

No.15/27/2010-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

Dated 10th February, 2012

Notification

(Final Findings)

Subject: Sunset Review anti dumping duty investigation concerning imports of Partially Oriented Yarn (POY) originating in or exported from China PR.

No. 15/27/2010-DGAD.— Having regard to the Customs Tariff Act, 1975 as amended from time to time (and the Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. Background of the case

1. Whereas the Designated Authority, 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 or the AD Rules or the Anti Dumping Rules), had initiated the original investigation vide Notification No. 14/10/2005-DGAD dated 13th December, 2005. The Authority issued its Final findings recommending imposition of definitive anti-dumping duty on imports of Partially Oriented Yarn (POY) (hereinafter referred to as the subject goods) originating in or exported from China PR (hereinafter referred as the subject country) vide Notification No.14/10/2005-DGAD dated 08th June, 2007. Definitive anti-dumping duties were imposed by the Government of India vide Customs Notification No. 92/2007-Customs dated 03rd August, 2007 on imports of Partially Oriented Yarn (POY) originating in or exported from China PR.

2. And, whereas in terms of Section 9A (5) of the Customs Tariff (Amendment) Act 1995, the anti-dumping duties imposed, shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of the duty is likely to lead to

continuation or recurrence of dumping and injury. In this regard, Hon'ble Delhi High Court in the matter of Indian Metal and Ferro Alloys Ltd v/s Designated Authority in WP No 16893 of 2006 had held that sunset review is mandatory. Therefore, in terms of Section 9A(5) and pursuant to the above-referred orders of the Hon'ble High Court, the Designated Authority had initiated sunset review vide Notification No. 15/27/2010 dated 11th February, 2011 in accordance with Section 9A(5) of the Act read with Rule 23 of the Anti-dumping Rules to examine as to whether cessation of the duty would lead to continuation or recurrence of dumping and injury.

3. And whereas, the original antidumping duty as notified vide Notification No.92/2007-Customs dated 03rd August, 2007 has been extended by the Government of India up to 10th February, 2012 vide notification No. 71/2011-Customs dated 09th August, 2011, in terms of Section 9(A)(5) of the Act.

B. Procedure

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

- i. After issuance of the public notice notifying the initiation of the above investigations by the Authority, the Authority notified the Embassy of subject country in India about the receipt of application alleging dumping made by the respondent Domestic Industry before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- ii. The Authority forwarded copy of the said public notice to the known exporters, importers/users and to the respondent Domestic Industry and gave them an opportunity to make their views known in writing within forty days from the date of the publication of initiation notification in accordance with the Rule 6(2).
- iii. A questionnaire for according market economy treatment was forwarded to all the known exporters and the Embassy of the Peoples' Republic of China. For the purpose of initiation, normal value had been based on the basis of constructed normal value in Taiwan as appropriate estimate of normal value. In an alternate to the price from a market economy third country to India, respondent Domestic Industry had also provided estimates of normal value in China as price payable in India in terms of Para 7 of Annexure I to the Rules. Subsequent to initiation, the Authority informed the known exporters that the Authority proposed to examine the claim of the respondent of treating China as non-market economy in the light of Para (7) & (8) of Annexure-I of the Anti Dumping Rules. The concerned exporters / producers of the subject goods from China PR were, therefore, requested to furnish necessary information / sufficient evidence as mentioned in paragraph 8 of Annexure-I to enable the Designated Authority to consider whether market economy treatment could be granted to cooperating

exporters / producers who could demonstrate that they satisfied the criteria stipulated in the said paragraph.

iv. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the application to the following known exporters/manufacturers from China and Embassy of the subject country in India:

1. Cixi Santai Chemical Fibre Co., Ltd.
2. Zhejiang Cifu Chemical Fiber Co., Ltd.
3. W.W Textile Co., Ltd.
4. Hangzhou Huaxin Textile Co.,Ltd.
5. Xinxiang Sunshining Textiles Co., Ltd.
6. Tongkun Group Zhejiang Hengsheng Chemical Fibre Co.,Ltd.
7. Hangzhou Zhongli Chemical Fiber Co., Ltd.

v. None of the exporters/producers from China responded to the questionnaire or the initiation notification.

vi. The Embassy of the subject country in India was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, application and questionnaire that was sent to the exporters was also sent to them.

vii. A questionnaire was sent to the following known importers/users/user associations of the subject goods for necessary information in accordance with Rule 6(4):

1. All India Texturisers Association, Mumbai
2. Suntex India
3. Galaxy Textiles
4. Harmony Yarns PVT. Ltd.
5. AVM Exports
6. Garg Tex-O-Fab Ltd.
7. Boghara Polyfab Private Ltd.
8. Silvassa Industries Ltd.
9. Beekaylon Synthetics Ltd.
10. Alok Industries Ltd.
11. Bajari Filaments P Ltd.
12. Sidhvan Yarns Ltd.
13. Crimpon Yarns
14. Uni Tex Texturisers
15. Unify Texturisers
16. Ghoomtex (India) Pvt Ltd.
17. Mehratex India P Ltd.
18. SRV Polytex Pvt. Ltd.
19. Synfab Sales and Industries Ltd.

- viii. None of the above mentioned importers/user/user associations of the subject goods or any other interested party responded to the questionnaire or the initiation notification.
- ix. A copy of the non-confidential version of the application was also provided to other interested parties, wherever requested.
- x. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept the same open for inspection by the interested parties as per Rule 6(7).
- xi. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the respondent Domestic Industry so as to ascertain whether the anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xii. A public hearing was held on 29th November, 2011 by the Designated Authority, which was attended by representatives of the Domestic Industry and certain other interested parties. The Authority has considered the written submissions and rejoinders received from the interested parties. These issues have not been repeated herein for the sake of brevity.
- xiii. **** in the Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.
- xiv. Investigation was carried out for the period starting from 1st January 2010 to 31st December 2010 (12 months), i.e., the period of investigation (POI). The examination of trends in the context of injury analysis covered the period 2007-08, 2008-09, 2009-10 and the POI.
- xv. The exchange rate adopted by the Authority in the Final Findings is 1USD=46.44 as per the relevant custom notification.

C. Product Under Consideration and the Like Article

Product Under Consideration:

5. The product under consideration in the present investigation is Partially Oriented Yarn, generally known as POY. It falls under the Custom Tariff Heading 5402.42 under the Indian Custom Tariff Classification. It is a yarn of polyester and is an intermediate which is subject to further processing, for example, texturing or draw twisting, to make it suitable for weaving or knitting into fabrics. The

Authority notes that different Denier of POY range from 50 to 530 Denier to meet the requirement of different segments. POY is different from PFY and, thus, PFY is not within the scope of the present investigation.

Like Article

6. Rule 2(d) of AD Rules defines Like Article as:

“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.”

The respondent Domestic Industry has claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end uses of the dumped imports and the domestically produced subject goods. The Authority notes that neither the exporters nor any other interested parties has disputed the fact that there is any difference in the dumped goods and the product under consideration manufactured by the domestic industry. The Authority observes that the imported goods are used by the user industry interchangeably with the goods produced by the domestic industry. The subject goods produced by the domestic industry and produced by the subject countries being technically and commercially substitutable, are ‘like articles’ under the Anti Dumping Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the respondent Domestic Industry in India are being treated as ‘Like Articles’ to the subject goods being imported from the subject country.

Submissions made by the Domestic Industry

7. The product under consideration in the present investigation is Partially Oriented Yarn. Partially Oriented Yarn is generally known as "POY" in the commercial and market parlance and is made in wide range from 50 Denier to 530 Denier to meet the requirement of different segments.

Submissions made by the interested parties

8. None of the interested parties has raised any objections regarding the scope of the product under consideration.

D. Domestic Industry

9. Rule 2(b) defines domestic industry as under:-

(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry:

10. It is noted that the application has been filed by M/s Association of Synthetic Fibre Industry, New Delhi, on behalf of the domestic industry comprising the following producers of the subject goods in India:

1. M/s Reliance industries limited
2. M/s Garden Silk Mills Ltd.
3. M/s JBF Ltd.

11. The Authority notes that the application has also been supported by M/s Indorama and M/s Alok Industries but they have not given any data.

Submissions by the interested parties

12. The reason for non-filing of the questionnaire response was that they were not aware about the initiation of the anti-dumping investigation as they did not receive any communication in this regard from the Designated Authority.

13. The Chinese economy was in turmoil. Therefore, there was no question of dumping.

14. Most of the times, the calculation of ex-factory price by the Designated Authority is based on assumptions. The management efficiency, plant efficiency, general economic conditions, impact of substitutes etc. are seldom taken into account by the Designated Authority.

Submissions by the Domestic Industry

15. The Domestic Industry made the following submissions:

- a. None of the exporters/importers, including M/s All India Texturisers Association and M/s Synfab Sales & Industries limited, had filed any response upto the date of public hearing. Therefore, none of the parties should be allowed to file the submissions at this late stage of investigation as per the standard practice of the DGAD. It was submitted that the plea of M/s All India Texturisers Association and M/s Synfab Sales & Industries

limited that they were not aware of the present proceedings is completely irrelevant as the initiation notification is issued by way of a gazette notification and was displayed on the website of the Ministry of Commerce. Furthermore, it was submitted that a gazette notification is a notice *in rem* and, therefore, the requirement of law is fulfilled fully by the DGAD. It was also submitted that M/s All India Texturisers Association had not even provided details of their members to enable them to know about their locus standi to appear as an interested party.

- b. Sales volume of the Domestic Industry shows an upward trend while the selling price per unit of the domestic industry has only increased marginally in comparison to the substantial increase in the selling price per unit of exports. This signifies the negative effect of volume and price of dumped imports on the domestic selling price of the industry and of injury.
- c. The details of the capacity and production for POY are not separately available in the public domain. However, the domestic industry has obtained the details of PFY which includes POY and FDY and numbers of the same are given in the response filed by us. Majority share out of the PFY production and capacity is of POY. It provides a good indication of the surplus capacity of POY in China which is a clear indication of the likelihood of injury. Sunset review is different in nature in comparison to the original investigation, being a forward looking analysis of likelihood of dumping and injury to the domestic industry. Therefore, surplus capacity available with the subject country is a good indicator of their likely behavior of dumping the subject goods in the domestic industry.
- d. In response to the submission of M/s All India Texturisers Association and M/s Synfab Sales & Industries limited that as the Chinese industry was in turmoil there is no question of dumping, it was submitted that even assuming that the above contention is correct, it follows that in such a state of economy, the Chinese manufacturers are bound to export the subject goods at or below their cost of production.
- e. Normal price, ex-factory price and other calculations concerning anti-dumping investigation are done strictly in accordance with the rules provided in the Anti-dumping Rules. These rules are being consistently followed by the Authority and case to case departures from these rules are not being made by the Authority. These rules are universally applicable to all the investigations concerning dumping.

Examination by the Authority

16. It is noted that the basic contention of the interested parties for not filing any information is that they were not aware of the initiation of the sunset review proceedings. In this context, it is important to note that all initiation notifications are invariably brought to the notice of the public at large by way of a gazette notification and, therefore, it is not open for any party to plead ignorance. In addition, the

known parties are also individually addressed about the investigations. The Authority also invariably places all the initiation notification on its website so as to ensure that there is maximum participation by the concerned interested parties. Under the circumstances, the plea of ignorance by some of the opposing parties is of no consequence in law or on fact and cannot be accepted. Nevertheless, the Authority proposes to deal with their submissions at appropriate places in the larger interest of justice.

E. De Minimis Limit

17. As per the import data received by the Authority from ICL, the import of the subject goods from the subject countries are above de-minimus level even though the test of de minimus does not apply in case of sunset review proceedings under Section 9A(5).

F. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS

Dumping Margin - Normal Value

18. The Domestic Industry has claimed that the subject country, i.e., China, is a non-market economy country under the Indian Anti-dumping Rules. Therefore, the normal value in case of China is required to be determined as per the procedure described in the Para 7 of the Annexure I to the Anti-dumping Rules. They have further claimed that as per paragraph 7, the normal value is required to be determined on the basis of either the domestic selling prices in a market economy third country or the constructed value in a market economy third country or the export prices from such a third country to any other country including India. However, if the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

19. For the purpose of determination of normal value in case of a non market economy country, an appropriate third market economy country is required to be selected as the first alternative. Domestic Industry in their submission proposed that Taiwan can be taken as an appropriate market economy third country in view of the fact that the industry structure, the average capacity of plants, the cost structure, the production process, the technology and the level of development are reasonably and fairly close to that found in China. However, the domestic industry was not able to get any documentary evidence or reliable information with regard to prices in Taiwan as such information is not available in public domain. Accordingly, domestic industry requested the Authority for determination of normal value in terms of the second part of paragraph 7 based on any other reasonable basis including price actually paid or payable in India.

Examination by the Authority

20. In anti-dumping investigations concerning imports from non-market economy countries, normal value is to be determined in accordance with paragraphs 7 & 8 of the Annexure 1 of the Anti-dumping Rules. The Authority notes that none of the Chinese producers had responded to the exporter's questionnaire. None of the Chinese producers have claimed that they should be granted market economy status. The Authority, therefore, proceeds to determine the normal value in accordance with paragraph 7 of Annexure 1 to the Rules.

21. It is noted that the normal value in China can be determined in the following manner:

- (a) on the basis of the price in a market economy third country, or
- (b) the constructed value in a market economy third country, or
- (c) the price from such a third country to other countries, including India.
- (d) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

22. The Domestic Industry had suggested Taiwan to be taken as the third country market economy in terms of the provisions of paragraph 7 of Annexure I of the Anti-dumping Rules. The Authority notes that in the present investigation the Chinese producers/exporters have not cooperated and no response has been filed by them. None of the importers in India has also filed any response. Further, none of the interested parties has provided any other alternate basis on which normal value can be determined. In view of the above position and the submissions made by the Domestic Industry and considering China as a non-market economy country, the Authority adopts the option (d) available in the Rules which provides for adoption of any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin and construct the normal value in respect of China PR.

23. Accordingly, the ex-works normal value of the product under consideration for China PR has been constructed based on facts available. The Normal Value has been constructed taking into account international prices of major raw materials and adopting conversion cost, consumption norms and SGA expenses of the domestic industry. After adding a reasonable profit margin of 5%, the constructed normal value is determined on weighted average basis as US\$ *** per MT in respect of the China PR.

Export Price

24. In the response submitted by the domestic industry, the domestic industry had worked out export price based on the ICL import data in view of the fact that import data is not available from DGCI&S for the entire period of investigation.

25. The Authority had observed that none of the exporters from the subject country has cooperated in the subject investigation. Therefore, the Authority has considered weighted average export price based on the ICL import data submitted by the domestic industry.

26. The net ex-works export price of the exports from China PR is determined by the Authority on weighted average basis as Rs **** per MT.

Dumping Margin

27. On the basis of the constructed normal value and net export price determined, as explained above, at ex-factory level, the dumping margin arrived at for all exporters of the subject goods from the subject country during POI is as given in table below:

Normal value (Rs per MT)	***
Net Export price (Rs per MT)	***
Dumping Margin Amount (Rs per MT)	***
Dumping Margin (%)	***
Dumping Margin (% Range)	0-10

G. ASSESSMENT OF INJURY AND DETERMINATION OF CAUSAL LINK

Assessment of Injury and likelihood of injury to continue or recur

Injury and Causal Link

28. The domestic industry has submitted that share of imports from China has increased manifold in relation to total imports during the period of investigation as compared to the base year April 2007- March 2008. It was submitted that the dumped imports from China have affected the domestic prices and the price undercutting and underselling is significant during the period of investigation. It was submitted that while the sales of the domestic industry have increased, the increase is less than the increase in demand. Further, the domestic industry had alleged that the margin of dumping from China is also significant during the period of investigation.

29. The Domestic Industry has further submitted that China has exported the subject goods to countries other than India at much lower prices for all the years in

the injury investigation period. It is, therefore, imminent that the subject goods from China would be exported to India at much lower prices than the prices at which the same have been exported to India throughout the injury investigation period. It also indicates that the India would become an attractive market for them in case the duties are withdrawn and the severe dumping from them would continue. This would result in further injury to the domestic industry.

Examination By The Authority

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

31. The Authority has taken note of the arguments of the interested parties on injury examination aspect and addressed the issues raised at appropriate places in this Final Findings to the extent these arguments are considered relevant to the investigations. The Authority has examined the injury parameters objectively taking into account the facts before it and the arguments of the interested parties.

Volume Effect

32. With regard to volume of the dumped imports, the Authority is required to consider as to whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. It is seen that the share of imports from China is showing an increasing trend during the POI as compared to the base year, whether it is in relation to total imports, total demand or the production of Indian Industry, as evidenced from the table given below.

Figure in MT

Particulars	2007-08	2008-09	2009-10	January2010- December 2010
Import from China	34	-	88	43
Production (domestic Industry)	842,743	805,132	896,359	943,652
Total Imports	4,475	476	357	261
Demand	7,27,107	6,93,552	8,08,026	8,61,567

Share of Chinese Imports in relation to (%)				
Total imports in India	0.7485%	-	24.7429%	16.5833%
Demand in India	0.0046%	0.0000%	0.0109%	0.0050%
Production of Indian Industry	0.0040%	-	0.0099%	0.0046%

However, it is noted that the quantum of imports is not much which is on account of the existence of the anti-dumping duties.

Price effect of dumped imports and impact on domestic industry:

33. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject country 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 the landed value of imports from the subject country. A comparison for subject goods during the period of investigation was made between the landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission offered by the domestic industry have been adjusted. Price underselling is an important indicator in the assessment of injury and, 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 determined for the domestic industry by appropriately considering the cost of production and other factors relating to cost on the basis of information provided by M/s Reliance Industries Ltd, M/s Garden Silk Mills Ltd and M/s JBF Industries Ltd. The position is as follows:

34. **Price Suppression And Price Depression:** In order to assess as to whether the imports from subject country were suppressing/depressing the prices of the domestic industry, the Authority has compared the cost of production and net selling price of the domestic industry along with the landed price of imports over the injury period, which is given in the table below:

Year	2007-08	2008-09	2009-10	January 2010- December 2010
Weighted Average COP of DI (Rs./MT)	***	***	***	***
Weighted Average COP of DI (Indexed)	100	99	98	104

Wt. Avg. Domestic Selling Price of DI (Rs./MT)	***	***	***	***
Wt. Avg. Domestic Selling Price of DI (Indexed)	100	98	102	108
Avg. Profit/Loss	***	***	***	***
Avg. Profit/Loss (indexed)	100	119	29	30
Wt Avg Landed Value from China	***	***	***	***

35. From the above table, it is evident that there is a marginal increase in the selling price of the domestic industry during the POI as compared to the base year. Further, cost of production of the domestic industry has also increased during the POI as compared to the base year. The Authority notes that the trend in the movement of the cost of production and the selling price shows price suppression/depression effect. It is seen that while the position of the Domestic Industry has improved, they are still incurring losses.

Consequent Effect of Dumped Imports on the Domestic Industry

36. **Changes in Market Share held by the Indian Producers:** The Authority has determined demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers and imports from all sources. The demand of the product in India during the POI has increased as compared to the base year as well as the preceding year. The position with regard to the market share has remained more or less the same on account of the fact that the imports are very low due to the existence of anti-dumping duties. In any event, the current market share is of little significance in a sunset review where the primary focus is on the likelihood of dumping and injury.

Figures in MT

Year	2007-08	2008-09	2009-10	January2010- December 2010
Sales of Domestic Industry (DI)	7,22,632	6,93,076	8,07,669	8,61,306
Import from China *	34	-	88	43
Import from other countries	4,442	476	269	217
Total Imports *	4,475	476	357	261
Demand	7,27,107	6,93,552	8,08,026	8,61,567
Market share of Domestic Industry	99.38%	99.93%	99.96%	99.97%

*Source: ICL data

37. **Production, capacity and capacity utilization:** The Authority notes from the table below that capacity utilization of the domestic industry has increased marginally by only 4% during the POI as compared to the base year. Moreover, it is evident from the table given below that the Domestic Industry still has sufficient capacity to cater to the demand of the Indian market. However, in spite of the available capacity, the production and sale of the domestic industry has only increased marginally during the POI, indicating the negative and injurious impact of dumped imports from the subject country.

Particulars	Unit	2007-08	2008-09	2009-10	January2010-December 2010
Installed capacity	MT	952,940	952,940	999,240	1,021,744
Total Production	MT	842,743	805,132	896,359	943,652
Capacity utilization	%	88%	84%	90%	92%

38. **Productivity:** The productivity of the domestic industry has improved during the period of investigation as compared to the base year 2007-08 which appears to be on account of the existence of the anti-dumping duties.

Particulars	2007-08	2008-09	2009-10	January2010-December 2010
Total Production (MT)	842,743	805,132	896,359	943,652
No. of employees	***	***	***	***
Production per employee	***	***	***	***

39. **Sales volume:** The Authority notes that the sales volume of the Domestic Industry has gone up on account of the increasing market size and the fact that the imports during the review period of investigation are subdued as a consequence of imposition of anti-dumping duty against the imports of the subject goods from China PR. Sales volumes of domestic industry are given in the table below:

Figure in MT

Particulars	2007-08	2008-09	2009-10	January 2010-December 2010
Domestic industry Sales	7,22,632	6,93,076	8,07,669	8,61,306

40. **Actual and potential effect on Employment and Wages:** The Authority notes from the information submitted by the Domestic Industry that there is no impact on the number of employees and the wages that are being paid to them which indicates

that the anti-dumping duties have been effective.

41. **Actual and Potential impact on Profitability, Return on Investment and Cash flow:** It is evident from the cost and prices information submitted by the domestic industry that the domestic industry has suffered losses during the POI.

Year	2007-08	2008-09	2009-10	January2010- December 2010
Weighted Average COP of DI (Rs./MT)	***	***	***	***
Wt. Avg. Domestic Selling Price of DI (Rs./MT)	***	***	***	***
Avg. Profit/Loss (Rs./MT)	(***)	(***)	(***)	(***)
Avg. Profit/Loss (indexed)	100	119	29	30

42. **Return on capital employed:** The Authority notes from the information given in the table below that domestic industry is still incurring negative return on capital employed in the POI (including the interest component) while the return is a meager 1% (ignoring the interest element) despite the levy of anti-dumping duty. The return on capital employed is also following the same trend as followed by profit and is much lower than what can be considered as reasonable for any industry.

Particulars	2007-08	2008-09	2009-10	January2010- December 2010
Capital employed	***	***	***	***
Profit before interest	***	***	***	***
ROCE %	***	***	***	***

43. **Inventories:** The Authority notes that there is a marginal decline in the stock of inventories. It is noted that the domestic industry had submitted that they have kept the inventories at a lower level with a view to reduce the overall cost by lowering the inventory carrying costs.

(in MT)

	2007-08	2008-09	2009-10	January2010- December 2010
Average stock	***	***	***	***
Indexed	100	46	77	73

44. **Price Undercutting and Price Underselling:** The domestic selling prices of the POY manufactured by the Domestic Industry have been analyzed on the basis of selling prices of the Domestic Industry in order to examine the effect of the

dumped imports on the domestic selling prices. For the purpose of examining price effect, the Authority has taken non-injurious price determined on the basis of the optimum cost of production, conversion cost, selling, general and administrative expenses and a reasonable return on capital employed based on information received from the Domestic Industry. This non-injurious price (NIP) has been compared with the landed values of comparable types of imported subject good for the POI. Based on the weighted average selling price of the domestic industry, the weighted average landed value of imports from the subject country and the NIP determined for the domestic industry, the price undercutting and underselling works out as under:

(Rs./MT)

Year	2007-08	2008-09	2009-10	January 2010- December 2010
Wt Avg Landed Value China	41,296	-	101,564	76,139
Wt Avg Domestic Selling Price of DI	***	***	***	***
Trend	100	98	102	108
Price Undercutting	***	***	***	***
Trend	100		(156)	(31)
Trend Range	90-110	-	(140-160)	(20-30)
Non injurious price				***
Price Underselling				***
Price Underselling Trend %				***
Price Underselling Range%				0-10

It is seen from above table that even though during the POI the price undercutting is negative but this has to be seen in view of the fact that the quantum of imports is negligible and the exporters are always in a position to monitor the prices in the period of review. It is also important to note that none of the exporters has cooperated in the investigations which would have facilitated the correct comparison of prices with the domestic prices. The Authority, therefore, considers that the negative price undercutting in a sunset review with such low level of imports and total non-cooperation by the exporters lead to a conclusion that price undercutting per se in this case is of little consequence. It may also be seen that the price underselling is positive.

45. **Magnitude of Dumping Margin:** The Authority notes that the dumping margin as indicator of magnitude of effect of dumped imports on the domestic industry is significant and worked out as ***%.
46. **Actual and potential impact on growth:** The Authority notes that the domestic industry is still not able to earn profits but has been able to achieve growth in sales volume as well as capacity utilization which is indicative of the fact that the

imposition of anti-dumping duties has been helpful for the industry even though they are yet to come out of the loss situation.

47. **Ability to raise capital investment:** The Authority finds that in view of the losses being suffered by the domestic industry on the product under consideration during the POI, the likelihood of any significant additional investments is remote.

48. **Other Known Factors and Causal Link:**

- a. Trade restrictive practice and competition between the foreign and domestic producers: The Authority did not find any trade restrictive practices followed by the Indian producers and other competing industries. As regards the Domestic Industry's inability to fill the gap between the domestic demand and their own production, it is observed that the imposition of anti-dumping duties does not amount to any kind of restriction on suppliers and producers for supplying the subject goods in the domestic market, which could have contributed to the injury to the domestic industry. Moreover, it is also noted that sufficient idle capacity is available with the domestic industry to cater to the demand of the domestic industry.
- b. Contraction of demand or Changes in the pattern of consumption: The Authority notes that there is no contraction in the demand during the period under consideration. On the contrary, the overall demand has increased during the POI. Therefore, the possible decline in demand is not a factor, which could have caused injury to the domestic industry.
- c. Development in technology, export performance and productivity of the domestic industry: It is noted that none of the interested party has submitted any evidence that the technology is a factor of injury to the domestic industry. The domestic industry has exported the subject goods during the period of investigation as well as during the previous years. The Authority notes that the export performance of the domestic industry has shown improvement. Further, the profitability of the domestic and exports sales have been segregated for the purpose of the injury examination. Therefore, export performance of the domestic industry cannot be attributed as a cause of injury for the performance of the domestic industry in the domestic market. The productivity of the domestic industry has improved during the period of investigation as compared to the base year 2007-08. The productivity *per se* could not be the cause of injury to the domestic industry.

H. **Conclusion on Causation**

49. In view of the fact that the present case concerns sunset review investigations, the importance of current injury is of much less significance. In view of the fact that anti-dumping duties were in place, parameters such as market share of the domestic industry in the total demand, sales, production, inventory have improved though

marginally. However, the domestic industry continues to suffer significantly on account of the price suppression and price depression due to the low landed price of the subject goods. It is also noted that the Domestic Industry is not able to earn profits as they are not able to increase their selling prices. The absence of price undercutting has to be viewed in the context of complete non-cooperation by the exporters which has curtailed the ability of the Authority to carry out a detailed price undercutting analysis. Return on investment and cash flows follow the same trend as followed by the profits. Moreover, the dumping margin from the subject country is also significant. On the basis of the foregoing, it is proposed to hold that the domestic industry continues to suffer material injury as envisaged under the Rules. It is also proposed to hold that no factor other than the adverse effect of imports from subject country can be attributed as a cause of injury to the domestic industry.

I. Likelihood of continuation/recurrence of dumping and injury

50. **Submissions made by the domestic industry:** The following submissions are made by the domestic industry regarding likelihood of continuation/recurrence of dumping and injury:

- i. China is having huge production capacity to meet the entire domestic demand in India. Moreover, China had made substantial capacity addition. The capacity addition itself is more than the total production capacity of the Domestic Industry. Furthermore, huge capacity additions are in the pipeline.
- ii. The significant decline in CIF prices and landed values in POI as compared to immediate previous year clearly indicate about the future behavior of the exporters from China that the prices from China would further be reduced to capture the market.
- iii. In view of the dumped imports from the subject country, the domestic industry is not able to increase their price so as to match their prices with that of the imports. Due to this, the domestic industry is not able to make profits and, thus, have an adverse effect on their capital raising ability and cash generating capabilities among others.
- iv. Significant dumping margin from the subject country also indicates about their dumping behavior. In all probability, dumping would intensify once the duties are lifted.
- v. The export prices of the Chinese producers to countries other than India are much lower for all years in comparison to the export price for India. This indicates that India would become an attractive market for them once the duties are withdrawn and that the current prices are not reflective of their actual export prices.

- vi. The present duty is to be continued and appropriately enhanced to protect the interest of domestic industry from the adverse effect of dumping of the subject goods from the subject country.

51. **Submissions by Other Interested Parties:** The following are the submissions made by the interested parties with regard to likelihood of continuance or recurrence of dumping and injury:

- i. Domestic Industry has not provided details regarding excess capacity available with the Chinese exporters as also not clarified as to whether it is talking about current capacity or capacity in the next 1 or 2 years. The domestic industry should provide year-wise details of capacity, production, etc. to establish excess capacity in China
- ii. Calculations done to establish injury and dumping to the domestic industry are based on assumptions. The management efficiency, plant efficiency, general economic conditions, impact of substitutes etc. are seldom taken into account.
- iii. Chinese economy was in turmoil and hence, there was no question of dumping.
- iv. Domestic Industry has not provided valid evidence to prove the likelihood of continuance or recurrence of injury.

Examination by the Authority

52. The Authority has examined the likelihood of recurrence/ continuation of dumping and injury as follows:

- i. In the present investigations, it is important to note that no questionnaire response has been filed by either the producers/exporters from the subject country or by the Indian importers of the subject goods. All the interested parties who could have given valuable information to the Designated Authority have preferred not to cooperate with the Authority in the present investigations. The Authority notes that the relevant information from the interested parties is more important in sunset review investigations where an assessment of likelihood is required to be made.
- ii. It is also noted by the Authority that the share of POY in the total production of PFY in the domestic industry is around 90%.
- iii. For the purpose of likely dumping and injury, the Authority has analyzed the export prices of Chinese producers to India and to countries other than India. The following table indicates the differential between the prices to India and prices to other countries:

	MT	% Exports	USD / MT
2008			
India	1831	1.43%	1605
Other Countries	126108	98.57%	1423
2009			
India	118	0.09%	1324
Other Countries	137474	99.91%	1131
2010			
India	41	0.04%	1550
Other Countries	108005	99.96%	1448
2011			
India	31	0.03%	2802
Other Countries	91908	99.97%	1829

It is noted from the above Table that the export prices from China to India are much higher as compared to the prices offered to the rest of the world. It is noted that during the Period of Investigation, the average export price to India was USD 1550 per MT as compared to USD 1448 per MT to the rest of the world. It is also important to note that in the Post-POI (Jan-December 2011), the differential was much larger as the prices to India stood at USD 2802 per MT as compared to USD 1829 per MT to the rest of the world. Such huge price differential is clearly an indicator of the fact that the export prices to India during the POI are not reflective of the actual international prices. Thus, it is abundantly clear that once the anti-dumping duties are removed, there is every likelihood of the prices to India falling in line with the prices to the rest of the world which is imminent to be a cause of material injury to the Domestic Industry.

The above analysis is also corroborated by the fact that the supplies from China to the rest of the world constituted 99.96% of Chinese overall exports during the POI as compared to 0.04% to India. In the following year (2011), this percentage was 99.97% and 0.03% respectively. Since the quantities supplied to India at higher prices are negligible, there is every likelihood that the small percentage of subject goods supplied to India at much higher prices would fall in line with the world prices. The Authority also notes that the above facts stand uncontroverted as none of the exporters has cooperated in the investigations.

- iv. The Domestic Industry has provided the following information with regard to the excess capacities available in China:

In KTA	2007	2008	2009	2010
Capacity	14159	15199	16235	18179
Production	12224	12319	13800	15120
Surplus Capacity	1935	2880	2435	3059
Surplus Capacity %	14%	19%	15%	17%

On the basis of the information made available by the Domestic Industry, it is seen that the Chinese producers have ample surplus production capacities with them. No other interested party has either controverted the information or provided any counter-factual information. However, some importers raised doubts about the claim of the Domestic Industry with regard to the excess

capacities in China on the ground that the Domestic Industry has not clarified whether there are any anti-dumping duties imposed by any other country. In this connection, the Authority notes that the importers have failed to establish any link between the issue of imposition of anti-dumping duties by other countries and the claim of excess capacities. As regards their contention that the Domestic Industry has not provided the year-wise details of capacity, production, surplus, etc., it is seen that the submission is factually incorrect as the application of the Domestic Industry itself contained the relevant year-wise information. Moreover, it is noted that the interested parties have failed to give any additional factual information which they wanted the Authority to consider while determining the issue of excess capacities. Moreover, the Authority observes from the TECNON Orbichem Report of July 2010, it is observed that the following capacities of PFY were added in China:

Figures in Million Tones

Year	2009	2010	2011
Capacity added/Scheduled	1.00	1.50	3.00

Thus, there is ample evidence to conclude that the Chinese have made substantial additions to their capacities. These capacities are in themselves more than the total production capacity of the domestic industry. The importance of such huge current and new capacities cannot be ignored.

In view of the aforesaid, the Authority does not find any merit in the comment made by the importers. Considering the facts available on record, the Authority is of the view that once the duties are removed, the likelihood of higher volumes of the subject goods at reduced price coming to India is imminent.

Magnitude of Injury and Injury Margin

53. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority on weighted average basis has been compared with the weighted average landed value of the exports of subject goods from the subject country for determination of injury margin during the POI. Thus compared, weighted average injury margin is negative. However, it is also noted that the total quantity exported during the POI is a meager 41MT which cannot be considered as of any significance particularly in a sunset review investigation. Moreover, the prices offered to India can also not be considered as reliable in view of the discussions in the earlier paragraphs. The Authority also observes that in terms of Section 9A(5), it is the likelihood of dumping and injury which is of critical legal importance. The current injury or the injury margin during the period of review cannot be the basis for a likelihood analysis. In this context, it is important to note that while Rule 4 is not even applicable to review under Rule 23, even Rule 17 is applicable mutatis mutandis. Under the circumstances, the Authority is of the view that lack of current injury margin is not a determinative factor for extension of anti-dumping duties in terms of the scope of Section 9A(5). The injury margin has been calculated by deducting the landed price from the NIP, which comes to Rs (***) per/ MT as follows:-

Average Landed Value in Rs per MT	***
Average NIP in Rs per MT	***
Injury Margin	(***)

j. Indian industry's interest and other issues

54. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by the dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. 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. Its objective is basically to create a level playing field for the domestic industry to compete more effectively in the market. Therefore, imposition of anti-dumping duty will help in maintaining availability of wider choice of the subject goods to the consumers.

K. Post Disclosure Statement Submissions

55. Submissions by Other Interested Parties

- i) Short period of hardly five days given for giving comments on Disclosure Statement.
- ii) Small organizations like theirs cannot watch everyday Gazette of India and the website of the Ministry of Commerce and Industry to find out if any investigation with respect to the import of POY has been initiated.
- iii) Domestic Industry has suffered no injury because of negligible quantity exported by China at higher prices compared to their export prices in other countries. In 2008-2009 China did not supply even one kg. Such low imports cannot cause price suppression or depression.
- iv) If China is selling POY to India at prices which result in a dumping margin of 0-10%, then the dumping margin of Chinese POY sold in other countries must still be higher. Then the question arises as to why other countries are not taking recourse to the anti-dumping duty laws.
- v) Surplus capacity in China is mentioned. 100% utilization of capacity is more a dream than reality.

- vi) The contention of the Domestic Industry that China would further reduce prices is not corroborated by the fact that Chinese prices have increased every year since 2008.
- vii) Chinese industry is facing high labour cost, high power charges and high financial costs and the costs are continuously rising. Hence, China finds it extremely difficult to sell Yarn below their cost of production.
- viii) China has no special interest in the Indian market as it did not file the Questionnaire response. If other countries are offering higher prices there is no reason why China should sell the product at lower prices.
- xi) If domestic industry contends that it is getting prices higher than China in other countries, it means the Domestic Industry has no injury.

56. **Submissions by the Domestic Industry**

The domestic industry had submitted that the export price which has been considered as unreliable for injury margin as also evidenced from the Disclosure Statement is equally unreliable for dumping margin for reasons of quantity as well as price.

Examination by Authority

57. The Authority has examined various issues raised by the Domestic Industry as well as the other interested parties. As regards the contention of the opposing parties that five days period is not sufficient to respond to the Disclosure Statement, the Authority observes that the issue of Disclosure Statement and the opportunity to offer comments thereupon is merely a consolidation of all the facts, submissions and arguments made by various interested parties with a view to ensure factual accuracy and completeness of the information being relied upon by the Authority to arrive at the final decision. In this context, the interested parties have been given sufficient time and opportunity to comment upon the information supplied by them during the course of the investigations. The Authority notes that the comments on the Disclosure Statement by the opposing parties are more in the nature of conjecture and suppositions bereft of any factual basis. Thus, the submission of the interested parties stands rejected. Regarding the question as to why other countries are not taking recourse to the anti-dumping duty laws, the Authority has noted that there are reports in the public domain that South Korea has imposed anti dumping duty on imports of POY from China but the Authority concludes that this fact has no bearing in a sunset review where likelihood of dumping is a major issue. Regarding the likelihood of dumping of the subject goods from China, the Authority concludes that the fact that China is having huge production capacity to meet the entire domestic demand in India and has made substantial capacity addition and other factors analysed in the foregoing paras clearly establish the likelihood of dumping in the present case. Other submissions of the opposing parties have already been considered at appropriate places in these findings. As regards the submission of the Domestic Industry that the export price which has been considered as unreliable for injury margin is equally unreliable for dumping

margin, the Authority holds that the said export prices are not found acceptable for computation of injury margin as well as dumping margin for reasons of both quantity as well as the price structure of Chinese exports.

L. Conclusion

58. Having regard to the contentions raised, information provided and submissions made by the interested parties and the domestic industry and facts available before the Authority as recorded in the foregoing paras and on the basis of the above analysis, the Authority concludes that the removal of anti-dumping duties on the imports of the subject goods from the subject country would lead to continuation/recurrence of dumping and injury which would be detrimental to the interests of the Domestic Industry.

M. Recommendations

59. In view of the aforesaid analysis and conclusions, the Authority considers it necessary to recommend continuance of definitive anti-dumping duty on imports of Partially Oriented Yarn (POY) originating in or exported from China PR as recommended by the Designated Authority vide its Final Findings Notification No.14/10/2005-DGAD dated 08th June, 2007 and imposed by the Government of India vide Customs Notification No. 92/2007-Customs dated 03rd August, 2007

N. Further Procedures

60. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Smt Vijaylaxmi Joshi)
Designated Authority