

To be published in Part-I Section I of the Gazette of India Extraordinary

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

Jeevantara Building, 4th Floor
5, Parliament Street, New Delhi-110001
Dated 23rd September, 2016

NOTIFICATION

Final Findings

Subject: Mid-term Review (MTR) anti-Dumping investigation concerning imports of 'Soda Ash', originating in or exported from China PR, European Union, Kenya, Pakistan, Iran, Ukraine and USA.

No. 15/28/2014-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred 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 thereof, as amended from time to time (hereinafter referred as the Rules);

A. Background of the case:

1. Whereas, the Designated Authority (hereinafter referred to as the Authority), had notified its final findings vide Notification No.14/17/2010-DGAD dated 17th February, 2012, recommending imposition of definitive anti-dumping duties on the imports of "Soda Ash" (hereinafter referred to as the subject goods, or product under consideration or Disodium Carbonate), originating in or exported from China PR, European Union, Kenya, Pakistan, Iran, Ukraine and USA (hereinafter referred to as the subject countries). The definitive anti-dumping duties were imposed by the Central Government vide Notification No. 34/2012- Customs (ADD) dated 3rd July, 2012.
2. Whereas, the All India Glass Manufacturers' Federation (AIGMF), a representative body of importers/users of the subject goods, hereinafter referred to as the applicant, submitted an application requesting for initiation of a midterm review of the anti-dumping duties imposed on the imports of the subject goods from the subject countries in accordance with section 9A of the Customs Tariff Act 1975 read with Rule 23 of the Rules. They have claimed that the circumstances that were prevalent during the period of investigation of the original investigation have changed significantly leading to a situation where the existing anti-dumping duties are no longer warranted.

3. Whereas, the applicant has submitted that the import prices of the subject goods have increased significantly; that domestic selling prices have also increased significantly; that the cost of major raw materials have also increased, but not in proportion to the increase in the prices of the imports of the subject goods from the subject countries. The applicant has further submitted that coupled with a significant increase in import prices leading to an increase in the landed value of imports, the injury margin has come down and as a consequence, a need for reviewing the current level of duties has arisen.
4. And Whereas, Rule 23 of the Rules read with Section 9A of the Act require that the Designated Authority shall review the need for the continued imposition of any anti-dumping duty, wherever warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.
5. Having regard to the information provided by the applicant, substantiating the need for such review and indicating changed circumstances, necessitating a review of the measure in force, the Authority, vide Notification No. 15/28/2014-DGAD dated 21st July, 2015, initiated the present Mid-term Review (MTR) investigation of the final findings notified vide Notification No. No.14/17/2010-DGAD dated 17th February, 2012, published in the Gazette of India, Extraordinary Part I, Section I and the definitive duties imposed by the Central Government vide Notification No., 34/2012-Customs (ADD) dated 3rd July, 2012 to review the need for continued imposition of the anti-dumping duties.

B. Procedure

6. The procedure described below has been followed with regard to the investigation:
 - i. The Authority sent copies of the initiation notification dated 21st July 2015 to the embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic producers, as per available information. The known interested parties were requested to file the questionnaire responses and make their views known in writing within the prescribed time limit.
 - ii. Copies of the letter and questionnaires sent to the exporters were also sent to embassies of the subject countries along with a list of known

exporters/producers, with a request to advise the exporters/producers from the subject countries to respond within the prescribed time.

- iii. Copy of the non-confidential version of the application filed on behalf of the applicant was made available to the known exporters, domestic producers and the embassies of the subject countries in accordance with Rule 6(3) of the AD Rules.
- iv. The Authority forwarded a copy of the public notice initiating the MTR to the following known producers/exporters in the subject countries 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) of the Rules:

Shandong Haihua Group, Shandong Haihua Group Co., Ltd. Develop Zone of Haihua Weifang City, Shandong, China
Qinghai Alkali Plant (Zhejiang Glass China's Qingtai Alkali Plant (Zhejiang Glass China's Qinghai Delingha Industrial Park Zip:817000 – China
Jinshan chemical co. China's Zhengzhou City in Henan Province, Zhengzhou City Fushoushan Street 87,China
Hebei Tangshan Sanyou Al kali Industry Company Nanpu Development Area,TangShan,Hebei,China
Tianjin Soda Ash Plant No. 87Xinhua Road Tangg u District Tianjin China
SIMAN LTD Pob 29 Kazanlak SL Zagora Bulgaria 6103
Solvay Sodi AD Zip Code: 9160 Bosnia and Herzegovina Brunner Monday Winnington Lane Mond House, Northwich, Cheshire, UK, CW8 4DT
SPIN INTERNATIONAL 13 RUE DE PASSY Paris 75016
BELVEDERE SRL ROMANIA Cetatianu Ioan GALATI , Romania 800198
Asha Trade Import Export Mangaliei Nr 71 BL PIS SC D Apt 36 Constanta 900116Romania
GHCL Romania

Ghcl Upsom Ocna Mures Alba County Romania 515700
Sisccam Sode Lukavac " The first street 1 75300 Lukava Bosnia and Herzegovina
Magadi Soda Company P O Box 1 - 00205, Magadi, Kenya.
ALLIED NETWORKX COMPANY LTD Asili Co-Op House Moi Avenue Nairobi Kenya 72964 00200
FMC Industrial Chemicals 1735 Market Street ' Philadelphia, PA 19103 USA
OCI Chemical Corporation 1800 West Oak Commons Court Suite 100 Marietta, GA 30062
SOLVAY SODA ASH Headquarters 5333 Richmond Ave., Houston, TX 77098 Mailing address: P.O. Box 27328, Houston, TX 77227
General Chemicals Industrial Products 120 Eagle Rock Avenue East Hanover, New Jersey, USA.
ANSAC 15 Riverside Avenue 2nd Floor Westport, CT 06880 USA
FMC Corporation Wells Fargo Bank N.A. Shareowner Services P.O. Box 64854 St. Paul, MN 55164-0854 Or 161 N. Concord Exchange South it. Paul, MN
Soda Ash Soda Ash Business ICI Pakistan Limited 63- Mozang Road Lahore, Pakistan
Olympia Chemicals Ltd. 23-Davis Road, Lahore , Pakistan
Syrina Trade Co., Arum s.88 office 251a Donetsk Ukraine

- v. In response to the initiation of the subject investigation, following producers/exporters from Pakistan have responded by filing questionnaire response and made submissions:

- i. Olympia Chemicals Limited, Pakistan.
 - ii. ICI Pakistan Limited, Pakistan.
- vi. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:

Gujarat Guardian Ltd, Village- Kondh, Valia Road, Plant Sate Highway No.13, Ankleshwar, Bharuch 393001
Float Glass India Ltd., T-7, Midc, Industrial Area, Taloja, Maharashtra
Hindustan National Glass & Ind. Ltd., Rishra, West Bengal
Procter & Gamble Hygiene & HealthCare, Mandideep Pnt L&C-MFG, Plot No.182, Mandideep, Madhya Pradesh
Advatecg Industries Pvt Ltd, Dhanali, Village –Dhanali, Al-Kadi Distrcit, Mahesana, Gujarat
U.P. Glass Manufacturer, Syndicate, 14-Monapuram, Near Ganesh Nagar, Firozabad-283203, U.P.
Fena (P) Ltd, A-237, Okhla Industrial Area, Phase I, New Delhi-20
Pollachi Chamber of Commerce & Industry, RP Complex, IInd floor, 14, Balagopalapuram Street, Pollachi-642001
Power Soap Ltd, 62-B, North Boag Road, T.Nagar Chennai – 600017
Alembic Glass Industries Ltd, Alembic Road, Baroda (Vadodara) Gujarat
Deepak Nitrite Ltd, 4/12, Chemical Complex, GIDC, Nanfessari, Baroda (Vadodara) Gujarat
Hindustan Unilive Ltd., Party Address Dakshina Building, 8th Floor, Plot No-2 Sector-11, CBD Belapur, Navi Mumbai
Albright Morarji & Pandit Ltd, Ambernath, Dist. Thane, Maharashtra
Saint-Gobain Glass India, Head Office and Plant: A-1 SIPCOT Industrial Park, Sriperumbudur-602105, Kanchipuram District – Tamil Nadu
Asahi India Glass Ltd., 5th Floor, Tower-B, Global Business Park, Mehrauli-Gurgaon Road, Gurgaon-122002(India)
Shree Union Organics P Ltd, BS-3, Apeejay. 130, Bombay Samachar Marg, Mumbai-23
Vasundhara Rasayan Ltd, C-104, MIDC Industrial Area, Mahed, Dist. Raigad, Maharashtra
Shantinath Detergents Pvt Ltd, P-15, Kalakar Street, Kolkata-700007

Advance Home & Personal Care Ltd, Advance Surfactants India Ltd, 511/2/1, Village Rajokri, New Delhi-38
S. Kumar Detergent P. Ltd, Plot No.34, Sector-2, Industrial Area, Pithampur-454775 Distt Dhar, M.P.
Hind Silicates Pvt Ltd., 3A, Auckland Place, 5th floor, Kolkata-17
P & J Cretechem (P) Ltd, 318, Swapnalok, 92/93, SD Road, Secunderabad-500003, AP, India
J.J. Patel Industries, Gondal Road, B/H Rajkamal Petrol Pump, Vavdi, Rajkot-360004
Modern Glass Industries, Coal Siding Road, S.N. Road, Firozabad-283203
Sandeep Organics Pvt Ltd., 104, Nain Krupa, 118/122, Kazi Syeed, Street, Masjid Bunder (West), Vadgadi, Mumbai -400003
Alembic Glass Industries Ltd., Alembic Road, Baroda(Vadodara) Gujarat
Rohit Surfactants(P) Ltd., 117/H-2/202, Pandu Nagar, Kanpur-05
BDJ Glass Industries Pvt. Ltd, 1 Kyd Street, Place Court, 1 st Floor, Suite-14-A, Kolkata-700016
Jagatjit Industries Ltd., Plot No.78, Sector-18, Institutional Area, Gurgaon-122001
Haldyn Glass Gujarat Ltd., 9, Gayatri Commercial Complex, Behind Mittal Industrial Estate No.5, Andheri Kurla Road, Marol Naka, Andheri(E), Mumbai-400059
Hipolin Limited, Madhuban", 4 th Floor, Ellisbridge, Ahmedabad-380006
Modern Glass Industries, Coal Siding Road, S.N. Road, Firozabad-283203
Detergent Manufacturers, Association (Delhi Region) 148, New Okhla Industrial Complex-1, New Delhi-110020
Mauli Exports, Plot No.97-98, Sector – 25, Part-II, Industrial Area, HUDA, Panipat – 132 104, Haryana
M/s Chempex International, 393/III/6 Bazer, Bikanerian, Katra, Ahluwalia, Amritsar, Punjab
Tata Chemicals Ltd., Leela Business Park, Andheri Kurla Road, Andheri (E), Mumbai -59
M/s Tuticorin Alkali Chemicals and Fertilizers Ltd., 534, Anna Salai, Teynampet, Chennai -18
AGI Glasspac, Glass factory Road, Moti Nagar, Post Box. 1930, Shanth Nagar, Hyderabad – 500 018
Power Soaps Ltd., A-8, 1st Main Road, Ambattur Industrial Estate Chennai – 600 058
Hindcon Chemicals (P) Ltd., 62/B, Braunfled Row, 1st floor, Calcutta – 700 027

Empire Industries Ltd., Empire House, 414, Senapati Bapat, Lower Parel, Mumbai – 13

vii. In response to the above notification, following importers/users have filed importer questionnaire response and made submissions.

- a. Hindustan Unilever Limited
- b. Gold Plus Glass Industry Limited
- c. HNG Float Glass Limited
- d. HSIL Limited, Packaging Products Division
- e. La Opala Rg Limited
- f. Piramal Glass Limited

viii. Questionnaires were also sent to the known domestic producers of the subject goods in India for necessary information and response.

M/s DCW Ltd
M/s GHCL Ltd
M/s Nirma Ltd
M/s Saurashtra Chemicals Ltd
Tata Chemicals Ltd

ix. Initiation notification was also sent to the following associations:

Detergent Manufacturers Association (Delhi Region)
Indian Chemical Merchants & Manufacturers Association
Bulk Drug Manufacturers Association(India)
Indian Glass Manufacturers' Association
The Dyers & Chemical Merchants Association
All India Glass Manufacturer's Federation
Alkali Manufacturers Association of India
Indian Soap & Toiletries Maker's Association

x. Apart from the respondent producers/exporters, importers/users, domestic producers and their representatives, the following parties also made submissions during the course of this investigation:

- i. Detergent Manufacturers Association of India
- ii. Detergent Manufacturers Association (Delhi Region)
- iii. Bengal Soaps and Detergents Manufacturers Welfare Association
- iv. Hindustan Unilever Ltd
- v. Sandeep Organics Ltd
- vi. RSPL Ltd
- vii. Asoka Enamel and Glass Works Pvt Ltd.
- viii. Indian Council of Small Industries
- ix. All India Glass Manufacturers Federation

- x. Saint Gobain Glass India Ltd.
- xi. Exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange for details of imports of subject goods for the past three years, including the period of investigation. The Authority has, therefore, relied upon the DGCI&S data for computation of the volume of imports and required analysis.
- xiii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry. The NIP has been determined by the Authority in terms of the principles laid down under Annexure III to the Anti-dumping Rules.
- xiv. Investigation was carried out for the period starting from 1st April, 2014 to 31st March, 2015 (POI). However, injury examination was conducted for a period from 2011-12, 2012-13, 2013-14 and the POI. The Authority also called relevant information/data from the interested parties for post POI (1st April 2015 to 30th Sep. 2015) for conducting likelihood analysis.
- xv. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to the interested parties to present their views orally in a public hearing held on 2nd March, 2016. The parties, which presented their views in both the oral hearings, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- xvi. The submissions made by the interested parties during the course of the investigation have been considered by the Authority, wherever found relevant, in this finding. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry.
- xvii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. 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.

- xviii. In accordance with Rule 16 of the Rules supra, the essential facts were disclosed by the Authority to the known interested parties vide a disclosure statement issued on 14th September, 2016 and comments received on the same, to the extent considered relevant by the Authority, have been considered in this finding.
- xix. 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 recorded the final findings on the basis of available facts.
- xx. *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxi. The average exchange rate of 1US\$ = Rs 61.69 prevailing during the POI has been adopted by the Authority in this finding.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

7. The Product under Consideration (PUC) in the original investigation as well as in the present review is 'Soda Ash'. In the original investigation the product was defined as under:

"i. The product under consideration in the present investigation is Disodium Carbonate, also known as Soda Ash having chemical formula Na₂CO₃. Soda Ash is produced in two forms- Light Soda Ash and Dense Soda Ash. The difference in the two types is bulk density. It can be produced through synthetic route and natural route, known as dissolution process. The present investigation includes all types and forms of Soda Ash.

ii. Soda Ash is an essential ingredient in the manufacture of detergents, soaps, cleaning compounds, sodium based chemicals, float glass, container and specialty glasses, silicates and other industrial chemicals. It is also widely used in textiles, paper, metallurgical industries and desalination plants. Soda Ash is classified under Chapter 28 of the Customs Tariff Act under subheading No. 2836.20. The customs classification is, however, indicative only and is not binding on the scope of the present investigation."

8. None of the importers, consumers, exporters, domestic industry and other interested parties has made any comment or submissions with regard to product under consideration and like articles. The applicant submitted that they have no issues regarding the product under consideration and like article. In view of the above, the scope of the product under consideration in the present review investigation remains the same as that in the original investigation.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

Submissions made by the Petitioner and other interested parties

9. The following submissions have been made by the applicant and other interested parties with regard to standing and scope of the domestic industry:
- i. Concerned domestic producers claiming themselves to be domestic industry are themselves big importers of subject goods from the subject countries. Wholly owned subsidiaries of certain domestic producers have also exported subject goods to India significantly. Domestic producers categorically admitted that for supplying customers of southern and eastern India they are predominantly relying on imports. Therefore such domestic producers are not eligible for becoming domestic industry as per anti-dumping rules.
 - ii. The largest Indian domestic producer "Tata Chemicals Ltd." imported material from its subsidiary from Kenya and from unrelated producers from EU and China.
 - iii. Nirma has acquired wholly owned companies in other countries and importing subject goods from those companies. Designated Authority should examine whether low price of import may have been compensated in price received by Nirma.
 - iv. GHCL is also importing from other producers/exporters. GHCL has more than 87% capacity utilization in the period of investigation which is maximum for these industries. GHCL is a major producer with capacity of 8,50,000 MT and it has compulsion to import subject goods from various countries including subject countries. They are paying Anti Dumping Duty while importing subject goods and still they are earning profits.
 - v. Saurashtra Chemicals Ltd. (SCL) is already amalgamated with Nirma and does not exist as legal entity/company.
 - vi. Tuticorin Alkali Chemicals & Fertilizers Ltd is the smallest and the most inefficient member of the domestic producers in terms of production. It

suspends its production again and again because of non-availability of raw material CO2.

- vii. Only DCW is a small player having the capacity of about 3,00,000 MT per year. It is utilizing the capacity at higher rate and earning profit. Such a company is not entitled for any continued protection.
- viii. Neither the so-called domestic industry, nor the Authority, has clarified which of the domestic producers constitute domestic Industry" in terms of Rule 2(b) of anti-dumping rules before the oral hearing was held.

Submissions made by Domestic Industry

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

- i. Barring GHCL and Tata Chemicals, none of the companies have themselves imported the subject goods during the POI.
- ii. The imports by GHCL were only to maintain market presence in order to afford continuity when enhanced capacities are made available.
- iii. GHCL had a related company in Romania which is now closed. Nirma has a related producer in USA, which has exported Soda Ash to India during the POI. However, the exports have been directly made by the company.
- iv. DCW does not have any related producer-exporter outside India.
- v. Tata Chemicals has a related producer in Kenya, US and Europe. The Kenyan company is a subsidiary of Tata Chemicals which has exported goods to India. These exports have been directly made by Tata Chemicals. TCL may be considered as ineligible domestic industry if it is deemed fit.
- vi. There are many reasons for imports by domestic industry. Firstly the landed price is materially below the price at which domestic producers can sell in these regions. Secondly, the near future expansion of capacities requires prior creation of demand which is being done by supplying imported product to these consumers. Thirdly very nominal profits have been earned on these imports. Fourthly, duties were recommended without including freight which should have been included to ensure fair comparison.

- vii. Anti-dumping duties are on non discriminatory basis and if the domestic producers have imported the product under consideration they have paid applicable anti-dumping duty.
- viii. As regards hearing being ineffective, it was incumbent upon the applicant importer association to identify the domestic industry and thereafter establish no injury and no likelihood therein.
- ix. The capacity of Nirma shown is including the capacity of SCL. SCL was a separate entity in the beginning of the injury period and later merged to Nirma. The information of Nirma includes information of SCL.

Examination by the Authority

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

“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 such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.

12. Rule 2(b) of the Anti-dumping Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. The Authority is of the considered view that the use of the word ‘may’ in Rule 2(b) suggests that the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. On the contrary, it has been the consistent practice that exclusion of such producers must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.

13. The Authority notes that in the original investigation also the domestic industries were involved in imports of subject goods from the subject countries or were related to the exporters/importers of subject goods from the subject countries. In the final findings of the original investigation, the Authority had noted as below:

“49. The Authority considers that the domestic producers who import an insignificant quantum of the dumped goods or whose related exporter, exports

the dumped goods or whose related importer, imports the dumped goods, do not unduly benefit from dumping practices, if these imports do not represent a significant part of their sales or market size. Indeed, no advantage occurs to such domestic producers because of the competition from other suppliers in the market. The Authority also notes that another distinction drawn by the Investigating authorities of other countries, while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? The Authority considers that in the latter case, such company should be excluded from the scope of domestic industry. Another element which can be considered is whether or not the domestic producer in question is committed to production in the country of imports.

50. *In view of the above, the Authority holds that the only relevant issue for determination is whether or not GHCL, Nirma, SCL and Tata Chemicals should be treated as eligible domestic industry. In the instant case, there is no allegation that any of the domestic producers is related to an importer. The arguments of the interested parties are that SCL, Nirma and GHCL should be treated as ineligible domestic industry in view of their relationship with foreign producers/exporters in subject countries or, in case of Nirma, additionally because of imports made by Nirma.*

51. *The Authority has examined the issue of eligibility of the applicant companies by applying the aforesaid principles to the facts and circumstances of the present case. The facts of the instant case are as follows in so far as the issue of relationship and eligibility of the applicant companies is concerned.*

- i. The application was filed by Alkali Manufacturers' Association of India (AMAI). AMAI is an association of producers of caustic soda (including chlorine) and soda ash.*
- ii. DCW, GHCL, Nirma and Saukem have provided information relevant to injury to the domestic industry and have requested to be considered as "domestic industry" for the purpose of the present investigation. These companies are being treated as "participating companies". The petition has express support of all Indian Producers of soda ash during POI, except Tata Chemicals. Tata Chemicals has neither supported nor opposed the imposition of anti-dumping duties. It is however noted that Magadi Soda Company, Kenya (renamed as Tata Chemicals Magadi Ltd) is a 100% subsidiary of Tata Chemicals and the company is participating in the present investigations by filing exporters' questionnaire response.*
- iii. Post initiation and after holding of 1st oral hearing, Tuticorin Alkali Chemicals (TAC) has filed its written submissions vide their letter dated 23rd May, 2011 supporting the application and requesting the Designated Authority to impose anti-dumping duties. It is noted that TAC has not participated in the proceedings by way of filing response to the initiation notification. It is also noted that they were not producing the*

subject goods during POI. The Authority has, therefore, not considered the submissions of TAC at this belated stage.

- iv. None of the petitioner companies are related to any of the importers of the product under consideration in India;
- v. DCW Ltd. does not have any related producer-exporter outside India. The company has not imported the product under consideration, nor is the company related to any exporter or importer. There is no dispute that DCW is an eligible domestic producer constituting 'domestic industry'. Petitioner has strongly contended that in the event the Authority holds that GHCL, Nirma and SCL are ineligible domestic industry, DCW alone shall constitute domestic industry, as the production of the company in that event shall constitute 100% of the "production by the domestic industry".
- vi. SCL and Nirma are undisputedly related companies.
- vii. Nirma has imported soda ash from its related supplier in USA. Barring Nirma, none of the petitioner companies have themselves imported the material from any of the subject countries during the entire injury period.
- viii. GHCL has a related company in Romania, namely S.C. GHCL Upsom. The related exporter of GHCL has exported Soda Ash to India over the current injury period. GHCL has also provided details of their related company in Romania regarding production and exports to India (volume information only). Details of exports made by related exporter over the injury period show that (a) these exports have been directly made by the Romanian company to unrelated Indian customers during the POI, and (b) the volume of exports by the company steeply declined over the injury period. Table below shows the volume of exports from Romania, exports by GHCL Upsom and other relevant details.

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
A	(a) Exports by S.C. GHCL Upsom	MT	17,356	51,353	6,489	4,101
B	Exports to related parties	MT	11,082	-	-	-
C	Exports to unrelated Indian parties	MT	6,274	51,353	6,489	4,101
D	(b) Total imports from Romania	MT	46,594	67,121	7,652	47,148
2	Exports made by S.C. GHCL Upsom in relation to	MT	17,356	51,353	6,489	4,101

A	Indian production		0.85%	2.54%	0.32%	0.20%
B	Indian Consumption		0.80%	2.33%	0.29%	0.17%
C	Production of GHCL		3.31%	8.68%	1.05%	0.61%
D	Imports made by GHCL in relation to					
A	GHCL's production		2.11%	0.00%	0.00%	0.00%
B	Indian production		0.54%	0.00%	0.00%	0.00%
C	Indian consumption		0.51%	0.00%	0.00%	0.00%
3	Gross imports from Romania	MT	46,594	67,121	7,652	47,148
A	• Exports by GHCL Upsom	MT	17,356	51,353	6,489	4,101
B	• Exports by Other exporters	MT	29,238	15,768	1,163	43,047
C	Share of GHCL Upsom in total exports from Romania		37.25%	76.51%	84.80%	8.70%

52. The Authority holds that

- (i) GHCL Upsom is not the majority exporter of soda ash from Romania. Other exporters from Romania constitute majority exports from Romania.
- (ii) Exports by GHCL Upsom declined significantly in absolute terms as also in relation to imports from Romania.
- (iii) Exports by GHCL Upsom are quite insignificant when compared with total imports of soda ash in India, production of soda ash by GHCL and consumption of soda ash in India.
- (iv) The imports were not made by GHCL, India. The imports were made directly by unrelated consumers.
- (v) The volume of exports by GHCL Upsom is not so significant as to have caused or provoked injury to the domestic industry.
- (vi) Focus of GHCL continues to be on production. The company has not turned trader. Nor the company has unduly benefited from dumping. In fact, imposition of anti-dumping duty would imply imposition of anti-dumping duty on exports made by GHCL Upsom as well. The injury determination shall not get distorted by including GHCL within the scope of the domestic industry.
- (vii) None of the opposing interested parties have advanced any justification for exclusion of GHCL from the scope of the domestic industry, barring the fact of relationship itself.

53. SCL & Nirma have related producer in USA, namely Searles Valley Minerals. Details of exports made by related exporter over the injury period show that (a) these exports have been made only during the POI, (b) the exports have been made to Nirma, (c) Nirma has used this material for self-consumption. Table below shows the volume of exports from US, exports by Searles Valley Minerals (related producer of Nirma and SCL in USA) and other relevant details

S. No.		Unit	2006-07	2007-08	2008-09	2009-10
1	(a) Exports by Searles Valley Minerals	MT	-	-	-	2,700
	Exports to Nirma	MT	-	-	-	2,700
	Exports to unrelated Indian parties	MT	-	-	-	-
	(b) Total imports from USA	MT	123	629	830	32,679
	Direct	MT	123	629	830	17,852
	Transshipments	MT	-	-	-	14,827
2	Exports made by Searles Valley Minerals (USA) in relation to					
	Indian production		0.00%	0.00%	0.00%	0.13%
	Indian Consumption		0.00%	0.00%	0.00%	0.11%
	Production of Nirma		0.00%	0.00%	0.00%	0.58%
	Imports made by Nirma in relation to					
	Nirma's production		0.00%	0.00%	0.00%	0.58%
	Indian production		0.00%	0.00%	0.00%	0.13%
	Indian consumption		0.00%	0.00%	0.00%	0.11%
3	Imports from USA in India	MT	123	629	830	32,679
	Exports by affiliated parties of Nirma/ Saukem	MT	-	-	-	2,700
	Exports by Other Parties from USA	MT	123	629	830	29,979
	Share of exports by Nirma's affiliated producer in total exports from USA		0.00%	0.00%	0.00%	8.26%

54. The Authority notes that –

- (i) Searles Valley Minerals (related company of Nirma and SCL in USA) is not the majority exporter of soda ash from USA during the POI. Other exporters (non-related) from USA have a majority and much larger share in exports from USA.

- (ii) Exports by Searles Valley Minerals are insignificant when compared with total imports of soda ash in India, production of soda ash by Nirma and Saukem and consumption of soda ash in India.
- (iii) The volume of exports by Searles Valley Minerals is not so significant as to have caused or provoked injury to the domestic industry.
- (iv) The imports from the related company in USA by Nirma have not been used for trading in the domestic market. The same has been used for captive consumption by Nirma and the volume thereof is insignificant compared to the total production of Nirma.
- (v) Focus of Nirma (or Saukem) continues to be on production. It can be reasonably stated that the company has not shifted to trading in imported goods. Nor the company can be said to have unduly benefited from dumping. In fact, imposition of anti-dumping duty would imply imposition of anti-dumping duty on exports made by Searles Valley Minerals as well. The injury determination shall not get distorted by including Searles Valley Minerals within the scope of the domestic industry.
- (vi) None of the opposing interested parties have advanced any justification for exclusion of Searles Valley Minerals from the scope of the domestic industry, barring the fact of relationship itself.

55. Tata Chemicals (one of the domestic producers of subject goods) has a related producer in Kenya as per information available on record and the Authority notes that there are significant imports from Kenya during POI. The present investigation includes Kenya as one of the subject countries. Details of exports made by related exporter in Kenya over the injury period show that (a) the Kenyan company is a subsidiary of Tata Chemicals, (b) records do not show any other producer of soda ash in Kenya, (c) these exports have been made throughout the injury period (d) petitioner claimed and other interested parties have not disputed with cogent reasons that Tata Chemicals should be treated ineligible domestic producer under Rule 2(b) to qualify as a domestic industry. Table below shows the volume of exports from Kenya, exports by Magadi Soda Ash (renamed as Tata Chemicals Magadi Ltd) and other relevant details

S. No.		Unit	2006-07	2007-08	2008-09	2009-10
1	(a) Exports by Magadi Soda	MT	85,797	1,15,520	1,17,572	1,06,585
	Exports to related parties	MT	-	-	-	2,005
	Exports to unrelated Indian parties	MT	85,797	1,15,520	1,17,572	1,04,580
	(b) Total imports from Kenya	MT	85,797	1,15,520	1,17,572	1,06,585

2	Exports made by Magadi Soda (Kenya) in relation to	MT	85,797	1,15,520	1,17,572	1,06,585
	Indian production		4.19%	5.72%	5.79%	5.13%
	Indian consumption		3.97%	5.24%	5.33%	4.32%
	Production of TCL		11.33%	16.57%	16.91%	15.32%

56. From the above, the Authority notes that-

- i. *Magadi Soda, Kenya (renamed as Tata Chemicals Magadi Ltd) is the sole exporter of soda ash from Kenya.*
- ii. *Exports by Magadi Soda (Kenya) are quite significant when compared with total imports of soda ash in India, production of soda ash by Tata Chemicals and consumption of soda ash in India.*
- iii. *The volume of exports by Magadi Soda (Kenya) is significant so as to have caused or provoked injury to the domestic industry.*
- iv. *Focus of Tata Chemicals continues to be on production. The company has not turned trader. However, the undue benefit to the company from dumping by related company cannot be ruled out, given the volume of exports by the related company from Kenya during POI.*
- v. *While the petitioner has argued that Tata Chemicals should be treated ineligible domestic industry, none of the opposing interested parties have sought inclusion of Tata Chemicals within the scope of domestic industry.*

57. It is, thus, seen that –

- i. *85% of exports from USA and 93% of exports from Romania are by producers unrelated to Indian producers. However, 100% of exports from Magadi are by the producer related to one of the Indian producers.*
- ii. *As regards Tata Chemicals, the exports made by Magadi Soda are quite significant. Magadi Soda is the sole producer of soda ash in Kenya, the volume of exports has not declined. Magadi Soda has low domestic demand and the focus of the company is on exports (exports by the company are almost 90% of its total sales). The Authority holds that even though Tata Chemicals is a domestic producer, the company must be considered ineligible to be treated as “domestic industry” for the purpose of the present investigations.*
- iii. *As regards GHCL, the Authority notes that the exports made by related exporter have significantly declined over the injury period, 93% of the exports from Romania are by unrelated producers in Romania, focus of GHCL has not shifted from manufacturing to trading, nor any undue*

benefit can be said to have accrued either to related exporter or to GHCL. The Authority holds GHCL as eligible to be treated as “domestic industry” for the purpose of the present investigations.

- iv. *As regards Nirma and Saukem, the Authority notes that the exports made by related exporter were only in the investigation period. 85% of the exports from USA are by unrelated producers in USA. Focus of Nirma has not shifted from manufacturing to trading, as the relevant figures would indicate. Exports made by the related producer in USA cannot be said to have resulted in undue benefit to the domestic producer in India, namely, Nirma or Saukem. Rather, the insignificant quantity of the material has been imported for internal consumption. In view of the above position, the Authority holds Nirma and Saukem as eligible to be treated as “domestic industry” for the purpose of the present investigations.*

58. Thus, the Authority is of the view that it is appropriate to consider GHCL, Nirma, Saukem and DCW Limited as the domestic industry under Rule 2(b) of the Anti-dumping Rules. Accordingly, the Authority considers GHCL, Nirma, Saukem and DCW Limited, the constituent applicants as “domestic industry”, satisfying the requirements of Rule 2(b) read with Rule 5(3) of the Anti-dumping Rules.”

14. In the present investigation, DCW has neither imported subject goods from the subject countries nor is related to either importers or exporters of subject goods from the subject countries. Nirma also has not imported the subject goods from the subject countries. Only their 100% owned subsidiary in USA has exported the subject goods to India during the POI. GHCL Ltd has imported an insignificant volume of the subject goods from the subject countries. Only Tata Chemicals has not made a significant volume of imports of subject goods from their subsidiary in Kenya in the POI, but neither in the original investigation nor in the present review do they constitute domestic industry. The details of imports of subject goods, from the subject countries, during the POI, made by the various domestic producers involved in the present investigation and claiming to be domestic industry, are as follows:

GHCL

S N	Particulars	Unit	2011-12	2012-13	2013-14	2014-15	Post POI
1	Imports by GHCL	MT	-	-	3,021	12,689	14,760
a	Subject Countries(China etc)	MT	-	-	3,021	12,689	14,760
b	Subject Countries(Turkey and Russia)	MT	-	-	-	-	-
2	Total Imports	MT	4,44,475	6,92,228	5,67,587	7,23,978	3,67,818
a	Subject Countries(China etc)	MT	3,29,828	5,53,416	4,89,270	6,73,706	3,47,389

b	Subject Countries(Turkey and Russia)	MT	1,10,695	1,19,014	62,103	49,071	19,305
3	Indian Production	MT	23,55,710	23,61,482	23,35,596	24,17,331	12,36,435
4	Indian Consumption-Without Captive	MT	24,30,534	27,77,552	27,35,605	29,42,744	14,86,940
5	Production of GHCL	MT	6,76,007	6,85,101	6,76,523	7,04,835	3,49,820
6	Imports made by GHCL in relation to						
a	GHCL Production	%	-	-	0.45	1.80	4.22
b	Indian Production	%	-	-	0.13	0.52	1.19
c	Indian Consumption	%	-	-	0.11	0.43	0.99
d	Total Imports	%	-	-	0.53	1.75	4.01
i	Subject Countries(China etc)	%	-	-	0.62	1.88	4.25
ii	Subject Countries(Turkey and Russia)	%	-	-	-	-	-

15. As regards Nirma Ltd, the Authority notes that the said company has not imported the subject goods from the subject countries during the POI directly. However, their 100% owned subsidiary in USA has exported some volume of the subject goods to India during the POI. But, Nirma's subsidiary is not the sole producer or exporter from USA and therefore, had it not exported the volume it has exported to India during the POI, another USA exporter would have filled the gap. The details of exports of subject goods made by the related USA entity, as provided by Nirma, are as follows:

S N	Particulars	Unit	2011-12	2012-13	2013-14	2014-15	Post POI
1	Exports by Searless Valley Minerals Inc	MT	-	-	-	48,228	59,523
	a)Related	MT	-	-	-	-	-
	b)Unrelated	MT	-	-	-	48,228	59,523
2	Import from all Subject Countries by Nirma Limited	MT	-	-	-	-	-
3	Total Exports by Searless Valley Minerals Inc	MT	-	-	-	48,228	59,523
4	Total Imports	MT	4,44,475	6,92,228	5,67,587	7,23,978	3,67,818

a	Subject Countries(China etc)	MT	3,29,828	5,53,416	4,89,270	6,73,706	3,47,389
b	Subject Countries(Turkey and Russia)	MT	1,10,695	1,19,014	62,103	49,071	19,305
5	Indian Production	MT	23,55,710	23,61,482	23,35,596	24,17,331	12,36,435
6	Indian Consumption	MT	24,30,534	27,77,552	27,35,605	29,42,744	14,86,940
7	Production of Nirma Ltd	MT	8,21,064	8,43,699	8,43,444	8,58,359	4,56,112
8	Exports by Searless Valley Minerals Inc in relation to						
a	Nirma Production	%	-	-	-	5.62	13.05
b	Indian Production	%	-	-	-	2.00	4.81
c	Indian Consumption	%	-	-	-	1.64	4.00
d	Total Imports	%	-	-	-	6.66	16.18
ii	Subject Countries(China etc)	%	-	-	-	7.16	17.13
ii	Subject Countries(Turkey and Russia)	%	-	-	-	-	-

16. As regards Tata Chemicals Ltd, the Authority notes that the Company has themselves imported the subject goods from their related party in the subject countries. Further, the related party of Tata Chemicals Ltd has exported significant volume of subject goods to India. In view of the above position, the case of Tata Chemicals is not comparable with either GHCL or Nirma and therefore the Authority does not consider Tata Chemicals Ltd as an eligible domestic industry. The details of their imports, as furnished by the domestic industry, are as follows:

Tata Chemicals Ltd

SN	Particulars	MT	2011-12	2012-13	2013-14	2014-15
1	Exports by Tata Chemicals Magadi Limited	MT	-	-	-	1,32,725
	a)Related	MT	-	-	-	16,407
	b)Unrelated	MT	-	-	-	1,16,318
2	Import from Subject Countries(China etc) net of Kenya	MT	-	-	-	43,253
3	Total Imports/Exports by Tata	MT	-	-	-	1,75,978
4	Subject Countries(Turkey and Russia)	MT	-	-	-	-
5	Total Imports	MT	4,44,475	6,92,228	5,67,587	7,23,978

a	Subject Countries(China etc)	MT	3,29,828	5,53,416	4,89,270	6,73,706
b	Subject Countries(Turkey and Russia)	MT	1,10,695	1,19,014	62,103	49,071
6	Indian Production	MT	23,55,710	23,61,482	23,35,596	24,17,331
7	Indian Consumption	MT	24,30,534	27,77,552	27,35,605	29,42,744
8	Production of Tata Chemicals	MT	6,90,181	6,93,396	7,23,819	7,23,892
9	Imports made by TCL in relation to					
a	TCL Production	%	-	-	-	24.31
b	Indian Production	%	-	-	-	7.28
c	Indian Consumption	%	-	-	-	5.98
d	Total Imports	%	-	-	-	24.31
i	Subject Countries(China etc)	%	-	-	-	26.12
ii	Subject Countries(Turkey and Russia)	%	-	-	-	-

17. The Authority notes that the intent of the provisions laid down under Rule 2(b) of the Anti-dumping Rules is not to debar any domestic producer from the ambit of domestic industry merely because they have imported the subject goods from the subject countries. Imports of subject goods from the subject countries by a domestic producer claiming the status of domestic industry under the Rules cannot be treated as a sacrilege. What is important to be assessed by the Authority is the intent and tone and tenor of such domestic producers, the magnitude of such imports, the situation under which such imports have been effected and the impact of such imports on the financial parameters of such industries. As per the facts available in the present investigation, GHCL and Nirma, who have claimed to be treated as domestic industry along with DCW, have neither made significant imports of subject goods from the subject countries during the POI, nor have their related exporters in the subject countries marketed the subject goods in India through them. Their focus of business has also not shifted from production to trading. Both GHCL and Nirma have utilized more than 80% of their capacity of production during the POI. Therefore, the imports of subject goods made by them or exports made by their related party cannot be interpreted as an effort to involve themselves in trading. If at all they have imported some volume of subject goods from the subject countries, it is either to match the price of imports or to retain a customer, which otherwise would have shifted to cheaper imports. Moreover, such imports by them are of course on payment of anti-dumping duties and therefore cannot be seen to have accrued undue financial

advantage to them.

18. The production position of the constituents of the domestic industry in the present investigation is as given below:

Particular	UOM	2011- 12	2012- 13	2013-14	POI
Domestic Industry Production	MT	15,78,674	16,11,377	16,02,002	16,45,154
Other Producers Production	MT	7,77,036	7,50,106	7,33,594	7,72,177
Total Indian Production	MT	23,55,710	23,61,482	23,35,596	24,17,331
Share of Domestic Industry	%	67.01	68.24	68.59	68.06
Share of Other Producers	%	32.99	31.76	31.41	31.94

19. In view of the above position, the Authority considers GHCL, Nirma Ltd and DCW Limited as “domestic industry”, satisfying the requirements of Rule 2(b) read with Rule 5(3) of the Anti-dumping Rules.

E. Confidentiality

20. The applicant and other interested parties have made the following submissions with regard to the issue of confidentiality:

- i. There is no reasonable basis for grant of confidentiality to the domestic producers. Information pertaining to sales value, opening and closing stock is easily available in the respective balance sheets of the Applicants, but the same has not been given in their response.
- ii. There are discrepancies in the non confidential version of domestic producers. Therefore, the information supplied by the domestic producers needs to be rejected.

21. The domestic industry has made the following submissions with regard to confidentiality:

- i. As regards the confidential figures are concerned, there were clerical/calculation or cumulation errors in the data which have been corrected and information provided to all the parties before the hearing.
- ii. The domestic industry did not materially change the figures. It filed an additional letter and there was no difference as regards the confidential information contained in the two submissions.
- iii. There is no basis for publically disclosing volume of imports made by the domestic industry constituents or volume of exports made by related parties.

EXAMINATION BY THE AUTHORITY

22. With regard to confidentiality of information, Rule 7 of 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.

23. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was 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. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

F. MISCELLANEOUS SUBMISSIONS

Submissions made by the Applicant and other Interested Parties

24. Following miscellaneous submissions have been made by applicant and other interested parties:

- i. The domestic industry did not exercise any due diligence or care in ensuring the accuracy of the data provided in response to the MTR and they did not even file the necessary certificate of correctness.
- ii. The claim of inclusion of freight has no legal tenability and in fact principle of res judicata is applicable to this issue since the domestic industry is once again pressing this issue before the same Authority which they did in the original investigation and was rejected by the Authority.
- iii. During the oral hearing, the domestic industry did not rebut the submissions made by the Respondents and in view of principle of 'Doctrine of Non-Traverse', it is deemed that the Domestic Producers admitted such submissions.
- iv. The two mid-term reviews should be combined as the product under consideration, the composition of the Domestic Producers as well as the period of investigation are the same.
- v. The domestic industry has to be inferred as domestic industry as defined in the previous investigation. It is only and only the domestic producers themselves, who can lead information in this regard and not the applicant. There exists no need under Rule 23(1A) of Anti-Dumping Rules for the Applicant to identify the domestic industry and make allegations.
- vi. Since writ petitions and appeals are pending in High Court and CESTAT on the issue of inclusion of freight, filed by the domestic producers, authority should not change its settled practice regarding determination of non-injurious price and continue to exclude inland freight while determining non-injurious price. This issue of inclusion/non-inclusion of freight may be decided as and when the matter is finally settled by the High Court or the CESTAT.
- vii. There is a demand supply gap in the domestic market since the domestic industry is unable to supply despite having capacities.
- viii. There are thousands of tiny, small and medium scale detergent producers in India providing employment to masses. Anti-dumping duties imposed on soda ash, the major raw material for detergents, cause much hardship to them. Non supply of required volume by domestic industry due to demand supply gap forces these industries to depend upon imported material by bearing the anti-dumping duty, thereby making their products cost ineffective.

- ix. There is a mutual understanding among the domestic producers of soda ash in terms of price fixation amounting to cartelization at the cost of downstream industries.

Submissions made By Domestic Industry

25. Following miscellaneous submissions have been made by the domestic industry:
- i. The petition is deficient as it claims absence of injury without establishing “domestic industry”.
 - ii. The petition doesn’t establish why antidumping duties are required to be withdrawn. The objective of midterm review is to analyze whether the injury to the domestic industry is not likely to continue or recur in the event of premature revocation of duty.
 - iii. The Authority is requested to consider the submissions by domestic industry with regard to methodology for determination of injury margin generally applied by the Authority and as applied at the time of original investigations and reasonableness and appropriateness of the same in the facts and circumstances of the present case. As regards NIP practice and law the provisions prescribed under Annexure III were being practiced earlier and were being followed by the Authority prior to introduction of law.
 - iv. As regards difference in production in the standing table and injury statement given that the standing statement contains company wise breakdown, it is was a clerical error which is regrettable but it cannot be said to cause serious prejudice to the interested parties that the duties should be terminated.
 - v. There is no prescribed requirement for filing of certificate of correctness with the information filed. The domestic industry cannot be penalized on the ground of clerical human errors and depriving it of a legitimate protection.
 - vi. As regards the argument of interested parties that domestic industry is not willing to supply in South due to freight, it is submitted that firstly domestic industry has not regretted material to any consumer and secondly that this shows that freight could be recognized for determining injury margin.
 - vii. The reliance on Doctrine of Non Traverse is unfounded because hearing has a meaning when submissions are made and rejoinder submissions are made to submissions raised by other parties.

- viii. The domestic industry has no objection to cumulation of two mid-term reviews, however this will render initiation invalid and warrant initiation of a fresh midterm review investigation.
- ix. India is short in soda ash production vis-à-vis global market having surplus. RSPL Ltd, a leading detergent manufacturer, is setting up a soda ash plant in India with 5 lakh MT production capacity for captive consumption and sale in domestic market. With their entry, India would become self sufficient in Soda Ash. If the present anti-dumping duties are withdrawn and the prices decline, then RSPL would suffer injury. Therefore, the present anti-dumping duties should continue.

EXAMINATION OF THE AUTHORITY

26. Rule 23 of Anti-dumping Rules states as follows:

(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive anti-dumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.

27. Article 11.2 of the Anti-dumping Agreement provides that the Authority shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time

has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the Authority determines that the anti dumping duty is no longer warranted, it shall be terminated immediately.

28. The applicant and the other interested parties have contended that the scope of mid- term review is different from the scope of sunset review. The applicant has contended that in a mid-term review DGAD is required to consider and determine whether there is sufficient justification for withdrawal of anti-dumping duty before completion of five years, whereas in sunset review DGAD is required to determine whether anti- dumping duty is required to be extended further or not after expiry of five year. On the other hand, domestic industry contended that in a mid-term review, current performance alone is insufficient to conclude whether the anti-dumping duty can be withdrawn at this stage and that the Authority is required to consider the likely situation when anti dumping duty is withdrawn.
29. The Authority has examined the issues raised by the interested parties and domestic industry and notes that Rule 23 of the Anti-dumping Rules obligates the Authority to review the need for the continued imposition of an anti-dumping duty, *inter alia*, upon request by any interested party who submits positive information substantiating the need for such review after a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Authority shall recommend to the Central Government for its withdrawal, where it comes to the conclusion that the injury to the domestic industry is not likely to continue or recur if the said anti-dumping duty is removed or varied and is therefore no longer warranted.
30. As regards the contention of the applicant and other interested parties that domestic industry did not exercise any due diligence or care in ensuring the accuracy of the data provided in response to the MTR and they did not even file the necessary certificate of correctness, the Authority notes that the relevant data/information of the domestic industry has been verified.
31. As regards the argument of applicant and other interested parties that the claim of the domestic industry for inclusion of freight in the NIP has no legal tenability and should not be acceded by the Authority, it is noted that the NIP has been determined strictly as per the provisions laid down under Annexure III of the Anti-dumping Rules.
32. The applicant and other interested parties have argued that two mid-term

reviews i.e. the present one and the one against Turkey and Russia initiated by the Authority should be combined as the product under consideration, the composition of the domestic producers as well as the period of investigation are the same, the Authority notes that the two midterm reviews are concerning two different final findings and duty notifications involving different set of countries. Therefore, it would not be appropriate to combine both these investigations.

33. As regards the argument of the interested parties that there is a demand supply gap in the domestic market since the domestic industry is unable to supply despite having capacities and because of which downstream industries, especially tiny, small and medium scale detergent producers, are suffering, the Authority notes that in the anti-dumping law the domestic industry is not obliged to fulfill the entire demand in the domestic market. Since imposition of anti-dumping duties do not prevent import and its intent is only to rectify an unfair position due to dumping, the user sector can always import and fulfill their extra demand.

34. As regards the argument of the interested parties that there is a mutual understanding among the domestic producers of soda ash in terms of price fixation amounting to cartelization at the cost of downstream industries, the Authority notes that the allegation is unsubstantiated.

G. Determination of Dumping Margin

Market Economy Claims, Normal Value, Export Price and Dumping Margin

Submissions made by the Applicant and Other Interested Parties

35. The submissions made by the Applicant and other interested parties with regard to market economy, normal value, export price and dumping margin are as follows:

- i. The cost of production is significantly lower when soda ash is produced from natural resources. If such revelation is correct, then the Normal Value in those countries would be significantly lower.
- ii. Domestic producers have their subsidiary companies in the subject countries i.e. NIRMA has its subsidiary in USA and TATA has its subsidiary in Kenya and USA. Therefore the Domestic Industry should be able to provide the Normal Value of the exporter in the subject countries.
- iii. Authority should calculate the normal value for China and Ukraine on the basis of price obtained from the subsidiary companies of the Domestic

Producers in the Market economy country or the constructed value of market economy third country.

- iv. Domestic industry has used HIS benchmark prices for determining normal value for the subject countries except China and Ukraine despite having related producers in most of these countries. Authority should not accept such methodology of determination of normal value.
- v. As no evidence has been provided by the Domestic Producers in respect to how they have taken the values for the Ocean freight, Marine Insurance, Commission, Inland Transportation, Port Expenses and Bank Charges, the Designated Authority is requested to call for evidence and seek such information instead of relying blindly on the information furnished by the domestic producers.
- vi. Normal Value and the Export Price for the non-cooperating exporters should be calculated on the basis of export price and normal value of the cooperating exporters.
- vii. There were only 3 producers operating in Ukraine at the time of original investigation. However, during the past few years, circumstances have changed drastically in Ukraine as a result of which two out of three plants have shut down and one operating plant is based in Crimea, which has since been annexed by Russia. Resultantly, there being no producer in Ukraine, the anti-dumping duties are required to be withdrawn against Ukraine.

Submissions made by the domestic industry

36. The submissions made by the domestic industry with regard to market economy, normal value, export price and dumping margin are as follows:

- i. China and Ukraine are non-market economy. China and Ukraine have been treated as non-market economy by India, European Union and United States in the past three years.
- ii. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
- iii. Market economy status cannot be given unless the responding exporters establish that the prices of major inputs substantially reflect market values.
- iv. Market economy status cannot be given unless the responding exporter establishes that their books are audited in line with international accounting standards.

- v. Market economy status cannot be granted even if one of the parameters is not satisfied.
- vi. It is for the responding exporters to establish that they are operating under market economy conditions.
- vii. Market economy status cannot be granted unless the responding company and its group as a whole make the claim.
- viii. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.
- ix. Domestic industry has determined Normal Value in China and Ukraine on the basis of price paid in India. Additionally, domestic industry has determined normal value on the basis of cost of production in India, by taking the international price of the major raw materials and duly adjusted with selling, general and administrative expenses and considering the consumption norms of the domestic industry.
- x. Domestic industry has considered prices for USA, and EU as per prices reported in IHS Chemical Global Soda Ash.
- xi. Since trade law journals do not publish prices of product under consideration for Iran, the domestic industry has determined normal value in Iran on the basis of best estimates of cost of production in Iran, considering consumption norms of the domestic industry, power prices in Iran.
- xii. Normal value for Pakistan has been made on the basis of Annual Report of ICI Pakistan, which also disclosed the production and sales value for the company.
- xiii. Normal value for Kenya has been made on the basis of Annual Report of Tata Chemical Ltd a listed company in India having a plant in Magadi, Kenya.
- xiv. The export price has been on the basis of DGCI&S transaction wise data. The export prices have been adjusted for ocean freight, marine insurance, commission, inland transportation, port expenses, bank charges and VAT difference.
- xv. Both the normal value and export price have been determined at ex-factory level. Domestic industry has taken into account all physical characteristics of

the product for which the information is available. Thus, the comparison made by the domestic industry constitutes a fair comparison.

- xvi. The dumping margins are not only de-minimis but also substantial.
- xvii. As regards cost of production being lower in countries where production is from natural resources, the IHS Chemical Journal gives out the price prevalent in the countries which leads to presumption of high profits made in these countries.
- xviii. The domestic industry has provided price prevailing in the country which is what needs to be considered.
- xix. The basis of construction of normal value of China and Ukraine may be decided by Designated Authority as it deems fit.
- xx. The domestic industry has followed conservative approach with respect to evidence taken for various adjustments.
- xxi. The Authority should take the highest normal value and lowest export price transaction in order to determine dumping margin for non cooperative exporters.

Examination by the Authority

37. It has been contended that there were only 3 producers operating in Ukraine at the time of original investigation, out of which, two plants have already been shut down and one operating plant is based in Crimea, which has since been annexed by Russia. Resultantly, there being no producer in Ukraine, the anti-dumping duties are required to be withdrawn against Ukraine. The Authority notes that such contention has no basis since exports of subject goods from have been reported from Ukraine during the POI of the present investigation. If the contention of Ukraine is true, then how exports have taken place from Ukraine.

Examination of Market Economy Claims

China PR & Ukraine

38. The Authority sent copies of the MET questionnaire to all the known producers/exporters in for rebutting presumption of non-market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested the respective country's embassies in India to advise the producers/exporters in their country to provide the required information. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended,

the presumption of a non-market economy can be rebutted if the exporter(s) provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. However, none of the producers/exporters in China PR and Ukraine have cooperated and filed response to the exporter's questionnaire and MET questionnaire in the present investigation. In view of the above position and in absence of rebuttal of non-market economy presumption, the Authority considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value for China PR and Ukraine.

H. DETERMINATION OF NORMAL VALUE

39. The exporter's questionnaire responses submitted by the following producers/exporters from Pakistan have been accepted by the Authority and considered for the purpose of determination of normal value, export price and dumping margin.

- a) Olympia Chemicals Limited, Pakistan
- b) ICI Pakistan Limited, Pakistan

In respect of other producers/exporters from the respective subject countries the Authority has determined normal value on the basis of best available information as the Rules.

Normal Value for China PR and Ukraine

40. In view of non-cooperation by the Chinese and Ukrainian producers/exporters, the Authority considers it appropriate to proceed with the provisions of para-7 of Annexure-I to the Rules for determination of normal value. Para 7 of Annexure I of the Anti-dumping Rules provides that:

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

market economy third country and shall be given a reasonable period of time to offer their comments.”

41. Accordingly, the Authority has determined normal value in respect of China PR and Ukraine as mentioned in the dumping margin table given below.

European Union (EU)

42. The Authority notes that none of the producers/exporters from EU have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for determining normal value in respect of EU. Accordingly the Authority has determined the normal value of EU at ex-factory level on the basis of the average prices during the POI published in IHS Chemical, an international journal which periodically publishes the prices of Soda Ash prevailing in EU, provided the domestic industry. The normal value so determined for EU has been mentioned in the dumping margin table given below.

Normal value in case of USA

43. The Authority notes that none of the producers/exporters from USA have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for the determination of normal value in respect of USA. Accordingly the Authority has determined the normal value in respect of USA at ex-factory level, on the basis of prices periodically published in IHS Chemical, an international journal which periodically publishes the prices of Soda Ash prevailing in USA, as provided the domestic industry. The normal value so determined for USA has been mentioned in the dumping margin table given below.

Normal value in case of Iran

44. The Authority notes that none of the producers/exporters from Iran have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for the determination of normal value in respect of Iran. The normal value so determined for Iran has been mentioned in the dumping margin table given below.

Pakistan

45. The Authority notes that the two exporters of Pakistan namely, ICI Pakistan Limited and Olympia Chemicals Limited, Pakistan have submitted exporter's questionnaire response furnishing details of domestic sales of subject goods

during the POI.

ICI Pakistan Limited

46. In the exporter's questionnaire response, during the POI of the present MTR investigation, ICI Pakistan Ltd has reported total domestic sales of *** MT of subject goods for the gross invoice value of *** PKR. Adjustment has been claimed on account of sales tax, Commission, commission of trade, discount, cargo handling charges storage charges, insurance, selling and distribution cost i.e. salary, others and corporate general administration expenses, taxation on domestic profit, cost of holding finished goods and cost of credit. However, the respondent company could not furnish complete back up documents to substantiate the claimed adjustments. In view of the above position, the Authority could not determine the normal value for ICI Pakistan Ltd.

Olympia Chemicals Limited, Pakistan

47. Olympia Chemical limited, Pakistan has reported total domestic sales of *** MT of subject goods during POI with gross invoice value of PKR ***. Adjustment has been claimed on account of VAT, discount, commission, inland freight, credit cost and bank charges. The Authority has admitted the adjustments as claimed and determined the normal value at ex-factory level in respect of Olympia Chemical Limited, Pakistan. The normal value so determined for Olympia Chemical Limited, Pakistan has been mentioned in the dumping margin table given below.

Non Cooperative exporters of Pakistan

48. The Authority notes that no other producer/exporter from Pakistan has submitted cooperated in the present investigation. Therefore, the Authority has adopted the highest normal value of the cooperative exporter from Pakistan for determining the normal value for the non cooperative producers/exporters from Pakistan. The details of the normal value so determined for the non cooperative producers/exporters from Pakistan have been mentioned in the dumping margin table given below.

Kenya

49. The Authority notes that none of the producers/exporters from Kenya has submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for the determination of normal value in respect of Kenya and accordingly determined the normal value for all producers/exporters of Kenya. The details of the normal value so determined for the non cooperative producers/exporters

from Kenya have been mentioned in the dumping margin table given below.

I. EXPORT PRICE

China PR, EU, USA, Iran, Kenya and Ukraine

50. The Authority notes that none of the exporters/producers of subject goods from China PR, EU, USA, Iran, Kenya and Ukraine has responded to the Authority in the form and manner prescribed. In the absence of exporter's questionnaire response from the producers/exporters from the said countries, the Authority has determined the export price in respect of these countries on the basis of best available information in terms of Rule 6(8) of the Rules. The Authority has relied upon DGCI&S import data for the purpose of arriving at the weighted average CIF value of imports from the said countries during the POI. Adjustments on account of ocean freight, insurance, commission, port expenses, inland freight and bank charges, as claimed by the petitioner, have been considered to arrive at the net export price in respect of the said countries. Accordingly, export price at ex-factory level for all exporters of China PR, EU, USA, Iran and Ukraine has been determined as given in the dumping margin table given below.

Pakistan

ICI Pakistan Ltd.

51. As per the exporters questionnaire, during the POI, ICI Pakistan Ltd., exported *** MT of subject goods to India for the gross invoice value of PKR ***. The Company has claimed adjustments on account of commission, discount, loading and unloading expenses, port charges, insurance, service charges, taxation on domestic profit, interest income on advance received. However, the respondent company could not furnish complete back up documents to substantiate the claimed adjustments. In view of the above position, the Authority could not determine the net export price for ICI Pakistan Ltd.

Olympia Chemicals Ltd.

52. As per the exporters questionnaire, during the POI, Olympia Chemicals Ltd., exported *** MT of subject goods to India for the gross invoice value of US\$ ***. After making price adjustments, as claimed by the Company, on account of commission, inland freight, credit cost, bank charges, insurance and handling charges, the net export price, at ex-factory level, has been determined. The details of the net export price so determined for Olympia Chemicals Ltd, Pakistan have been mentioned in the dumping margin table given below.

All other exporters of Pakistan

53. The Authority notes that no other exporter from Pakistan has submitted exporter's questionnaire response. Therefore, the Authority has adopted the lowest representative net export price to India of the cooperative exporters for all other exporters as the net export price after making the due adjustments. The net export price so determined for the non-cooperative exporters from Pakistan has been mentioned in the dumping margin table given below.

J. DUMPING MARGIN

54. Comparing the aforesaid normal values and export prices as determined, the dumping margin determined for the subject countries during POI and Post POI are as follows:

POI

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
China PR	All	***	***	***	***	15-25
Ukraine	All	***	***	***	***	15-25
EU	All	***	***	***	***	5-15
Iran	All	***	***	***	***	5-15
USA	All	***	***	***	***	5-15
Kenya	All	***	***	***	***	10-20
Pakistan	Olympia Chemicals Limited, Pakistan	***	***	***	***	20-30
	Non-Co- operative producers/ exporters in Pakistan	***	***	***	***	30-40

Post POI

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
China PR	All	***	***	***	***	5-15
Ukraine	All	***	***	***	***	15-25
EU	All	***	***	***	***	0-10
Iran	All	***	***	***	***	0-10
USA	All	***	***	***	***	15-25

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
Kenya	All	***	***	***	***	0-10
Pakistan	Olympia Chemicals Limited, Pakistan	***	***	***	***	15-25
	Non-Co- operative producers/ exporters in Pakistan	***	***	***	***	20-30

K. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

Submissions made by the Applicant and Other Interested Parties

55. Following are the submissions made by the applicant and other interested parties in this regard:

- i. Import is occurring only because domestic producers forcing it upon the users. Even the domestic producers, who use the subject goods in downstream production, use the imported products only. Therefore, the Anti-dumping Duty may be recommended to be withdrawn with effect from the date on which such MTR has been initiated.
- ii. The domestic producers never disputed the fact that the capacity utilization could be achieved more than what has been achieved. It has not been disputed that Nirma along with earlier SCL made a claim before the BIFR that the plant of SCL was in the state of scrap.
- iii. It was not disputed by the domestic producers that the price at which imported goods, which were resold, were significantly higher than the landed value shown at the port of import, resulting into a distorted Landed Value for the purposes of comparison of such Landed Value with the NIP and NSR.
- iv. 20% - 25% ROCE earned by the domestic producers has been arrived at from the Financial Records without applying the principles of Annexure III which requires to remove extra-ordinary expenses like expenses incurred during shutdown of the plant due to unavailability of the raw material.
- v. NSR of the domestic producers for the price undercutting have been arrived at after adding freight. It has been done even though according to

the practice of the designated authority Net Sales Realization is arrived at the ex-factory gate of the domestic producers.

- vi. Gujarat Heavy Chemicals Limited (“GHCL”) is a profit making company and that the related producers and exporters are not participating in the investigation as there is no dumping. The Domestic producers did not deny the fact that TATA Chemicals Limited (“TCL”) is also a profit making company and earning huge profits on resale of the imported subject goods.
- vii. There are no price Suppression and Depression even after the inclusion of the non- functional plants of the domestic producers. Therefore it may be inferred that the domestic Industry is not suffering any injury.
- viii. Domestic Industry is not suffering any volume injury, price injury and that the plants are running at their best capacity utilizations. There is no need for continuation of Antidumping Duty on the import of subject goods from the subject countries.
- ix. The estimates of NIP, NSR and landed price show that there exists negative injury margin in the POI. Post POI also shows negative injury margin. Domestic Industry is not suffering any injury; there is no need for continuation of anti-dumping duty on the import of subject goods from the subject countries. There is no likelihood of continuation of injury as well to the domestic industry.
- x. It is undisputed fact that the landed value increased significantly because of the increase in export price in USD. The domestic producers are not dependent on imported material and therefore unaffected by depreciation in INR against USD. Such change is of lasting nature and continued for more than 3 years now. Therefore, there is no remote possibility for recurrence of injury to the domestic producers.
- xi. The production increased from 2,391,519 MT in base year to 2,405,410 MT in POI. The domestic producers have accepted during the public hearing that they are not suffering injury.
- xii. The total exports of domestic Industry have come down sharply from a figure of 2,00,354 MT in the year 2011-12 to 26,642 MT in the year 2014-15, which clearly falsifies the statement made by the Domestic producers that Domestic producers has to continue its exports to dispose of inventories.

- xiii. The domestic sales of the product increased from a figure of 20,06,729 MT in 2011-12 to 22,18,766 MT in 2014-15. The total sales, however, very marginally decreased from 24,19,438 MT in 2011-12 to 24,03,783 MT due to sharp decline in Captive Consumption & Exports.
- xiv. The largest Indian domestic producer "Tata Chemicals Ltd." imported material from its subsidiary from Kenya and from unrelated producers from EU and China. The domestic producer claimed that the product imported from Kenya was of lower grade and fetches lower price than the domestic producers in India. The price at which the domestic producers sold subject goods to the users after import, should be compared with the Net sale realization and the NIP.
- xv. The Domestic Producers achieved the optimal capacity utilization during the POI and injury period. The capacity indicated by them is only name plate capacity, the plants are worn out and they are not capable to achieve capacity utilization more than at which they are operating.
- xvi. Even after several years of duty, Soda Ash industry did not increase the capacity to such levels so as to meet the entire Indian demand. The purpose of ADD is to eliminate the trade-distorting effects of injurious dumping and not to create a monopolistic situation for the domestic industries.
- xvii. The capacity of the domestic producers has not increased from the original investigation which is under review. Further the claims of Domestic Industry about the investments made in the plants for increasing the capacity is not substantiated with any evidence
- xviii. As regard expansion plans, the domestic producers in ambiguous term are seeking protection to earn huge profits at the expense of the users. Here again the domestic producers made a false claim. The return of INR 1250 PMT is an average for the industry. It is not for the domestic producers who will expand capacities or the new entrant.
- xix. There is no injury to the domestic producers for last two years from imports examined with or without Anti-dumping Duty, it can be concluded that there is no need to continue Anti-dumping Duty which is an unnecessary burden on the users.
- xx. GHCL is operating at more than 87% during POI which is the maximum possible capacity utilization in these industries. GHCL is one of the major producers with capacity of 8, 50,000 MT. It is earning good amount of profit also from the business. Even than it has its compulsions to import

the subject goods from various countries including the subject countries. It may be noted that they are importing the goods after payment of Anti-dumping Duty and then earning sufficient profit on resale of the same.

- xxi. Domestic Industry is choosing the figures as it is suiting them. Such an approach cannot be accepted. Even though import was taking place, they kept on increasing prices at extra-ordinary trend. As may be seen from the correct data reported by the domestic industry vide their submission dated 02.03.2016, in 2013-14, cost of sales increased only to 111, but selling prices increased to 117. In 2014-15 when cost of sales witnessed a decline by 1 percentage points to 110, selling prices jumped by 10 percentage points compared to previous year.
- xxii. The change in the prices of the subject goods in the exporting country and international market along with sales realization of the domestic industry should be considered for examination of lasting nature as the changes in prices of the subject goods are reflected in the world market and increase in export price to India is not a standalone event.
- xxiii. Annexure III under the AD Rules clearly says freight outward which is a post manufacturing expense shall not be considered for the purpose of NIP. The DI is now trying to create an impression that their contention is not NIP determination but determination of injury margin, in effect both are the same as the injury margin is considered as the difference between landed price of imports and NIP at ex-factory levels.
- xxiv. The claim that the duties should be continued to protect an anticipated future investment which is not of any concrete nature and such claims has no tenability.
- xxv. In cases where the injury margin itself is negative i.e., landed value is more than the NIP, no antidumping duty can be recommended by the Authority. Since no injury is caused to the domestic industry, anti-dumping duty should be withdrawn.
- xxvi. Super profits being generated by the domestic industry is directly related to the fact that imports are at par with the NIP and this difference is being taken advantage of by the domestic industry. The customers are suffering due to artificially inflated price of soda ash required for their industries, which in turn would have a carry forward on various industrial and consumer items.
- xxvii. The increase in prices is on account of the exchange rate as well as increased prices in the international market. Domestic producers enjoy the

benefits of devalued rupee in terms of the increased landed value, there is no effect on their costs due to the fact that domestic producers are using raw material which is abundantly available in India itself.

- xxviii. Import price is highest in Gujarat. The high price in the region where subject goods is available in sufficient quantity and low price where supply is not available also establishes that the decision to buy is not dependent on price preference.
- xxix. There is no relation between import volume and prices and the domestic producers are earning huge profit irrespective of the import volume and prices. The users are ending up paying Anti-dumping Duty without any need of protection to the domestic producers.
- xxx. Imported goods which were resold were significantly higher than the landed value shown at the port of import resulting into a distorted Landed Value for the purposes of comparison of such Landed Value with the NIP and NSR.
- xxxi. The foreign exchange rate changed where value of INR depreciated significantly against USD. The cumulative effect of such changes resulted into increase in import prices.
- xxxii. There are no price Suppression and Depression even after the inclusion of the non- functional plants of the Domestic Producers. Therefore it may be inferred that the domestic Industry is not suffering any injury.
- xxxiii. Just as domestic industry at the time of initiation of investigation has to only provide evidence regarding existence of dumping, injury and causal link and not actually determine injury margin and dumping margin, similarly in case of review, the applicants are only required to file an application giving positive evidence on changed circumstances.
- xxxiv. The domestic producers have contended that the injury margin for non-cooperating exports should be determined on the basis of lowest prices reported in India. The Respondent denies the submissions as incorrect and submit that the Designated Authority should consider the Average weighted price for calculation of injury margin. In the present case exporters from the subject countries have participated in the investigation and even the Domestic producers have the related parties in the subject countries under the investigation. Therefore, the injury margin may be calculated on the basis of the data available with the Designated Authority and not at the lowest price reported in India.

- xxxv. The domestic producers have contended that Authority may consider only those transactions, where the injury Margin which are positive. The Respondent denies the submissions of the Domestic Industry as incorrect. There is absolutely no basis for making such a request and there is no provision anywhere, which allows consideration of only positive injury margin.
- xxxvi. The Domestic Producers have contended that the Designated Authority requires to look into the future investments of Domestic Industry as well as the Authority should analyze if any material retardation is caused to the Domestic Industry. The Respondents denies the submissions as incorrect. The Respondent submits that the Domestic Producers are claiming that they have made future investments during the time of public hearing as well. However they were unable to establish that they had made any investments after the imposition of antidumping duty to improve their capacity, whereas the demand of the subject goods had increased.
- xxxvii. DA is requested to also require the domestic producers to come clean regarding the imports made by them. It is necessary for them to clarify at what prices domestic producers import the subject goods. Further, since domestic producers have information of their net sales realizations, they must be aware whether imports made by them were above the net sales realization or not? Also, domestic producers must disclose the prices at which the imported goods were resold in the open market.
- xxxviii. Domestic producers have been predominantly selling their subject goods in Gujarat and region around Gujarat at a very good price. Admittedly, domestic producers are making huge profits. The price decline is stated to be high in West Bengal alone and the decline is not much in Gujarat and other parts of India.
- xxxix. In present case there is no relation between import volume and prices and the Domestic Producers are earning huge profit irrespective of the import volume and prices. The users are ending up paying Anti-dumping Duty without any need of protection to the Domestic Producers.
- xl. The Domestic producers have their subsidiary companies in the subject countries i.e. NIRMA has its subsidiary in USA and TATA has its subsidiary in Kenya and USA. Therefore the Domestic Industry should be able to provide the Normal Value of the exporter in the subject countries. Authority should calculate the normal value for China and Ukraine on the basis of price obtained from the subsidiary companies of the Domestic Producers in the Market economy country or the constructed value of market economy third country. The Authority should not consider the cost

of Production of domestic Industry when other options are available with the Authority.

- xli. The largest Indian domestic producer “Tata Chemicals Ltd.” (Hereinafter referred as TATA) imported material from its subsidiary from Kenya and from unrelated producers from EU and China. The domestic producer claimed that the product imported from Kenya was of lower grade and fetches lower price than the Domestic Producers in India. Therefore, it is apparent if due to difference in quality an adjustment of 20% is made in price for comparison then imports become highly costlier, but users are buying it because they are not getting enough supplies. The price at which the Domestic Producers sold subject goods to the users after import, should be compared with the Net sale realization and the NIP.

SUBMISSIONS MADE BY THE DOMESTIC INDUSTRY

56. The domestic industry has submitted as under:-

- i. Mere improvement in performance of the domestic industry is insufficient ground for revocation of antidumping duty. Rule 23(1A) mandates the Authority to examine the effect of the revocation of duty on domestic industry, instead of merely focusing on the present situation of domestic industry.
- ii. The meaning of lasting nature is evidently that the changes in circumstances are such that they would not reverse back to what it was earlier. The decline in import price clearly establishes that the changes were not of lasting nature and were purely temporary in nature.
- iii. Injury margin in case of non-cooperation of exporters should be determined on the basis of lowest price reported in India. Further, Authority must consider only injurious imports and ignore those imports which are above NIP. Negative injury margin does not mean withdrawal of antidumping duty.
- iv. The Authority is required to first examine whether the domestic industry has suffered material injury. If the authority comes to a conclusion that the domestic industry has not suffered material injury, the Authority needs to examine whether the domestic industry is threatened with material injury in the event of premature withdrawal of anti dumping duty. If not so, the Authority must examine whether continued dumping of the product under consideration is likely to materially retarded establishment of the domestic industry in the Country.

- v. As regards the claim that net selling price of domestic industry is above Rs. 19000 PMT, indexed figures show that the selling price is way below the net sales realization stated by the interested parties at the time of hearing.
- vi. As regards the issue of Capital employed based on books of accounts, the prescribed format is relevant only for determining continuation of injury and not potential injury and likelihood of injury. For likelihood of injury, potential situation is required to be seen.
- vii. As regards applicability of *res judicata* principle on issue of freight inclusion is concerned, the principle is applicable only when final judgment is made on issue. The issue as raised before the DA in original investigation is pending as an appeal before the Hon'ble Tribunal, therefore remains alive and valid presently. Further grounds for review mention 'injury margin has come down'.
- viii. As regards the contention that Domestic industry while arguing about freight is talking about injury margin on the surface when it actually means determination of NIP, is faulty as the two are different terms. There is no law or methodology provided to determine injury margin. Annexure III only relates to governing principles.
- ix. The reliance on Brazilian practices related to lesser duty rule is concerned, is appropriate since in the absence of guidelines on determination of injury margin, the practice and principles keep on developing. The incidence of freight is important is selective products and therefore has not been agitated heavily in the past.
- x. As regards several years of duty is concerned the antidumping duties were levied in 2012. The industry was incurring losses in 2011-12 and was making low level of profits and ROI till 2013-14. After imposition of duties, the situation of domestic industry gradually improved and market viability increased consequently resulting in planning of expansions. Arguments with regard to profiteering should be posed to exporters who are possibly looting the consumers in the domestic market.
- xi. The future investments are of a concrete nature and cannot be withdrawn. The reliance on EC case on imports of pure silk typewriter ribbon fabrics from China is misplaced as the facts are different. The demand of the product had been changing and there were no imports since almost 9 years among other differences.
- xii. As regards high profitability of domestic industry, it is seen that soda ash is a highly capital intensive, low raw material cost and high finished product freight industry. The freight costs constitute very high percentage of cost of

production. Therefore this case should be seen in the light of peculiarities of the product under consideration.

- xiii. Export price in India has significantly declined in the post POI.
- xiv. Heavy discounts are being given on the list prices. Therefore, selling price (before discounts) are materially below the price lists.
- xv. As regards the argument of domestic industry charging artificially inflated prices, the Turkey prices and profits in their home market is much higher which dispels any similar concerns for the domestic industry.
- xvi. As regards issue of devaluation of rupee and exchange rate is concerned, the devaluation of rupee has also impacted domestic producers as they have to import various raw materials like Limestone, Coal, Coke etc. While exchange rate has changed even when considered in Indian rupee the imports occurring at present are materially below the NIP of domestic industry.
- xvii. Decline in captive consumption is because one domestic producer could not produce downstream product due to stiff competition. The decline has not adversely affected the overall consumption and is not a cause of injury to the domestic industry. Overall consumption of detergent has increased, thus there is no decline in consumption of Soda Ash for production of detergent.
- xviii. As regards not responding to the capacity utilization of domestic industry claims of interested parties is concerned the capacity utilization has in fact increased to higher levels.
- xix. There is no evidence or basis for the claim that comparison of landed value with NIP and NSR, price of resold imported goods were higher than the landed value shown at the port of import.
- xx. With regard to no denial of domestic industry to price undercutting methodology, it is established that there is no one methodology for determining price undercutting.
- xxi. As regards ROCE, the plants are being operated by industry are depreciated yielding very low returns. Since net fixed assets are unfair to domestic producers and don't represent true value the domestic producers have considered present value of investment for calculating ROCE.
- xxii. The valuation of inventory in financial accounting cannot be considered for present purposes. That wouldn't be in conformity with the specific rules of NIP which must be considered herein.

- xxiii. Present capital employed of domestic industry at present is not appropriate figure for determining return on capital employed. Present capital employed is against capacity of 29,94,435 MT; whereas *** Crores is being invested for enhancing capacities by 8 Lac MT. This itself clearly shows that the present capital employed is grossly insufficient to determine return required by the industry. Capacity with the domestic industry can be 8 lakh tones and not 78 lakh tons as has been alleged by the interested parties.
- xxiv. The import price in Gujarat is comparable. The price in North is comparatively higher and share of imports in Gujarat is less than 5% of total imports.
- xxv. As regards the argument that the landed value simpliciter cannot be used for comparison with NIP or NSR to assess injury margin or injury, it is submitted that majority of the imports from Kenya are directly by the consumers.
- xxvi. As regards the profit margin being considered unreasonable, it is submitted that any business making investment would legitimately expect such a return. The investment details of particularly Rohit Surfactants were enclosed with rejoinder to substantiate the point.
- xxvii. As regards reliance on Final Finding of Soda Ash from Turkey and Russia, the original finding issued by the Designated Authority did not include capacity of M/s Tuticorin Alkali Chemicals & Fertilizers Ltd as it was not an applicant and part of domestic industry in the said investigation. Further the company was not producing subject goods.
- xxviii. As regards the allegation of adjustment of 20% in price, the domestic industry claims no such adjustment.
- xxix. There is no evidence to support the possibilities that there may be grades that are not substitutable.
- xxx. As regards the argument that domestic producers are unable to supply in some areas and therefore imports should not be charged with antidumping duties, the domestic industry holds that for this reason freight should be added while determining injury margin.
- xxxi. As regards the domestic industry's proximity to raw material availability is concerned, such proximity has lowered cost in favour of consumer interests. The freight cost incurred on raw materials is being considered as a part of cost of production and NIP, which is being borne by the consumers. By linking price to cost of production, the Designated Authority has in a way taken away

the efficiencies created by a producer in optimizing itself with overall economics.

- xxxii. The domestic producers have serious intentions of making investments. Even at present rate of profit the fresh investments will be recovered in 32 years. Further the weighted average quantum of anti dumping duties during the POI was Rs.1,290 PMT considering that exports have been made by exporters named in the duty table. Thus, if the domestic industry were to reduce its price by the quantum of anti dumping duty, the fresh investment now being made shall be recovered in 34 years! Thus, possible withdrawal of anti dumping duty shall imply serious reconsideration on these investments.
- xxxiii. The price reported by IHS Global Soda Ash service is a good indicator of the prevailing prices of subject goods in the domestic markets in various countries/regions. Further, since the journal mentions high and low prices, domestic producers have adopted average price.
- xxxiv. The increase in landed price of imports was 32% and not 56% as claimed by the interested parties.
- xxxv. The price increased by the domestic industry was 27% as against 65% claimed by the interested parties. This is due to check on dumping of the product in the country.
- xxxvi. Profitability of domestic industry is far adverse in Southern and Eastern regions due to import competition.
- xxxvii. The overall demand has increased over the injury period. Imports have increased over the injury period despite antidumping duty in force.
- xxxviii. Imports have also increased in relation to production and imports in relation to consumption have declined.
- xxxix. Price would be significantly positive in the event of revocation of anti dumping duty.
- xl. Indian producers of soda ash are located in the State of Gujarat due to availability of raw material. Due to substantial transportation costs the selling price of the domestic industry should be compared with the landed price of imports only after adding transportation costs.
- xli. Authority should determine whether there has been a significant price undercutting by the dumped imports as compared with the price of like

product in India. Premature withdrawal of duties is likely to lead to significant price undercutting in the market.

- xlii. There are no current price suppression or depression effects with the antidumping duties in force. However, if the duties are withdrawn the dumping would cause significant depressing effect on the prices of the domestic industry in the market.
- xlili. Performance of the domestic industry in terms of production, and capacity utilization, profits, return on investments, cash flow has started improving with imposition of antidumping duty. The withdrawal of duties will lead to recurrence of material injury.
- xliv. The causal link has already been established in the original investigation. The dumped imports from subject countries have increased despite antidumping duties in force.
- xlv. Subject imports are available at prices lower than domestic prices. The excess capacities of producers in subject countries show likelihood of increase in volume of dumped imports in case of revocation of duties.
- xlvi. Price undercutting leads to consumers preferring imported material resulting in domestic industry losing sales. This leads to increase in inventories leading to decline in production and further decline in capacity utilization.
- xlvii. As regards price effect the price undercutting will lead to a situation where the domestic industry is prevented from effecting price increases, which leads to decline in profitability. This decline leads to decline in gross profit earned leading to decline in cash profits resulting in further decline in the return on capital employed.
- xlviii. The raw material utilization and utilities utilization should not be considered at the best achieved levels in the past because the cause of increase in consumption is not inefficient utilization of such inputs but changes in input physical circumstances. Designated Authority should consider the consumption inputs and the reasons for the changes in consumption pattern so as to normate the same.
- xliv. The captive inputs should be considered at market price. Actual raw materials and utilities consumption should be considered. Actual cost of production should be determined instead of a notional lower cost of production in order to determine a price which can be compared with the import price in order to assess injury margin.

- I. A comparison of non injurious price of the domestic industry without including associated freight with landed price of imports after adding associated freights will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry.
- li. Freight cost forms a part of cost of production. The domestic industry incurs the freight cost for shifting the goods from factory to depots/warehouses which are extended factory gates. Title of goods remains with the producers and gets transferred to the purchasers only on clearance of the material from warehouses.
- lii. Since the customs duty is added before comparing with non-injurious price even if not paid, the inland freight being incurred in the domestic product must also be added. This was followed in the matter of white cement and should be followed in the present investigation as well.
- liii. Non-consideration of factors such as freight cost incurred by domestic industry, significant difference in payment terms offered by foreign producers/ exporters and Indian industry leading to imports, disparities in taxes & duties between domestic and imported product, existence of present NIP law and interpretations drawn there from, absence of codified practice on key elements despite existence of NIP law are some of the examples which are individually and collectively impacting the quantum of anti-dumping duties by reducing the protection level that the domestic industry should be entitled under anti-dumping law.

EXAMINATION BY THE AUTHORITY

57. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury. The non injurious price of the domestic industry has been determined as per the guidelines laid down under Annexure III of the Anti-dumping Rules.
58. As regards the contention of the domestic industry for consideration of freight incurred by domestic industry as a factor in injury analysis, the Authority notes that first of all Annexure III of the Anti-dumping Rules does not permit such a practice. Moreover, the final finding of the Authority in the anti-dumping investigation concerning imports of White Cement, involving the freight issue is subjudice before CESTAT. Similar cases are also pending before the Delhi High Court.
59. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.

L. Cumulative assessment

60. Attention is invited to Annexure II para (iii) of the Anti-dumping Rules which provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

61. In this regard the Authority observes that:

- i. the margins of dumping from each of the subject countries are more than the limits prescribed above;
- ii. the volume of imports from each of the subject countries is more than the limits prescribed;
- iii. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:
 - a. The subject goods manufactured by the producers from the subject countries inter-se and in comparison to the product manufactured by the domestic industry. In other words, the subject goods supplied from various subject countries and by the domestic industry are inter-se like articles.
 - b. There are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product.
 - c. The exporters from the subject countries and domestic industry have sold the same product in the same periods to the same set of customers. The sales channels are comparable.

- d. Volume of imports from each of the subject countries is significant.
- e. Consumers make purchase decision on the basis of prices offered by various suppliers.

62. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from China PR, EU, Kenya, Iran, Pakistan, USA and Ukraine on the domestic industry in the light of conditions of competition between imported product and like domestic product. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above.

63. The Authority has taken note of submissions made by the interested parties. Annexure II of the Anti-dumping Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products. While examining 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 price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increase which would have otherwise occurred to a significant degree.

64. As regards the impact of dumped imports on the domestic industry, Para (iv) of Annexure-II of Anti-dumping Rules states as follows:

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

65. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

66. The Authority has examined the injury parameters objectively taking into account the facts and arguments of the interested parties. For analyzing the injury parameters, all relevant documents including the balance sheet of the Domestic Industry have been examined and verified by the Authority. The issues relating to the interest of the Indian industry and other issues have also been dealt by the Authority under appropriate headings.

Demand and market share

67. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry and other Indian producers have been added to the total imports into India and the same has been summarized below:

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI	Annualised Post POI
Demand in India including captive							
Sales of Domestic Industry	MT	14,31,825	15,19,990	15,78,148	16,01,302	8,22,679	16,45,357
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>110</i>	<i>112</i>	<i>57</i>	<i>115</i>
Sales of Other Indian producers	MT	7,51,493	7,26,475	7,37,588	7,55,169	3,79,582	7,59,164
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>98</i>	<i>100</i>	<i>51</i>	<i>101</i>
Total Domestic Sales+Captive Transfer	MT	21,83,318	22,46,466	23,15,737	23,56,471	12,02,261	24,04,521
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>103</i>	<i>106</i>	<i>108</i>	<i>55</i>	<i>110</i>
Imports- Subject Countries	MT	3,29,828	5,53,416	4,89,270	6,73,706	3,47,389	6,94,779
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>168</i>	<i>148</i>	<i>204</i>	<i>105</i>	<i>211</i>
Imports- Other Countries attracting duties	MT	1,10,695	1,19,014	62,103	49,071	19,305	38,611
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>108</i>	<i>56</i>	<i>44</i>	<i>17</i>	<i>35</i>
Imports- Other Countries	MT	3,952	19,799	16,214	1,201	1,123	2,246
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>501</i>	<i>410</i>	<i>30</i>	<i>28</i>	<i>57</i>
Total Demand	MT	26,27,793	29,38,694	28,83,324	30,80,449	15,70,079	31,40,157
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>112</i>	<i>110</i>	<i>117</i>	<i>60</i>	<i>119</i>
Market Share in Demand							
Domestic Industry	%	54.49	51.72	54.73	51.98	52.40	52.40
Other Indian	%	28.60	24.72	25.58	24.51	24.18	24.18

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI	Annualised Post POI
Producers							
Indian Producers as a whole	%	83.09	76.44	80.31	76.50	76.57	76.57
Subject Countries	%	12.55	18.83	16.97	21.87	22.13	22.13
Other Countries attracting duties	%	4.21	4.05	2.15	1.59	1.23	1.23
Other Countries	%	0.15	0.67	0.56	0.04	0.07	0.07
Market Share in relation to							
Demand	%	12.55	18.83	16.97	21.87	22.13	22.13
Indian production	%	14.00	23.44	20.95	27.87	28.10	28.10

68. The Authority notes that demand has increased during the POI as compared to the base year. The growth in demand during the POI over base year was 17%. The demand has shown increasing trend during the post POI as well. On the contrary, the market share of the domestic industry as well as other Indian producers has fallen during the POI as compared to the base year. However, during the post POI, the market share of the domestic industry has shown a marginal increase. On the contrary, the market share of the subject country has increased from 12.55% during the base year to 21.87% during the POI. During the post POI, the market share of the subject countries has shown further increasing trend.

M. Volume Effects of Dumped Imports

Import Volume and Market Share

69. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCIS. The volume of imports of the subject goods from the subject countries have been analysed as under:

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI	Annualised Post POI
Import Volume							
China	MT	3,307	1,18,277	98,735	1,25,589	37,105	74,210
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>3,576</i>	<i>2,986</i>	<i>3,798</i>	<i>1,122</i>	<i>2,244</i>
EU	MT	98,968	1,86,264	1,89,139	2,43,032	1,16,264	2,32,528

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI	Annualised Post POI
<i>Trend</i>	<i>Indexed</i>	100	188	191	246	117	235
Kenya	MT	1,58,255	1,43,093	1,62,244	1,31,656	60,524	1,21,047
<i>Trend</i>	<i>Indexed</i>	100	90	103	83	38	76
Pakistan	MT	24,108	19,989	16,948	37,447	19,520	39,040
<i>Trend</i>	<i>Indexed</i>	100	83	70	155	81	162
Iran	MT	5,276	9,040	-	5,427	7,742	15,483
<i>Trend</i>	<i>Indexed</i>	100	171	-	103	147	293
Ukraine	MT	39,913	12,305	196	43,276	27,083	54,165
<i>Trend</i>	<i>Indexed</i>	100	31	0	108	68	136
USA	MT	1	64,447	22,009	87,279	79,153	1,58,306
<i>Trend</i>	<i>Indexed</i>	100	100	34	135	123	246
Subject Countries	MT	3,29,828	5,53,416	4,89,270	6,73,706	3,47,389	6,94,779
<i>Trend</i>	<i>Indexed</i>	100	168	148	204	105	211
Other Countries attracting duties	MT	1,10,695	1,19,014	62,103	49,071	19,305	38,611
<i>Trend</i>	<i>Indexed</i>	100	108	56	44	17	35
Other Countries	MT	3,952	19,799	16,214	1,201	1,123	2,246
<i>Trend</i>	<i>Indexed</i>	100	501	410	30	28	57
Total Imports	MT	4,44,475	6,92,228	5,67,587	7,23,978	3,67,818	7,35,636
<i>Trend</i>	<i>Indexed</i>	100	156	128	163	83	166
Market Share							
China	%	0.74	17.09	17.40	17.35	10.09	10.09
EU	%	22.27	26.91	33.32	33.57	31.61	31.61
Kenya	%	35.60	20.67	28.58	18.19	16.45	16.45
Pakistan	%	5.42	2.89	2.99	5.17	5.31	5.31
Iran	%	1.19	1.31	-	0.75	2.10	2.10
Ukraine	%	8.98	1.78	0.03	5.98	7.36	7.36
USA	%	0.00	9.31	3.88	12.06	21.52	21.52
Subject Countries	%	74.21	79.95	86.20	93.06	94.45	94.45
Other Countries attracting duties	%	24.90	17.19	10.94	6.78	5.25	5.25
Other Countries	%	0.89	2.86	2.86	0.17	0.31	0.31
Total	%	100.00	100.00	100.00	100.00	100.00	100.00

The Authority notes that from the subject countries, imports have increased in absolute terms from 3,29,828 MT in the base year to 6,73,706 MT in the POI in consonance with increasing demand in India. Imports from subject countries has shown further increasing trend during post POI as well.

N. Price Effect of the Dumped imports on the Domestic Industry

70. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like

products 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. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries.

Price suppression and depression effects of the dumped imports:

71. The price suppression and price depression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values of the subject goods from the subject countries in relation to injury period including POI and Post POI.

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI
Landed price of Subject Imports	Rs./MT	12,939	15,135	15,203	16,820	17,482
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>117</i>	<i>117</i>	<i>130</i>	<i>135</i>
Cost of Sales	Rs./MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>101</i>	<i>110</i>	<i>106</i>	<i>102</i>
Selling Price	Rs./MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>108</i>	<i>113</i>	<i>123</i>	<i>125</i>

From the above information, the Authority notes that the landed price of the imports from the subject countries has increased from Rs.12,939/MT during the base year to Rs. 16,820/MT during the POI. The landed price of the subject goods has significantly increased during the post POI as well. The cost of sales of the domestic industry has also increased during the POI as compared to the base year. But, the increase in cost of sales of the domestic industry is much less as compared to the increase in the landed price. During the post POI, while the landed price has significantly increased, the cost of sales of the domestic industry has fallen.

Price undercutting and Price underselling effects

Price Undercutting

72. While working out the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been deducted. The landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty and education cess to the export / CIF prices from the subject countries, as reported by each responding exporter. For others category, landed price has been computed by adding applicable basic customs duty and education

cess to the Assessable value as per DGCI& S data.

Particulars	Unit	2011- 12	2012- 13	2013-14	POI	Post POI
China						
Landed price of imports	Rs./MT	14,048	14,985	14,126	17,174	16,990
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***
Price Undercutting	%	***	***	***	***	***
Price Undercutting	% Range	0-5	5-10	10-15	5-10	5-10
EU						
Landed price of imports	Rs./MT	12,660	15,716	16,148	17,229	18,606
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	(***)
Price Undercutting	%	***	***	***	***	_***
Price Undercutting	% Range	10-15	0-5	0-5	0-5	Negative
Kenya						
Landed price of imports	Rs./MT	12,714	15,222	14,805	15,618	16,969
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***
Price Undercutting	%	***	***	***	***	***
Price Undercutting	% Range	10-15	0-5	10-15	10-15	5-10
Pakistan						
Landed price of imports	Rs./MT	14,384	17,288	18,023	19,033	19,958
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	(***)	(***)	(***)	(***)
Price Undercutting	%	***	_***	_***	_***	_***
Price Undercutting	% Range	0-5	Negative	Negative	Negative	Negative
Iran						
Landed price of imports	Rs./MT	14,150	14,317	-	16,598	16,517
Net Sales Realisation	Rs./MT	***	***	-	***	***
Price Undercutting	Rs./MT	***	***	-	***	***
Price Undercutting	%	***	***	-	***	***
Price Undercutting	% Range	0-5	10-15	-	5-10	10-15
Ukraine						
Landed price of imports	Rs./MT	13,400	16,741	17,473	17,086	17,524
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	(***)	(***)	***	***
Price Undercutting	%	***	_***	_***	***	***
Price Undercutting	% Range	5-10	Negative	Negative	5-10	0-5
USA						
Landed price of imports	Rs./MT	11,265	12,682	12,660	15,915	15,922
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***
Price Undercutting	%	***	***	***	***	***

Particulars	Unit	2011- 12	2012- 13	2013-14	POI	Post POI
Price Undercutting	% Range	20-25	20-25	20-25	10-15	10-15
Subject countries as a whole						
Landed price of imports	Rs./MT	12,939	15,135	15,203	16,820	17,482
Net Sales Realisation	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***
Price Undercutting	%	***	***	***	***	***
Price Undercutting	% Range	10-15	5-10	5-10	5-10	0-5

73. The Authority notes that during the POI as well as post POI, the price undercutting effect of dumped imports is positive in respect of all the subject countries individually except Pakistan. However, as subject countries as a whole, the price undercutting is positive during the POI as well as post POI.

Price Underselling

74. For the purpose of price underselling the landed prices of the imports from subject countries have been compared with the Non-injurious price (NIP) of the domestic industry. The Authority notes that the price underselling is negative during the POI as well as post POI.

POI

Particulars	Landed Value US\$/MT	Non Injurious Price US\$/MT	Price Underselling US\$/MT	Price Underselling %	Price Underselling % Range
China	278.40	***	(***)	(***)	Negative
EU	279.28	***	(***)	(***)	Negative
Kenya	253.18	***	(***)	(***)	Negative
Pakistan	308.52	***	(***)	(***)	Negative
Iran	269.05	***	(***)	(***)	Negative
Ukraine	276.97	***	(***)	(***)	Negative
USA	257.98	***	(***)	(***)	Negative

Post POI

Particulars	Landed Value US\$/MT	Non Injurious Price US\$/MT	Price Underselling US\$/MT	Price Underselling %	Price Underselling % Range
China	263.04	***	(***)	(***)	Negative
EU	288.07	***	(***)	(***)	Negative
Kenya	262.72	***	(***)	(***)	Negative
Pakistan	308.99	***	(***)	(***)	Negative
Iran	255.73	***	(***)	(***)	Negative
Ukraine	271.31	***	(***)	(***)	Negative
USA	246.51	***	(***)	(***)	Negative

O. Examination of other Economic Parameters of Domestic Industry

Production, Capacity, Sales and Capacity Utilization

75. The Production, Capacity and Capacity Utilization details are as follows:

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI	Annualised Post POI
Installed capacity	MT	19,61,000	19,61,000	19,61,000	19,61,000	10,15,500	20,31,000
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>52</i>	<i>104</i>
Production	MT	15,78,674	16,11,377	16,02,002	16,45,154	8,48,136	16,96,272
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>101</i>	<i>104</i>	<i>54</i>	<i>107</i>
Capacity Utilization	%	80.50%	82.17%	81.69%	83.89%	83.52%	83.52%
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>101</i>	<i>104</i>	<i>104</i>	<i>104</i>
Domestic Sales	MT	12,67,561	13,86,286	14,66,643	15,03,224	7,68,250	15,36,499
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>109</i>	<i>116</i>	<i>119</i>	<i>61</i>	<i>121</i>
Demand	MT	24,30,534	27,77,552	27,35,605	29,42,744	14,86,940	29,73,881
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>114</i>	<i>113</i>	<i>121</i>	<i>61</i>	<i>122</i>

From the above information, the Authority notes that the capacity of production of the domestic industry has remained constant during the injury period including the POI. However, both sales and capacity utilization have increased during the POI as compared to the base year in line with increase in demand.

Inventories:

76. Data relating to inventories shows as follows:

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Post POI
Opening	MT	***	***	***	***	***
Closing	MT	***	***	***	***	***
Average	MT	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>101</i>	<i>101</i>	<i>73</i>	<i>122</i>

It is noted that average inventories have remarkably decreased during the POI as compared to the earlier years. However, the average inventory has shown increasing trend during the post POI.

Profits and actual and potential effects on the cash flow

77. With regard to Profit/Loss and cash flow, it is noted that the profitability of domestic industry in terms of profit before tax and interest and cash profit has remarkably increased in the POI as compared to base year. The position has further improved during the post POI.

Particulars	Unit	2011-12	2012-13	2013-14	POI	Post POI	Annualised Post POI
Cost of Sales	Rs/MT	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	101	110	106	102	102
Selling Price	Rs/MT	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	108	113	123	125	125
Profit/Loss	Rs/MT	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	176	146	293	356	356
Profit/Loss	Rs.Lacs	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	193	169	347	216	432
PBIT	Rs.Lacs	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	146	133	215	128	256
Cash Profit	Rs.Lacs	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	168	153	270	171	342
Return of investment	%	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	141	140	233	279	279

Employment, wages and productivity

78. The data relating to employment, wages and productivity show as follows:

Particulars	UOM	2011-12	2012-13	2013-14	POI	Post POI	Annualised Post POI
Productivity per employee	MT	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	99	102	105	105
Employment	Nos.	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	104	103	102	102	102
Wages	Rs. Lacs	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	113	113	117	67	133

It is noted that there was marginal increase in the number of employees as well as productivity during the POI and post POI as compared to the base year. But, wages have increased significantly during the POI as well as post POI as compared to the base year.

P. Magnitude of dumping

79. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the imports of the subject goods from the subject countries are positive and substantial during the POI.

Growth

80. The Authority notes that the growth of the domestic industry was positive

during POI as well post POI.

Ability to raise funds:

81. It is noted that the domestic industry has not enhanced its capacity of production of the subject goods from the base year to POI. This signifies that their ability to raise capital investment has not been affected.

Q. Magnitude of Injury and Injury Margin

82. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject countries for determination of injury margin during POI and Post POI. The injury margin thus determined is as under:

POI

Country	Exporter/ Producer	NIP US\$/MT	Landed Value US\$/MT	Injury Margin US\$/MT	Injury Margin %	Injury Margin % Range
China PR	All	***	278.40	(***)	(***)	Negative
Ukraine	All	***	276.97	(***)	(***)	Negative
EU	All	***	279.28	(***)	(***)	Negative
Iran	All	***	269.05	(***)	(***)	Negative
USA	All	***	257.98	(***)	(***)	Negative
Kenya	All	***	253.18	(***)	(***)	Negative
Pakistan	Olympia Chemicals Limited, Pakistan	***	***	(***)	(***)	Negative
	Non-Co- operative producers/ exporters in Pakistan	***	***	(***)	(***)	Negative

Post POI

Country	Exporter/ Producer	NIP US\$/MT	Landed Value US\$/MT	Injury Margin US\$/MT	Injury Margin %	Injury Margin % Range
China PR	All	***	263.04	(***)	(***)	Negative
Ukraine	All	***	271.31	(***)	(***)	Negative
EU	All	***	288.07	(***)	(***)	Negative
Iran	All	***	255.73	(***)	(***)	Negative
USA	All	***	246.51	(***)	(***)	Negative
Kenya	All	***	262.72	(***)	(***)	Negative

Pakistan	Olympia Chemicals Limited, Pakistan	***	***	(***)	(***)	Negative
	Non-Co-operative producers/exporters in Pakistan	***	***	(***)	(***)	Negative

The Authority notes that the injury margin is negative in respect of the subject countries during POI as well as post POI. The injury margin is also negative in respect of the individual cooperative exporter from Pakistan during POI as well as post POI.

R. Conclusion on material injury

83. The Authority notes that during POI, while the capacity of production has remained constant throughout the injury period including the POI, the performance of the domestic industry has improved remarkably in terms of production, sales volumes, profit, cash profit, return on capital employed and inventory. The market share has declined during the POI as compared to the base year. During the post POI, the economic parameters has shown continued improvement including increased trend in the market share. Further, the net sales realization is more than the landed price from the subject countries during the POIO as well post POI. Moreover, while the price undercutting and underselling effects are negative and price depression and suppression effects are absent during POI as well as post POI. Thus, the Authority notes that the tremendous improvement in the economic health of the domestic industry during POI and continued improvement during post POI period do not exhibit any material injury.

S. Other Known Factors & Causal Link

84. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, underselling and price suppression and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry, as follows:-

(a) Volume and prices of imports from third countries

The Authority notes that during POI, imports of the subject goods from countries other than the subject countries and countries attracting anti-

dumping duty have remained very minimal in volume.

(b) Contraction of demand and changes in the pattern of consumption.

The Authority notes that there is no contraction in the demand during the POI. On the contrary, overall demand for subject goods has shown improvement during the POI as well as post POI.

(c) Developments in technology:

The Authority notes that none of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(d) Trade restrictive practices of and competition between the foreign and domestic producers

The Authority notes that the subject goods are freely importable. The domestic industry is the major producer of the subject goods and account for significant domestic production and sales. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

(e) Export performance of the domestic industry:

The table below summarises the performance of the domestic industry in respect of exports made by them.

Particulars	UOM	2011- 12	2012- 13	2013- 14	POI	Post POI	Annualised Post POI
Exports	MT	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>28</i>	<i>34</i>	<i>14</i>	<i>4</i>	<i>8</i>

The Authority notes that the export performance of the domestic industry has fallen drastically during the POI as compared to the base year. However, during the post POI, the export performance of the domestic industry has shown some improvement vis-à-vis the POI, but remained much below the performance during the base year.

85. From the above analysis, the Authority notes that neither the listed known parameters nor the other factors analysed above show any injury to the domestic industry either during POI or post POI. The economic health of the domestic industry has improved remarkably during the POI as compared to the base year despite continued dumping of subject goods from the subject countries. Further, the post POI performance of the domestic industry also

shows positive trends despite continued dumping. Therefore, it's a scenario of continuing dumping without injurious effect on the domestic industry.

T. Likelihood of continuation or recurrence of injury

86. In a review investigation, the Authority has to determine as to whether the subject goods are continuing to enter the Indian market at dumped prices or are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti dumping duties. It is also pertinent to examine whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed or varied. The Authority examined the likelihood of continuation or recurrence dumping and injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules, which states as under:

“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors and;

a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

b. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.

c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely to increase demand for further imports and,

d. Inventories of the article being investigated.”

Submissions made by the Applicant and other interested parties

87. Following submissions have been made by the applicant and other interested parties:

- i. The circumstances in which the AD duty was imposed on the exporter have under gone substantial changes of very lasting nature and the situation warrants withdrawal of existing AD duties since the injury to the domestic industry is not likely to continue or recur if the present duties are removed or varied.
- ii. The understanding of the domestic producers that unless the dumping ceased or there is no likelihood of recurrence of dumping, the duty cannot

be withdrawn is incorrect. It is legally required to withdraw duty if injury or likelihood of injury to the Domestic Industry is absent.

- iii. The domestic industry has not conclusively refuted the submission based on evidences that injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted which shows there is no likelihood also.
- iv. There is no evidence to show that exporters in subject countries are having sufficient freely disposable or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased exports to Indian markets.
- v. In the present case, crucial parameters such as landed price of imports, non-injurious price and injury margin have undergone significant changes. the above facts itself constituted sufficient ground for initiation of investigation and further establishes injury to the domestic industry is not likely to continue or recur in the event of revocation of existing AD duties.
- vi. The domestic producers may be treated as non-cooperating and duty may be withdrawn immediately with effect from the date of commencement of POI. Domestic producers are not affected by volume and value of imports; therefore, there is no possibility of injury or any recurrence of injury if the Anti-dumping Duty is withdrawn. The fact that the major domestic producer is also importing the subject goods also supports the conclusion that there is no requirement for continued imposition of Anti-dumping Duty.
- vii. Olympia is having the lowest duty across subject countries in the present investigation. Even after this position if the exporter did not increase its volumes to India and have been increasing prices consistently then it clearly shows the change in circumstance of a lasting nature and there is not any situation to say that the exporter will export more on removal of duty. There is no current or potential export from Olympia which can cause any injury to the domestic industry. There is no likelihood of continuation or recurrence of dumping in case of withdrawal of duty concerning Olympia.
- viii. Olympia is running at a utilization of 90% to 100% level which is above optimal level. The company is realizing benevolent volume and price levels for the subject goods produced by it and Olympia is not under any volume pressure nor does it have any imminent fresh additional available volume. The export price of Olympia at landed levels in India was increasing consistently and has been higher than the NIP of the DI leading to negative injury margin which rules out any significant depressing or

suppressing effect on domestic prices. The company isn't having any significant inventory levels also. The position of exports from Olympia have changed significantly and the injury to the domestic industry is not likely to continue or recur if the present duties on Olympia are removed or varied, thus, the Authority may recommend for the withdrawal of the same.

Submissions made by the Domestic Industry

88. Following submissions have been made by Domestic industry

- i. Petitioner is obliged to provide information on likelihood and has failed to supply the authority with prima facie evidence in this regard. There must be evidence pertaining to relevant parameters while seeking initiation of investigation.
- ii. As regards capacity expansion by domestic industry, the Designated Authority may kindly examine whether withdrawal of antidumping duty is likely to cause injury to the domestic industry both in respect of capacities which are already installed and operational capacities that have not been installed so far and which shall become operation in near future.
- iii. The dumping margin determined in previous investigations and present investigation is significant. Significant positive dumping and injury margins itself warrants continuation of antidumping duty.
- iv. There is a huge demand supply gap in USA and China. Exporters from Pakistan are expanding its capacities as sourced from IHS journal.
- v. Majority of exports made by China, European Union, Ukraine and USA, to the third countries are at both significantly dumped and injurious prices. The volume of such exports is much more than the demand in the domestic market.
- vi. Import prices at present have declined below the levels prevailing at the time of original investigation. The prices are below the NIP of the domestic industry even without considering various arguments of domestic industry with regard to determination of injury margin. This shows that alleged change in circumstances were highly temporary in nature and were not of lasting nature.
- vii. Price undercutting without anti-dumping duty is positive and significant showing clear likelihood.

- viii. Current global economy situation shows that the market situation in the product under consideration is not likely to improve. The revocation of antidumping would lead to import prices being materially below the selling price of the domestic industry. The consumers would therefore switch to imported product which would lead to significant increase in imports of the product.
- ix. Significant costs have been incurred, in the expansion of capacities by the domestic industry that is in process of being added. This should be considered while determining likelihood of injury in the event of withdrawal of antidumping duty. The fresh investments of domestic industry shall suffer losses if domestic industry sells the product at a price prevailing in POI.
- x. The injury margin for likelihood purposes should be determined on the basis of weighted average of NIP for present and potential production, i.e. the expansions must be considered.
- xi. The CESTAT decision on Hindustan Lever is not relevant as it has been set aside and the reliance on CESTAT decision on Jindal Stainless Ltd is misplaced as there was no evidence of likelihood of injury and nor that fact was argued.
- xii. Reliance on Forum of Acrylic Fibre Manufacturers case is misplaced as unlike the case the landed value is not much above the level of non injurious price or selling price of the domestic industry. There are various other parameters that establish likelihood of recurrence of dumping and injury in the event of withdrawal of antidumping duty.

Examination by the Authority

89. Rule 23 of Anti-dumping Rules of India requires the Authority to examine the need for continued imposition of the duty from time to time. In this regard, the Authority notes as under:

Volume of Exports Post- POI

90. In order to examine, the likelihood of injury to the domestic industry due to dumping of the subject goods from the subject countries, the Authority has undertaken analysis of the volume of exports of the subject goods to India from the subject country during the post-POI period as well. The Authority notes that the volume of the exports from subject countries to India during the POI and post POI on the basis of DGCI&S data was 3,29,828 MT and 6,94,779 MT (Annualised), showing a massive growth in exports and also at dumped prices

since the dumping margin is positive during the post POI as well. But, mere growth in exports, even at dumped prices, does not indicate a likely situation justifying continued imposition of anti-dumping duty, unless of course, such imports are likely to cause injury to the domestic industry.

Market share of Subject Countries in the Indian market

91. The Authority notes that the market share of the subject countries has significantly increased during the POI as compared to the base year and the position has further improved during the post POI. On the contrary, the market share of the domestic industry has marginally declined during the POI as compared to the base year, but showing positive trend during the post POI. Further, the market share of the other countries has fallen during the POI, thereby indicating that the fall in their market share has been captured by the imports from the subject countries. Thus, since the market share of the domestic industry has remained more or less at the same level, their market share have not been impacted by the imports from the subject countries.

Price attractiveness of Indian market

92. The Authority notes that the landed value from the subject countries is more than the NIP and both undercutting and underselling effects are negative during POI as well as post POI. Thus, in the event of the revocation of anti-dumping duties, the Indian prices would not be too attractive to the foreign producers and there is no likelihood that Indian consumers would import substantially due to increasing demand.

Export orientation of foreign producers

93. Even if the subject countries are export oriented, export orientation among the producers of the subject goods in the subject countries itself cannot be a strong likelihood factor unless backed by favorable market conditions and weak domestic industry in India. Although there is high demand for the subject goods in India, the prices prevailing in Indian market and the strong domestic industry base may not be conducive for the subject countries to target Indian market in the event of revocation of the duties.

Level of current and past dumping margin

94. The Authority notes that dumping margin in the original investigation as well as the present MTR are positive and the dumping margin in the post POI of the present investigation is also positive. Thus, in the event of revocation of the anti-dumping duties, in most likelihood, dumping may continue and may also get intensified. But, dumping of any magnitude has no relevance under the anti-dumping law as long as it does not cause injury to the domestic industry. In the present investigation, injury margin is negative in the POI as well as post

POI periods, thereby indicating that despite dumping from the subject countries, the domestic industries were not injured during the POI and there is no likelihood of injury to the domestic industries as well in the event of revocation of the duties.

95. The essential facts of the investigation, as analysed by the Authority in this finding, sufficiently prove that despite continued dumping of subject goods from the subject countries, the economic condition of the domestic industries has improved remarkably and indicate further improvement during the post POI. Thus, the changed circumstances, as alleged by the applicant, are not transient but there to stay in favour of the domestic industries in the event of revocation of the duties.

U. Post Disclosure Comments

96. The following are the post disclosure comments made by the petitioners and other interested parties and considered relevant by the Authority:

- i. No Effective Opportunity of hearing was given by the authority.
- ii. The domestic industry is performing well and the AD duty is being misused by them to achieve maximum profits. The injury to the domestic industry is not likely to continue or recur, if the applicable anti-dumping duty is removed or varied. Therefore, the Authority should recommend withdrawal of the anti dumping duties.
- iii. The normal value determined by the authority for the subject countries is not as per the relevant legal provisions.
- iv. The market share of the domestic industry has remained unaffected by imports from the subject country. The performance of the domestic industry has improved in respect to all the economic parameters.
- v. The demand for the subject goods has increased by 17% in the POI as compared to the base year. However, the capacity of the domestic industry has remained the same. Therefore, the imports have increased purely to cater to the increasing demand which the domestic industry is unable to meet.
- vi. Thus, the only reason for the imports coming into India is the presence of a demand-supply gap. In particular, the users are left with no option but to import as a result of the inability of the domestic industry to cater to the rising demand.
- vii. The imports have been coming in at prices that are not undercutting underselling the prices of the domestic industry and further are not suppressing or depressing the prices of the domestic industry. Therefore, there is no negative price effect with respect to imports from the subject countries.

- viii. That there is no reason for the Authority to conclude that there is a likelihood of continuance or recurrence of injury with respect to imports from the subject country. Therefore, in the absence of material injury to the domestic industry and further no likelihood of recurrence of injury to the domestic industry, the duty imposed on the subject goods should be discontinued.
- ix. Considering the improved performance of the domestic industry, absence of injury and likely injury, the anti-dumping duty should be revoked.

97. The following are the post disclosure comments made by the domestic industry and considered relevant by the Authority:

- i. The domestic industry has established that there was significant likelihood of injury in case of withdrawal of anti dumping duties. However, the designated authority has shifted the obligation of establishing likelihood onto the domestic industry instead of the petitioners. The entire legal basis on which the present investigation has been initiated and conducted is inconsistent with Rule 23 of the AD Rules.
- ii. The time that was made available for filing comments to disclosure statement is grossly inadequate.
- iii. The dumping margin in the original investigation as well as the present MTR are positive and the dumping margin in the post POI of the present investigation is also positive. Thus, in the event of premature withdrawal of the anti-dumping duties, dumping shall not only continue but also intensify. The conclusion that dumping of any magnitude has no relevance under the anti-dumping law as long as it does not cause injury to the domestic industry is legally not correct.
- iv. Authority determined price attractiveness without considering relevant factors and parameters. Price attractiveness is a comparative analysis. Therefore, export price from subject countries to each of third countries is required to be examined to ascertain volume of exports which is below NIP and volume of exports above NIP.
- v. Increase in imports, significant surplus capacities with the exporting countries, significant price undercutting implies price depression in the event of cessation of anti dumping duties coupled with likelihood of intensified dumping clearly establishes likelihood of injury in the event of premature withdrawal of duty. Injury margin criteria cannot be applied for determination of injury.

- vi. The disclosure statement has been issued without examining the likelihood of injury in respect of exports to each of the third countries from subject countries.
- vii. Authority should differentiate on transaction by transaction basis dumped and injurious import volumes from un-dumped and non-injurious ones on the basis of comparison of normal value with export price and NIP with landed price of imports and then calculate dumping and injury margin.
- viii. The producers in major subject countries (and in particular, China and Turkey) are holding huge unutilized capacities. Thus, in the event of withdrawal of anti-dumping duties, these producers are likely to find good market opportunities in India and are likely to export significant volumes at a price below the NIP determined by the Authority, as the exporters are already selling at such lower prices in third countries. The Authority should therefore examine the behavior of exporters in various third countries and unutilized capacities with them.
- ix. Significant capacity additions are being made by the domestic industry after incurring significant investments. The Authority should examine whether withdrawal of anti dumping duty is likely to cause injury to the domestic industry both in respect of capacities which are already installed & already operational and capacities that have not been installed so far and which shall become operational in near future.
- x. While the NIP law introduced through Annexure-III deals only with determination of NIP; the Authority has considered that the principles of fair comparison cannot be applied while determining injury margin. This is discriminatory, as the Designated Authority has applied principles of fair comparison in several investigations in the past and there is no need to discriminate against the present domestic industry.
- xi. Authority has wrongly considered that addition of freight is an issue concerning determination of non injurious price (NIP). Rather it is an issue of fair comparison.
- xii. There is no legal basis for the conclusion, as Annexure-III is restricted only to determination of NIP and does not deal with determination of injury margin. Principles of fair comparison require the Designated Authority to compare the domestic industry prices with import prices in a fair manner. The way the domestic industry is facing competition from imports and the level at which the domestic industry is facing competition from imports cannot be ignored. Principles of fair comparison enshrined in Annexure-I are suggestive of the principles that needs to be followed for

determination extent of injury or injury margin. in the context of determination of dumping margin.

- xiii. The Authority should wait for outcome of the Writ petition, wherein the case is now listed for final hearing on 3rd Oct., 2016. The time limit provided under Rule 17 is 18 months from the date of initiation and therefore significant time is available to the Authority for completing this investigation.
- xiv. Authority has wrongly applied principle given in Annexure III and has drastically reduced the "NIP" without disclosing any circumstances.
- xv. Annexure-III does not bar consideration and application of principles of fair comparison for determination of injury margin when annexure-III restricts itself to only NIP determination

Examination by the Authority

98. The post disclosure comments made by the petitioners, domestic industries and other interested parties, considered relevant by the Authority, are examined as below:

- i. As regards the contention of some interested parties that no effective opportunity of hearing was given, the Authority notes that in accordance with Rule 6(6) of the Anti-dumping Rules, an opportunity was provided to the interested parties to present their views orally in a public hearing held on 1st March, 2016. The parties, which presented their views orally, were requested to file written submissions, followed by rejoinder submissions. The written submissions and the rejoinder submissions furnished by the interested parties pursuant to the oral hearing and considered relevant by the Authority, have been examined and addressed in this finding.
- ii. As regards the contention of some interested parties that the normal value determined by the authority for the subject countries is not as per the relevant legal provisions, the Authority notes that the normal values in respect of the subject countries have been determined as per the relevant Rules and consistent practice in the DGAD and the methodology adopted has been adequately explained in the relevant paras of this finding.
- iii. As regards the contention of the domestic industry that authority has inappropriately shifted the obligation of establishing likelihood onto the domestic industry instead of the petitioners, the Authority notes that it is the obligation of both the parties to substantiate their arguments.

- iv. As regards the contention of the domestic industry that inadequate time was provided by the Authority for comments on the disclosure statement, the Authority notes that anti-dumping investigations are time bound and have to be completed within the prescribed time frame. Nevertheless, keeping the time lines of the present case in view, adequate time was provided to the interested parties to comment on the disclosure statement. Further, it was made clear in the disclosure statement that since anti-dumping investigations are time bound, the Designated Authority shall not entertain any request for extension of time.
- v. It has been argued by the domestic industry that the dumping margin in the original investigation as well as the present MTR are positive and the dumping margin in the post POI of the present investigation is also positive. Thus, in the event of premature withdrawal of the anti-dumping duties, dumping shall not only continue but also intensify. The Authority notes that dumping per se is not actionable, unless it causes injury. Dumping of any magnitude has no relevance under the anti-dumping law as long as it does not cause injury to the domestic industry.
- vi. As regards the contention of the domestic industry that Authority should differentiate on transaction by transaction basis dumped and injurious import volumes from un-dumped and non-injurious ones, the Authority notes that the suggested action may amount to zeroing and therefore cannot be encouraged.
- vii. The domestic industry has argued that producers in major subject countries (and in particular, China and Turkey) are holding huge unutilized capacities and in the event of withdrawal of anti-dumping duties, exports from these countries is likely to intensify at dumped prices, causing injury to the domestic industry. The Authority studied the data available in the WTA for the POI and notes that the average prices of the subject countries to third countries are higher than the NIP of the domestic industry, thereby meaning that in the event of revocation of the duty, the imports from the third countries at such prices may not cause injury to the domestic industry.
- viii. It has been argued by the domestic industry that Authority should examine whether withdrawal of anti dumping duty is likely to cause injury to the domestic industry both in respect of capacities which are already installed & already operational and capacities that have not been installed so far and which shall become operational in near future, the Authority notes that any data concerning capacity expansion should be duly reflected in the books of accounts of the domestic industry, failing which such data cannot be relied upon.

- ix. As regards the contention of the domestic industry that the NIP law introduced through Annexure-III deals only with determination of NIP and not fair comparison, the Authority notes that the NIP matter is sub-judice before the Hon'ble Delhi High Court concerning certain anti-dumping investigations and therefore may not be appropriate to be commented.
- x. As regards the contention of the domestic industry that Authority determined price attractiveness without considering relevant factors and parameters, the Authority notes that as per the information available in the World Trade Atlas (WTA), the average landed price of the subject countries to the third countries is at comparable prices and therefore in the event of revocation of the duty, the subject countries may not divert their goods to India.

99. The Authority analysed the likelihood of impact of the third country export prices of the subject countries as a source of injury to the domestic industry, if the said countries export the subject goods at that price level to India in the event of revocation of the duties. The landed price of exports from the subject countries to India has been arrived based on the weighted average FOR price of exports by the subject countries to the rest of the world as per WTA data for the POI period plus 0.5% transit insurance on FOB value, ocean freight from each of the subject countries to India, 1% port handling charges, 7.5% of Customs duty and 3% of Cess on Customs duty. The freights of subject goods from Kenya is taken as per invoice raised by the TATA, Kenya to their customers in India, and for the rest, the difference between the CIF price of imports from the subject countries to India and export price (FOB) of the subject countries to India of the subject goods as per WTA data has been considered for calculating ocean freight and transit insurance. In case of Ukraine and EU, since no such information was available, the freight of Russia and USA has been considered for these countries respectively. However, the FOB price shown in the WTA data in respect of Iran appears to be unrealistic and also there is no third country export by Pakistan. Therefore, the Authority is not in a position to consider these two countries for third country injury analysis. Accordingly, the likely injury margin of exports of subject goods by the subject countries to India on the basis of their third country landed prices during the POI, computed as above on the basis of the WTA data, has been arrived as under:

Injury Margin for third country export.						
Subject Country	UOM	Landed Price	NIP	Injury Margin	Injury Margin %	Range
USA	USD/MT		***		(***)	Negative

		281.63		(***)		
Ukraine	USD/MT	495.59	***	(***)	(***)	Negative
Kenya	USD/MT	281.36	***	(***)	(***)	Negative
Iran	USD/MT	-	-	-	-	
China	USD/MT	264.98	***	(***)	(***)	Negative
EU	USD/MT	277.18	***	(***)	(***)	Negative
Pakistan	USD/MT	-	-	-	-	-

The above stated information indicates that the landed prices of the subject goods from the subject countries to India during the POI, arrived at on the basis of their third country export prices, are much higher than the non-injurious price (NIP) of the domestic industry. Therefore, the Authority notes that in the event of revocation of the anti-dumping duties, exports of the subject goods by the subject countries, at the prices at which they are exporting to third countries, would not cause injury to the domestic industry.

V. **Conclusions**

100. Having initiated and conducted the present review on the basis of an application filed by All India Glass Manufacturers' Federation (AIGMF), and having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submissions made by the interested parties or otherwise as recorded in this finding and on the basis of the analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i. Although dumping has continued despite the anti-dumping duties in force and the dumping of subject goods from the subject countries is positive during the POI, the adverse impact of the same on the volume, prices and profitability of the domestic industry is absent during the POI as well as post POI.
- ii. Both undercutting and underselling are negative during POI as well as post POI.
- iii. The injury margin is negative during POI as well as post POI.
- iv. The likely injury margin, on the basis prices of third country exports by the subject countries during the POI are also negative.
- v. Price suppression and price depression effects are absent.
- vi. All most all volume parameters and price parameters of the domestic

industry are positive during POI and post POI and there is a remarkable improvement of lasting nature in the performance of the domestic industry.

- vii. Although dumping continues, neither it has caused injury to the domestic industry, nor there any likelihood of causing injury in the event of revocation of the anti-dumping duties.

The Authority, therefore, concludes that if the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from the subject countries are removed, the injury to the domestic industry is not likely to recur.

W. Recommendation

101. Having concluded that there is a remarkable improvement in the performance of the domestic industry and there is no likelihood of recurrence of injury on account of dumped imports of the subject goods from the subject countries if the duties are revoked, the Authority holds that there is no need for continued imposition of the anti-dumping duties on the imports of the subject goods, originating or exported from the subject countries, and the same is required to be withdrawn.

102. The Authority had earlier recommended imposition of anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries, vide Final Findings Notification No. 14/17/2010-DGAD dated 17th February, 2012, published in the Gazette of India, Extraordinary Part I, Section I and the definitive duties imposed by the Central Government vide Notification No., 34/2012-Customs (ADD) dated 3rd July, 2012. In view of the above position, the Authority considers it necessary and recommends revocation of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from the subject countries.

X. Further Procedures

103. An appeal against the order of the Central Government arising out of this Final Finding Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(A.K. BHALLA)
Additional Secretary & Designated Authority