Further, the representative of Exxon Mobil had admitted that the local demand in Singapore is negligible and they are mainly exporting the subject goods. It is further submitted that as admitted by one of the producer / exporter namely M/s Exxon Mobil that their biggest export market is China followed by Vietnam, Indonesia and India. In this context, the domestic industry submits that as per the published information available with the domestic industry, China (who is net importer of subject goods) is going to be self-sufficient by end of 2015 as new capacities of subject goods will fulfil the local demand. It is, therefore, imminent that the exporters from Singapore would be left with additional surplus material which was hitherto finding market in China. From the Table below, it can be clearly seen that there is a significant reduction in the imports in China.

Unit '000 MT	Unit	2013	2014	2015	2016	2017	Source
Capacity in	MT	1576	1764	2080	2433	2698	IHS
Production in	MT	1320	1477	1723	1978	2212	IHS
Demand In	MT	1788	1949	2122	2280	2438	IHS
Imports in	MT	5010	5019	4132	3167	2417	IHS
Reduction In	MT		-9	888	1843	2593	
Reduction In	%		0%	-18%	-37%	-52%	

Unit '000 MT	Unit	2013	2014	2015	2016	2017	Source
Capacity in Singapore	MT	1448	1485	1485	1485	1485	IHS Chemical
Production in Singapore	MT	1135	1363	1293	1234	1245	IHS Chemical
Demand In Singapore	MT	42	43	43	44	45	IHS Chemical
Imports in Singapore	MT	552	580	550	560	600	IHS Chemical
Total Material Available	MT	1687	1943	1843	1794	1845	IHS Chemical
Net Qty Available for Exports	MT	1958	2022	1992	2001	2040	

156. It is further admitted position that China is the major market for Singapore. Therefore, any reduction in imports in China will have direct adverse impact on the exporters from Singapore and in the event duties are not continued there is every likelihood that the quantities supplied to China will find its way to Indian market. The Authority may also like to appreciate that the producers / exporters of subject goods have more than 140% of the production at their disposal which is significant by any standards. Therefore, in the event duties are withdrawn against Singapore, this excess produced will definitely route to India given the advantage they have over the other suppliers.

157. Due to the advantages (like freight, free trade agreement (FTA) and huge demand in India) to the exporters from Singapore, India will become the prime target.

158. That the price undercutting and price underselling analysis provided in the petition pertain to POI and not for post POI period. Unless information with respect to post POI is examined, it cannot be said that there is a likelihood of injury to the domestic industry.

159. That the likelihood determination under Article 11.3 entails an analysis of future events based on positive evidence available and as a result, the mere computation of a dumping margin will not discharge the burden required under Article 11.3. It is further contented that in the petition filed by the domestic industry, there is no post-POI data given.

160. That the interested parties requested the authority to direct the domestic industry to submit the Post-POI data in order to conduct likelihood determination by the authority and also provide the interested parties a copy of the same for their comments thereon.

161. From the above, it is clear that in case the of revocation of anti-dumping duties, the volume of imports of the subject goods is bound to increase further, which is also evident from the fact of continued dumped imports in spite of imposition of duty from the Singapore.

162. That there are positive and significant injury and dumping margins even when calculated based on the prices from Singapore to countries other than India.

163. 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 Singapore to dump the subject goods in India.

• **Submissions by producers/exporters/importers/ interested parties other than the DI**

164. That the domestic industry has not provided any evidence to prove that there is any likelihood or continuation of dumping and injury.

165. That the domestic industry has not provided post POI information in the petition, therefore, interested parties cannot comment on the post POI performance of the domestic industry.

166. That the Article 9A(5) of the Tariff Act and Rule 23(1A) of the Tariff Rules condition the maintenance of an anti-dumping measure on a determination, based on positive evidence and a firm evidentiary foundation, that the removal of that measure would likely lead to continuation or recurrence of both dumping and injury. Absent such determination, the Authority must terminate the anti-dumping measure.

167. That the strong and increasing domestic demand for polypropylene has led the Domestic Industry to increase its sales volume, output, capacity utilization, productivity, and ability to raise capital while benefitting from high domestic prices. This clearly excludes any likelihood of continuation or recurrence of injury should the anti-dumping measure on the Subject Goods from Singapore be allowed to expire.

168. Interested parties have disputed the claims of the domestic industry that there exist huge capacities in subject country which would lead to a likelihood of recurrence of dumping and injury because of imports from Singapore. It has been argued that mere existence of huge capacity is not a ground for extension of antidumping duty as has been held by the Appellate Body. The petitioners should provide concrete evidence for the existence of huge capacities and mere conjecture must not be accepted by the DGAD.

169. That the evidences provided by the domestic industry in relation to freely disposable capacities in the subject country are not fully substantiated and duties cannot be extended merely on the basis of the existing disposable capacities.

170. That the domestic industry has provided no evidence to establish the likelihood

of recurrence of dumping. Moreover, there is no merit in the argument of domestic industry provided in relation to likelihood of recurrence of dumping.

- **Examination by the Authority**

171. The present investigation is a sunset review of anti-dumping duties imposed on the imports of subject goods from Singapore. Under the Rules, the Authority is required to determine whether revocation of the anti-dumping duty would lead to continuation or recurrence of dumping and injury.

172. The quantity of PUC imports in the POI on the basis of the DGCI&S, DG Systems and data provided by the cooperative producers/ exporters broadly correlate to each other. The injury analysis on macroeconomic injury parameters is thus undertaken on the basis of the DGCI&S data.

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

(i) **Level of current and past dumping margins from the subject country**

174. The examination in the previous sections concludes that the level of dumping margin from Singapore is positive.

(ii) **Available capacities in the subject country**

175. The Authority observes that Singapore has although surplus capacities and only 3% to 4% of the total production in Singapore is meant for local consumption, there is a high level of export intensity of polypropylene from producers from Singapore. The Domestic Industry has submitted that a large portion of Singapore's exports (39%) goes to China. Further, the total imports by China are showing a declining trend due to China becoming self-sufficient. This indicates likelihood that Singapore goods which are being exported to China might be diverted to India if AD duty is withdrawn. Other interested parties have disputed the claim and have argued that mere availability of capacity cannot be a ground for extension of duties. The Authority, notes that while there could be an imminent likelihood of diversion of subject goods to India if the AD duties are revoked, the price behavior of producers/ exporters of Singapore to China as well as to India in Post POI (6 Months) as examined from the WTA data shows that the diversion of exports of the subject goods to India, may not lead to injury.

(iii) Level of injury based on export prices from subject country to other countries

176.

Sr. No.	Country	Landed Value (\$/MT) [DURING POI]	Landed Value (\$/MT) [POST POI- 6 months]
1.	Oman	1562	1480
2.	Kuwait	1551	1517
3.	Saudi Arabia	1507	1516
4.	UAE	1486	1431
5.	Singapore	1656	1671

177. The overall DGCI&S data both for POI and post POI, from the above table, evidences that injury to the domestic industry appears to be more so on account of imports from countries other than Singapore as the landed values of exports from Oman, Kuwait, Saudi Arabia and UAE for both POI and post POI are lower than not only that of Singapore but also lower than the NIP for both POI and post POI. As the share of imports of subject goods from Singapore has decreased in POI while that from other countries has increased, and with the price trends as shown in the above table, it is quite evident that the threshold of selling prices is being triggered by the countries other than Singapore.

(iv) Price Attractiveness of the Indian Market and Demand Scenario

178. Indian market for the subject goods continues to have an increasing demand for the product which is in line with the general economic growth. The market thus remains attractive for the global players with surplus capacity who may like to export to India. Therefore, if the duties are removed the Indian market may become much more attractive as the exporters may be able to realize better prices to the extent of the level of the current duties absorbed by them. The Authority keeping this aspect in view, has evaluated the price trends of the subject goods from the subject country to analyse continued injury. The prices in POI and post POI to India and to countries other than India, show a non injurious impact. The availability of preferential duty on imports from the subject country has also not led to decrease in the landed values which could be a possible fall out in response to the low landed values of the subject goods from other countries. This, therefore, implies that there does not appear to be a likelihood of injury even though demand of the subject goods may increase in India.

(v) **Trend in imports in the post POI period**

179. Examination of the trend in imports and prices in the post-POI period indicates that the third Countries POI and Post POI weighted average export prices of goods exported by M/s Exxon are *** \$/MT and *** \$/MT respectively which if diverted to India would be non injurious. M/s TPC's third country weighted average export prices in POI and Post POI are *** \$/MT and *** \$/MT respectively which if diverted to India would also be non injurious. Itochu's Post POI export price to India of goods produced by M/s TPC is *** \$/MT which also is non injurious. The post POI price trends are depicted in the following table:

POST POI TRENDS:

I. Source: World Trade Atlas

	Normal Value (US\$/MT)	NIP (US\$/MT)	Dumped Transactions (%)	Injurious transactions if diverted to India (%)
Exports to third countries from Singapore	***	***	95.96	None

	Normal Value (US\$/MT)	NIP (US\$/MT)	Dumped Margin (%)	Dumped Margin Range	Injury Margin (%)
Exports to India from Singapore	***	***	***	5-10	Negative

II. Source: Exporters' Questionnaire Responses

Exports to **third countries** from Singapore

	Dumping Margin Range	Landed Price (US\$/MT)	Injury Margin (US\$/MT)
TPC	0-10	***	Negative
Exxon	0-10	***	Negative

Exports to **India** from Singapore

	Dumping Margin Range	Landed Price(US\$/MT)	Injury Margin(US\$/MT)
TPC	0-5	***	Negative
Exxon	5-10	***	Negative

180. It is noted that during the period when AD duty was in force on imports from subject country, the imports from Singapore increased by 58%. For increase in imports volume besides the increase in demand of subject goods in India, factors like available capacity with producers/exporters in Singapore and a possible diversion of their third countries exports to India could also be responsible. However, the increase in exports from Singapore in POI and post POI by the cooperating exporters is found to be non injurious to the domestic industry. The cumulative exports in post POI from the subject country to India and other countries is also found to be non- injurious. Therefore, even if AD duty is revoked, exporters from Singapore may even though be at dumped prices, they would not be causing injury to the domestic industry.

181. Although there has been an increase in the imports from Singapore, their prices are higher than the NIP of the subject goods determined for the domestic industry in POI and also higher than the export prices from other countries like Saudi Arabia, Oman, UAE and Kuwait to India. Therefore, it is the countries other than Singapore who set the benchmark prices triggering price suppression and consequent injury to the domestic industry.

182. In case of non-cooperative producers/exporters treated as residual category, the Authority is not in a position to evaluate and analyse their specific price behavior regarding exports of the subject goods in POI and Post POI period to India and other countries. In the present SSR, therefore, it cannot be held with certainty that for such exporters' injury is being caused by non-subject countries. The Authority therefore recommends the imposition of AD duty on all non-cooperative producers/exporters in the current investigation, as determined in accordance with the lesser duty rule.

COMMENTS ON DISCLOSURE

COMMENTS BY DOMESTIC INDUSTRY

183. The issues raised by the domestic industry during the public hearing, written submissions, the rejoinder statement and other submissions which do not find mention or have not been dealt with appropriately in the disclosure statement may also be treated as a part of our comments to the disclosure statement and the same are not repeated herein for the sake of brevity.

184. The Domestic Industry requested the Authority to exclude Polypropylene having ethylene content of more than 15% from the scope of product under consideration since no producer in India is producing the said product.

185. *Propylene based Elastomer (Vistamaxx)* is a specialized product with very specific properties and niche application as standalone polymer. A comparative chart of the property differentiates is provided below.

<i>Sl No</i>	<i>Characteristics</i>	<i>Impact Co-Polymer</i>	<i>Propylene based Elastomer (Vistamaxx)</i>
<i>1</i>	<i>% Co-monomer Ethylene</i>	<i>5-15%</i>	<i>15-25%</i>
<i>2</i>	<i>% Ethylene Propylene Rubber (EPR)</i>	<i>10-30%</i>	<i>40-55%</i>
<i>3</i>	<i>Density</i>	<i>0.887-0.905 g/Cm³</i>	<i>0.863-0.878 g/CM³</i>
<i>4</i>	<i>Catalyst</i>	<i>Regular Diesters or Diether based catalysts</i>	<i>Metallocene catalysts</i>
<i>5</i>	<i>Production Technology</i>	<i>Unipol/ Spheripo/Adipol etc</i>	<i>Exxpoll Metallocene Technology</i>
<i>6</i>	<i>Melt Flow Index (230°C) g/10Min</i>	<i>1.5 -50</i>	<i>80-300</i>
<i>7</i>	<i>Hardness 15 Sec</i>	<i>84-98</i>	<i>72-77</i>
<i>8</i>	<i>Vicat Softening Point 200g (°c)</i>	<i>140-150</i>	<i>46-50</i>
<i>9</i>	<i>Performance Characteristics</i>	<i>Higher Tensile Strength, Lower Breaking Elongation, High Stiffness High Heat distortion Temperature (HDT) High Melting Temperature</i>	<i>Lower Tensile Strength, Better Breaking Elongation, Low Stiffness Low Heat distortion Temperature (HDT) Low Melting Temperature</i>

		<i>Higher Crystallinity</i> <i>Higher Density</i>	<i>Lower Crystallinity</i> <i>Lower Density</i>
	<i>End Uses</i>	<i>In making of Appliances Components, Automobile Components, furniture as standalone polymer</i>	<i>Hardly used as standalone Polymer with niche application (non woven –elastic bandage which can not be produced by ICP)</i> <i>85-90% is used as Modifier in recipes for production of various types of Polypropylene end products.</i>

186. Propylene based elastomers like Vistamaxx have high ethylene content in the range of 15-25% which is very high as compared to the co-polymer of propylene and ethylene (ICP) produced by the Domestic Industry where the co-monomer polymer ethylene is only 5-15% of total composition. This has resulted in to wide difference in EPR values which are 40-55% in Vistamaxx and only 10-30% in ICP. It was also brought to your notice that only 2-3 manufacturers in the world have the commercially viable production facilities for such elastomeric polypropylene.

187. At the time of the initial investigations, RIL had attempted to produce co-polymers with high Ethylene content but could not do so on a sustainable basis because of technology constraints. It is confirmed that the Domestic Industry has no capacity to produce such grades due to technology constrains. It is for this reason that the Domestic Industry in its SSR application had itself removed the high Ethylene content products like Vistamax from the import data and the purview of investigations.

188. Copolymers of high Ethylene content of more than 15% have different applications and are, therefore, priced much higher than the copolymers produced by the Domestic

Industry. The market for these co-polymers is totally different and these products are neither technically nor commercially substitutable to the products produced by the Domestic Industry.

189. The Authority is requested to exclude all co-polymers of Propylene and Ethylene having Ethylene content of more than 15%, such as Vistamaxx from the purview of the investigations. To support the aforesaid request of the Domestic Industry, it cited the following findings of the DGAD, wherein the Authority has withdrawn the duties as the Domestic Industry had stopped producing subject goods covered by that investigation:

(a) Ethylene-Propylene-Non-Conjugated - Diene-Monomer (EPDM) Rubber from China PR, European Union, USA, and Brazil [15/2/2009 DGAD dated 6.8.2009];

“24. Having concluded that the revocation of the anti dumping measures would not affect any domestic industry since presently there is none producing the subject goods in the country; the Authority is of the opinion that the measure is required to be revoked in respect of imports from European Union, USA, China PR and Brazil.”

(b) Sodium Tripoly Phosphate (STPP) from China PR [15/18/2011 DGAD dated 10.2.2012]

“21. Having concluded that the revocation of the anti dumping measures would not affect any domestic industry since presently there is none producing the subject goods in the country; the Authority is of the opinion that the measure is required to be revoked in respect of imports from China PR.”

190. Submission of TPC ought to be rejected as it had exported the subject goods to India through M/s Itochu Plastics Pte. Ltd and M/s Marubeni Chemical Asia Pacific PTE Ltd. But since Marubeni has not filed the exporter's questionnaire response, value chain of TPC cannot be considered as complete and ought to be rejected in light of the recent jurisprudence as emerging out of the Authority's following findings:

- ARW Case

“142 (ix). As regards the submission by Citic Dicastal that it has no control over unrelated producers to force them to cooperate in the present investigation and its export price should not be rejected on this ground, the Authority notes that the issue has been appropriately and adequately addressed in the relevant paras of this final finding. Nevertheless, the Authority notes once again that significant volume of exports (75%)

made by the Company are out sourced by Citic Dicastal from other producers, who have not cooperated with the Authority by filing exporters questionnaire response in the present investigation. Since complete value chain of the majority of the exports made by the Company is absent before the Authority, the Authority has not granted individual margins to Citic Dicastal.” (Emphasis Added)

- Plain Medium Density Fibre Board (MDF) SSR;
“37. The Authority notes that M/s Dongwha MDF (M) Sdn. Bhd. (DMM) (producer) and Dongwha Global Sales Sdn. Bhd.(exporter) from Malaysia, two related entities, have also filed questionnaire response. From the questionnaire response of Dongwha Global Sales Sdn. Bhd., who is the trader/exporter of Dongwha MDF (M) Sdn. Bhd., the Authority notes that the exporter has procured the subject goods from M/s Dongwha MDF (M) Sdn. Bhd. amounting to 1,18,326 CBM. The exporter Dongwha Global Sales Sdn. Bhd. has exported the subject goods in the POI to India as well as other countries. The total export volume is 2,63,699 CBM, out of which the export to India is 1,266 CBM. The exporter Dongwha Global Sales Sdn. Bhd. has not provided complete information regarding the procurement of the balance quantity. Further, in its questionnaire response, M/s M/s Dongwha MDF (M) Sdn. Bhd. has mentioned 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. Since DMM is selling the goods in the domestic market to two related companies and the value chain of the goods produced is not complete, the Authority, therefore, as per its practice, has not determined the individual dumping margin in respect of M/s M/s Dongwha MDF (M) Sdn. Bhd., Malaysia and M/s Dongwha Global Sales Sdn. Bhd., Malaysia.”

- Flexible Slabstock Polyol (FSP);
“90. With regard to the submission of SEPL/SETL for confirming the provisional conclusions of the Authority in the Final Findings, the Authority notes that the manufacturing operations of the subject goods are managed by SCSL a 100% owned subsidiary of SEPL. The Authority also notes that the sales of the subject goods have been made by Shell Eastern Chemicals (S), a registered business owned by SETL. It is also noted that the payments for the goods sold are received by Shell Eastern Chemicals (S). While SEPL and SETL filed EQR, SCSL and Shell Eastern Chemicals (S) have not filed EQR in spite of a specific direction issued by the Authority at the time of public hearing

held on 12.9.2014. In the absence of complete value chain of production and sale of subject goods, the Authority has rejected the EQR filed by SEPL and STEL.”

- Solar Cells;

“55. The Authority notes that First Solar SDN BHD, Malaysia, in addition to their exports through their related party namely First Solar GmbH, Mainz, Germany, has made substantial volume of exports of the subject goods to India during the POI through many parties who have not cooperated in the present investigation. Consequently, the complete value chain of the exports of subject goods by First Solar SDN BHD, Malaysia to India during the POI is absent before the Authority. Consequently, the Authority is not in a position to determine and grant individual margins to First Solar Malaysia.”

- USB Case: the Authority has rejected the response of ATP Electronics, Taiwan as they failed to file the questionnaire response of related party who is involved in the production of subject goods. We humbly reiterate our request to follow the same criterion in the instant case also.

- Saccharin Case: the Authority has rejected the response of M/s Tianjin Changie Chemical Co. Ltd. only on the ground that initially questionnaire responses were not filed and then filed at very later stage of the investigation by the related companies involved in the exports and domestic sales of the subject goods during the POI. However, it was clarified that related companies are only special purpose vehicle and they are not involved in the production and sales of the subject goods, only their name was figuring in the invoices.

191. Response of ExxonMobil also should be rejected on the ground that EMCAP or EMAPPL has not shown any law which states that two different entities can be treated as one single entity for the purpose of anti-dumping investigations.

192. Recent decision of the Authority in the case of FSP, wherein response of Shell Eastern Chemicals was rejected on the ground that they have failed to file response on behalf of one of the related entity under similar circumstances even though the same facts were on record in the original investigations also.

193. There is every likelihood of injury to the Domestic Industry. Injury margin for both TPC and EMCAP was found to be negative during POI and Post POI (April 2014 to September 2014). The import data for October 2014 to March 2015 clearly proves that the landed value from Singapore declined very sharply by more than 6% i.e., from Rs. 103939 / MT to Rs. 97432 / MT for the period April 2014 to September 2014 and October 2014 to March 2015 respectively. The calculation of landed value is provided in the Table below:

Row Labels	Qty MT	Ass. Value Rs	Ass. Value (Rs/MT)	CIF Value (Rs/MT)	Landed Value (Rs/MT)
Post POI I					
Apr 14 – Sep 14	58204	5987283491	102867	101848	103939
Post POI II					
Oct-14-March 15	46427	4476831278	96426	95472	97432

194. From the above analysis it is amply clear that from the second half of the 2014-15, landed value from Singapore has declined. This proves that there is every likelihood of injury to the Domestic Industry.

195. The import data for October 2014 to March 2015 shows that the landed value from Singapore declined by more than 6% i.e., from Rs. 103939 / MT to Rs. 97432 / MT for the period April 2014 to September 2014 and October 2014 to March 2015 respectively. Therefore, the Authority is requested to extend the duties on all the exporters, so that Domestic Industry gets adequate protection.

196. Acceptance of documents/information post-hearing is against all principles of natural justice. Besides, case of CR Coils [Final Findings F. No. 18/11/2010-DGAD dated 5.12.2011] was also cited, wherein a formal detailed report by a public sector enterprise regarding the technical capability of the Domestic Industry was rejected on the sole ground that the same was filed after the public hearing. The relevant excerpt of the said final findings is reproduced below for the ready reference of the Authority:

“vii)Subsequent to the hearing of the interested parties followed by written submissions and rejoinders, the petitioner company has submitted a copy of the report of M/s. MECON Limited Ranchi vide their letter dated 14th July, 2011, which is beyond the time frame stipulated for written submissions and rejoinders subsequent to the oral hearing held on 14.3.2011.

197. In view of the submissions advanced above, domestic industry request the Authority not to grant the individual dumping and injury margin to the exporters from the subject countries and award residuary rate of duty. Moreover, any revocation of the duties will jeopardize the investments made by the Domestic Industry and would be detrimental to the overall interest of the Indian Industry.

COMMENTS BY IMPORTERS/ EXPORTERS/ OTHER INTERESTED PARTIES:

198. The continued imposition of anti-dumping measure on the subject goods from Singapore must be terminated on the ground that it was imposed on a discriminatory basis.

199. The GATT 1994 imposes a firm non-discrimination obligation on and between WTO Members, commonly referred to as the Most-Favoured-Nation (“MFN”) treatment obligation.

200. Article I:1 of the GATT 1994 defines the MFN treatment obligation as requiring that “[w]ith respect to customs duties and charges of any kind imposed on or in connection with importation or exportation [...], and with respect to all rules and formalities in connection with importation or exportation, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country [...] be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”.

201. The revocations of the anti-dumping measures on the Subject Goods from Oman and Saudi Arabia were not based on a finding that the said imports were no longer dumped or causing injury to the Domestic Industry; nor did they result from the conduct of formal reviews pursuant to the Tariff Act and the Tariff Rules. In fact, on 9 August 2012, the Authority explicitly recognized that the revocation of the anti-dumping measure on the Subject Goods from Saudi Arabia did not derive from a reassessment of the Final Findings,

and expressly confirmed the validity of the Final Findings as regards the Subject Goods from Oman.

202. In sum, the Central Government failed to impose the current anti-dumping measure on a non-discriminatory basis on all sources of imports found to be dumped and causing injury. In so doing, the Central Government violated Article 9.2 of the AD Agreement and Rule 19 of the Tariff Rules, and failed to comply with its MFN treatment obligation under Article I:1 of the GATT 1994 to the extent that it granted an advantage to the Subject Goods from Oman and Saudi Arabia which it did not grant to the Subject Goods from Singapore. The same reasoning and conclusion apply to the extension of the anti-dumping measure on the Subject Goods from Singapore for an additional twelve months upon the initiation of the present review, as well as to any potential continuation of that measure as a result of the present review.

203. In the Disclosure Statement, it has been noted in Paragraph 65, that no representation or challenge was made as to the withdrawal of ADD on Oman or Saudi Arabia before any judicial body by the exporters. This is not factually correct, as ExxonMobil had filed an appeal before the CESTAT against the duty notification, and also taken up this issue in the remand proceedings before the Designated Authority.

204. The Authority being a creature of statute, derives its powers from the Customs Tariff Act, 1975 ('Act') and the Rules made thereunder, and must act in accordance with the statute, whether or not an objection is made by the parties. Therefore, the duties on Singapore are discriminatory and invite attention to its earlier submissions on the issue.

205. Whether the revocations of the anti-dumping measures on imports from Oman and Saudi Arabia were challenged before the Indian courts is irrelevant in assessing the discriminatory nature, and thus legality, of the anti-dumping measure on imports from Singapore.

206. Rule 18 of the Tariff Rules provides that "any provisional duty [...] or an anti-dumping duty [...] shall be on a non-discriminatory basis and applicable to all imports [...], from whatever sources found to be dumped and [...] causing injury to the domestic industry." As a result, the anti-dumping measure was maintained (and later extended) on imports from Singapore only, in violation of Rule 18 of the Tariff Rules and the

corresponding provisions of WTO law. On that basis alone, therefore the anti-dumping measures on imports from Singapore should be terminated.

207. The anti-dumping measure on the subject goods from Singapore must be allowed to expire because there is no likelihood of continuation or recurrence of dumping and injury.

208. Section 9A(5) of the Tariff Act provides that anti-dumping measures shall expire within five years of their imposition unless it is found, in the framework of a sunset review, that “cessation of such [measures] is likely to lead to continuation or recurrence of dumping and injury.” To extend the anti-dumping measure, the Authority must thus find that termination of the anti-dumping measure would likely lead to continuation or recurrence of injury.

209. The Authority must establish a clear causal link between the termination of the anti-dumping measure, on the one hand, and likely continuation or recurrence of injury, on the other hand. This causal link must necessarily be based on positive evidence and a firm evidentiary foundation, and cannot derive solely from the mechanic application of presumptions. Any injury suffered by the domestic industry could not be attributed to imports from Singapore and that the anti-dumping measure should thus be terminated.

210. The Disclosure Statement is welcomed, in as much as it records, that there is no likelihood of continuation or recurrence of dumping and injury, were the duties allowed to expire. The significant increase in price and insignificant sales volume and market share of the Subject Goods from Singapore exclude any possible causal relationship between the injury (if any) suffered, or likely to be suffered, by the Domestic Industry and the Subject Goods from Singapore.

211. Any injury suffered, or likely to be suffered, by the Domestic Industry must be attributed to other factors such as: (i) lower-priced imports from other countries, (ii) increased competition from polypropylene domestic producers, (iii) the Domestic Industry’s inability to sustain regular supplies of consistent quality to the domestic polypropylene market, and not to the Subject Goods from Singapore.

212. The domestic industry, argues that Vistamaxx has an unusually high ethylene content, in the range of 15% to 25%, and is not a polypropylene. Vistamaxx, is a co-

polymer of propylene and ethylene. The ethylene content in Vistamaxx is below 16%. Vistamaxx and Polypropylene are generally used together for end applications, which require enhanced elasticity. Vistamaxx is a specialized polypropylene, which gives greater elongation and tenacity to the end product. For the case on hand therefore, Vistamaxx falls within scope of product under consideration.

213. In the original proceedings, the Domestic Industry had specifically argued that Vistamaxx meets all technical and commercial parameters applicable to polypropylene, and therefore should be considered as subject goods. The Domestic Industry had also claimed that they had the capability to make Vistamaxx in India. On this basis, duties were imposed on Vistamaxx, and for the last 6 years, the importers have paid duty on imports of Vistamaxx. The argument of the domestic industry, now that Vistamaxx is not subject goods, is totally without merit.

214. All information requested by the Authority has been provided on whether Vistamaxx is to be considered a polypropylene during the on-site verification conducted between 24-25 November 2015. The Authority's assessment is affirmed that the PUC and its scope would not be altered in the present sunset review.

215. Pursuant to Article 11.3 of the AD Agreement, Article 9A(5) of the Tariff Act, and Rule 23 of the Tariff Rules, the Authority can maintain an anti-dumping measure only if it finds that expiration of the said measure would be likely to lead to continuation or recurrence of dumping and injury. Here, the evidence plainly shows that there would be no likelihood of continuation or recurrence of injury should the anti-dumping measure on the Subject Goods from the exporters from Singapore be allowed to expire. There is no legal basis to maintain the anti-dumping measure on the Subject Goods from Singapore and the said measure must thus be allowed to expire and terminated in its entirety.

216. TPC submits that it sells at competitive prices in India, and that there has not been any dumping. Any injury suffered by the petitioner (which has a dominating, non-competitive market share in India) is much more likely to be caused by accelerated growth of new domestic producers or the low priced imports from countries other than Singapore.

217. Therefore, it is submitted that there is no case for extension of duties for a further period of 5 years, as removal of duties on imports from Singapore is not likely to cause continuance or recurrence of injury to the Domestic industry.

218. Hence, the foregoing discussion demonstrates that, pursuant to Article 11.3 of the AD Agreement, Article 9A(5) of the Tariff Act, and Rule 23 of the Tariff Rules, the Authority can maintain an anti-dumping measure only if it finds that expiration of the said measure would be likely to lead to continuation or recurrence of dumping and injury. There is no legal basis to maintain the anti-dumping measure on the Subject Goods from Singapore and the said measure must thus be allowed to expire and terminated in its entirety.

EXAMINATION BY AUTHORITY

219. Relevant case laws cited by domestic industry in the rejoinder have been addressed in appropriate previous paras. The Authority notes the submissions of the domestic industry regarding exclusion of vistamaxx from the purview of investigation on the ground of vistamaxx having different technical properties from those of copolymers produced by the domestic industry, and being a modifier in terms of the end use.

220. The Authority in this regard reiterates that the PUC in the present SSR is being considered the same as that in the original Final Findings dated 23.10.2010. The issue of excluding specific grades was dealt with at length in paras 33 to 39 of the original Findings. The Authority holds that various grades of polypropylene were bundled as PUC and the like article test was based on the bundled PUC. It is no doubt appreciated that grades- mix of the composite PUC may undergo change on the basis of production, changing capability, demand/ supply from time to time. However, this does not call for dynamically altering the grade mix of the composite PUC which has been frozen and adopted in the original Findings after examining the inclusion & exclusion of various grades along with the like article test.

221. Further the two cases/ findings of the DGAD, viz EPDM Rubber case from China and STPP from China, cited by the domestic industry are not applicable to the present investigation. Since in each of the said cases, the production of the PUC in its entirety was closed/ stopped by the domestic industry, and therefore the AD duty was withdrawn/ revoked considering the larger interest of the domestic users of the subject goods. The present SSR, on the other hand, concerns specifically altering the grade mix which has passed the test of 'like article'. In para 29 of the original Findings, the domestic industry had submitted their views on cost and price aspects. In para 31, the domestic industry had

also submitted that, “*compounding is a process of adding additives to change the properties of the grade which include colour, tensile strength, temperature resistance, impact strength etc. before using the subject goods for the manufacture. However, the basic form and the product does not change which remains polypropylene only. Therefore, compounds are not to be excluded as the product essentially continues to remain Polypropylene.*”

222. The Authority in para 33 of the original Findings, noting the submission of the domestic industry and other interested parties, held that it would not be correct to state that compounds are not part of the product under consideration. Certain grades of vistamaxx as stated by the exporter in the para 17 of the original Findings, were also included in the scope of the PUC, and continued so and were later also subjected to AD duty.

223. The properties of vistamaxx vis-a-vis impact co- polymer (hereinafter referred to as ‘ICP’) as submitted by the domestic industry, in response to the Disclosure Statement, to differentiate between vistamaxx and ICP, are quite overlapping with the submissions on properties mentioned by the domestic industry in para 31 of the original Findings. These properties were broadly considered by the Authority in the original Findings as well, to freeze the PUC for inclusion of various grades. Therefore, there appears to be a contradiction in domestic industry’s advocacy for exclusion of certain grades without any substantial merits for further segregation and differentiation in grades on almost the same set of properties, on the basis of which the PUC was finalized in the original findings. The specific grade i.e. vistamaxx satisfies the definition of PUC and like article.

224. The authority therefore does not agree to the submissions of the domestic industry and holds the PUC and its scope to be the same as defined in the original Final Findings and also in the initiation notification of the present SSR.

225. It is also noted that during the 5- year period when the AD duty was in force on the subject goods, the domestic industry did not approach the Authority for seeking a mid-term review for a change in the scope of the PUC and consequential determinations. As regards domestic industry’s contention on the import data of years prior to POI submitted by them, the Authority holds that this data is essentially to capture a broad trend only, while the dumping and injury margin are evaluated for POI where the verified data is adopted.

226. The domestic industry has urged the Authority to reject M/s TPC's response on the ground that one of its exporting channels of the subject goods to India, i.e. M/s Marubeni has not filed any response. The domestic industry has also cited various findings of DGAD to support the aforesaid claim. In this regard, the Authority notes that in the instant case, the majority exports (almost 80%) of M/s TPC are through M/s Itochu who have responded in the present SSR and whose data has also been verified along with M/s TPC through an on- site verification.

227. The Authority has also correlated the exports data of M/s TPC to India through M/s Marubeni during the POI with the data provided by the DG Systems. In this regard, the Authority notes that in the original Final Findings, M/s TPC has exported through five channels all of whom were awarded an individual dumping margin and AD duty as per the producer- exporter combination. In the present SSR, as only M/s Itochu has responded as a cooperative exporter with M/s TPC as the producer, the Authority has determined individual dumping margin and AD duty only for the M/s TPC- M/s Itochu combination, and rendering the remaining channels of M/s TPC as non- cooperative. These non-cooperative exporters have been evaluated for recommendation of AD duty as per the consistent practice of the Authority by adopting the highest Normal Value and the lowest export price of cooperative producer/ exporter.

228. Thus the Authority holds that in view of majority exports being made by TPC through M/s Itochu in POI, the cases cited by the domestic industry on incomplete value chain due to non reporting of majority exports to reject M/s TPC's response, are not relevant in the instant case. The Authority has therefore determined individual dumping margin and injury margin for M/s TPC's exports through M/s Itochu in the POI.

229. The Authority notes that the records, as also verified on site at the producer- cum-exporter's premises, evidence that:

- a. EMCAP is a division and trading arm of EMAPPL.
- b. EMCAP is registered as a proprietorship under the Singapore Business Registration Act (Cap. 32).
- c. EMCAP is one of the six trading divisions of EMAPPL having same GST number for all.
- d. None of the documents proves that EMCAP is a private limited company.

e. In the original finding also EMCAP had filed response on behalf of EMAPPL stating that it was not a separate legal entity from EMAPPL even though it was a registered proprietorship concern.

230. The Authority notes the submissions of the domestic industry and reiterates that EMCAP is only a division and a trading arm of EMAPPL engaged in the business of PUC without being a separate private limited company. This aspect was verified by the team of officers on site. The Authority further notes that the domestic industry did not contest the issue of change of the scope of the PUC nor the issue of EMCAP being treated as an appropriate entity for determination of normal value, export price & injury margin, before DGAD or any other appropriate forum. Therefore, the Authority has considered the response filed by EMCAP for determination of normal value, export price and landed value for appropriate conclusions.

231. As regards new information the Authority notes that the Cooperative producers/exporters verification was undertaken post Public hearing. The process of verification entails validation, possible rejection, partial validation/rejection, appropriate modification of format/content/backup is based on the actual verification. All such data is intrinsically related to the questionnaire acquired in the process of verification which forms basis of a fair determination cannot be avoided or discarded. This has been a consistent practice of the Authority for any onsite verification which at times may happen post hearing depending on an administrative or procedural requirement. .

232. The Authority notes the submissions made by the cooperative Producers/Exporters from Singapore regarding discriminatory continued application of ADD duties on exports from Singapore, when the ADD duties on exports from Oman and Saudi Arabia were withdrawal. The Authority notes that in its findings of the post decisional oral hearing no. 14/5/2009-DGAD dated 09/08/2012 Pursuant to the Hon'ble Tribunal (CESTAT's) Misc. Order No. AD/M/2-4/2012-CU (DB) dated 14/05/2012, it had held that the Customs Notification No. 130/2011 – Customs dated 30th December, 2011, the Central Govt., in exercise of powers conferred by sub-section (1) read with sub-section (5) of section 9A of the Customs Tariff Act, 1975 revoked the duties on imports from Saudi Arabia but without finding any fault with the final findings dated 23rd August, 2010 of the Authority. The Authority has further noted that the notification revoking the duties was prospective in nature and therefore the contentions made by ExxonMobil, inter alia that ADD duties are

discriminatory, were devoid of any merit. The Producers/Exporters from Singapore after such a judgment, if desirous, could have further represented before an appropriate body for relief.

233. As regards the post POI- II trends submitted by the domestic industry, the Authority notes that the feedstock for production of polypropylene is petro based whose international prices have shown consistent down trend due to fall in crude prices. Therefore the fall in landed value needs to be seen this context. The Authority has in fact captured the above trend in the post POI of 6 months by an appropriate comparison of landed values and broadly determined NIP for post POI (6 months) as per its consistent practice.

INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

234. 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. 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.

RECOMMENDATIONS

235. The Authority holds that even though the subject goods exported by the cooperative producers/ exporters, i.e. M/s ExxonMobil directly and M/s TPC through M/s Itochu were found to be dumped, they did not cause injury to the domestic industry in the POI and post POI (6 months). Also the above producers/ exporters' export prices to the countries other

than India in POI and post POI were found not to be causing injury to the domestic industry in the event of the diversion of their exports to India.

236. The Authority however holds that the non-cooperative producers/ exporters in POI and post POI to India and to countries other than India, could not be specifically evaluated due to non availability of responses from them. Therefore, on the basis of the consistent practice of the DGAD to reference the highest Normal Value and the lowest Export Price of cooperative producers/ exporters, the Authority holds that aforesaid non cooperative producers/ exporters would cause injury to the domestic industry in the event of the withdrawal of ADD on their exports of the subject goods to India.

237. 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

S. No.	*Heading/ Sub Heading	Description of goods	Country of origin	Country of export	Producers	Exporters	Duty Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Singapore	Singapore	The Polyolefin company (Singapore) Pte. Ltd.	Itochu Plastics Pte. Ltd.	Nil	MT	US\$
2.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Singapore	Singapore	The Polyolefin company (Singapore) Pte. Ltd.	Any Other	145.2	MT	US\$
3.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of	Singapore	Singapore	Exxon Mobil Chemical	Exxon Mobil Chemical	Nil	MT	US\$

		propylene and copolymers of propylene and ethylene)'			Asia Pacific	al Asia Pacific			
4.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Singapore	Singapore	Exxon Mobil Chemical Asia Pacific, Singapore	Any other	145.2	MT	US\$
5.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Singapore	Singapore	Any combination other than as specified at Sr. nos. 1-4.		145.2	MT	US\$
6.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Singapore	Any country other than Singapore	Any	Any	145.2	MT	US\$
7.	39021000 and 39023000	'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'	Any country other than Singapore	Singapore	Any	Any	145.2	MT	US\$

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

238. 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.

FURTHER PROCEDURE

239. An appeal against the order, after its acceptance by the Central Government, shall lie before the customs, excise and service tax appellate tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975.

240. The Authority may review the need for continuation, modification or termination of the measure as recommended herein from time to time as per the relevant provisions of the Act, rules and public notices issued in this respect from time to time. No request for

such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

AK Bhalla
Designated Authority