

**BEFORE THE
HON'BLE DESIGNATED AUTHORITY OF ANTI-DUMPING AND ALLIED DUTIES**

**Anti-Dumping Investigation initiated on
Soda Ash originating in or exported from
China PR, Ukraine, European Union, United States of America, Iran,
Pakistan and Kenya**

Case No. 14/17/2010-DGAD dated August 20, 2010

**Rejoinder to Written Submissions made by Domestic Industry
post Public Hearing held on 13th May 2011
on behalf of
The All India Glass Manufacturers Federation**



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**Rejoinder to Written Submissions filed by Domestic Industry post
Public Hearing**

This submission is being made on behalf of our clients, The All India Glass Manufacturers’ Federation, (hereinafter referred to as “**the AIGMF**”/“**the Opposing Interested Party**”). The AIGMF represents all segments of glass industry consisting of large, medium and small-scale manufacturers in different parts of the country and is representative body of all categories of glass manufacturers in India.

The AIGMF hereby submits its Rejoinder to the Written Submissions post the Public Hearing filed by the Alkali Manufacturers Association of India (hereinafter referred to as “**AMAI**” / “**the Petitioners**”). For the sake of brevity, the earlier submissions made in the Preliminary Submissions dated 25th October, 2010 and the Written Submissions dated 23rd May, 2011 are not being repeated and are deemed to be incorporated herein. Everything alleged by the Petitioners is denied and nothing should be deemed to be admitted by the AIGMF, unless specifically done so.

Background:

The Hon’ble Designated Authority based on the Petition filed by the Petitioners has initiated an investigation in to the alleged dumping of Soda Ash from China PR, European Union, USA, Kenya, Ukraine, Iran and Pakistan (hereinafter referred to as the “**subject countries**”). Soda Ash (hereinafter referred to as “**product under consideration**” / “**subject goods**”) is an important input in the manufacture of detergent and glass industries.

A. Constitution of the Domestic Industry

With regard to the submissions made by the Petitioners in paragraphs 9 to 26, the AIGMF submits the following:

1. Without prejudice to the submissions made by the other parties opposed to the imposition of anti-dumping duties on the subject merchandise and assuming for the purposes of this rejoinder that the Hon'ble Designated Authority is vested with the absolute discretion to include or exclude importers or domestic producers related to exporters or producers from the subject countries from the purview of "Domestic Industry" as defined under Rule 2(b) of the Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination Of Injury) Rules, 1995 (Hereinafter referred to as "Anti-dumping Rules"), cogent reasons have to be provided for doing so. In fact this is agreed to by the Petitioners at para14 at page 6 of their submissions:

"14. Further the Authority is now under obligation to "construe" or "interpret" such company as eligible or ineligible part of the domestic industry with cogent reasons. There is no automatic exclusion or inclusion for such domestic producers. Nor the Authority can exclude or include a company without reasons/justification."

2. The burning question remains as to when this discretion needs to be exercised.
3. It is respectfully submitted that:
 - a. Following the decision in the case of Automotive Tyre Manufacturers Association Vs. The Designated Authority & Ors. (Civil Appeal No. 949 of 2006- decided on January 7, 2011) the Hon'ble Supreme Court has held that the Hon'ble Designated Authority is a *quasi-judicial* authority.

- b. In Kranti Associates Pvt. Ltd. and Anr. Vs. Sh. Masood Ahmed Khan and Ors. (Reported at (2010) 9 SCC 496) the Hon'ble Supreme Court has held that a quasi-judicial authority must record reasons in support of its conclusions. It was held that:

"51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts.
This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".
- c. It is respectfully submitted that within the factual matrix of the case, the Hon'ble Designated Authority is granted the discretion to "construe" the constituents of the "Domestic Industry. Clearly construction of Domestic Industry is a threshold issue and cannot be formulated half way through the investigation, as it impacts whether the petition can be brought at all by the applicant for anti-dumping duties. Rule 5(3) of the Anti-Dumping Rules provide:

"(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding –
(i) dumping,
(ii) injury, where applicable; and
(iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application."

- d. From the above, it is clear that the application needs to be filed by “Domestic Industry” and thus determination of the Domestic Industry cannot be done post initiation.
 - e. Specifically, as to whether the reasons for the construction of Domestic Industry need to be provided at all; the jurisprudence in administrative law in India mandates that reasons must be provided for the exercise of discretion by a quasi-judicial body. Consequently, it is submitted that reasons must be provided for excluding from or including within, domestic producers of the subject goods, from the scope of “Domestic Industry.”
4. It is reiterated that the determination of “Domestic Industry” under the Anti-dumping Rules is a threshold issue, and it is respectfully submitted that the record does not reflect any application of mind or any reasoned order for exercising such discretion.
 5. Within the factual matrix of the case at hand, the Hon’ble Designated Authority examined the issue of Domestic Industry as under:

“Domestic Industry

 3. The petition has been filed by M/s Alkali Manufacturers’ Association of India (AMAI) and the costing and injury information has been provided by, M/s GHCL Ltd., M/s DCW, M/s Nirma and M/s Saurashtra Chemicals Ltd.(SCL). According to the information provided in the petition, the production of participating companies constitutes 65.40% of Indian production during Apr’09-Dec’09. Thus, the applicant constitutes “domestic industry” for the purpose of the present investigation.
 4. The Authority after examining the above, prima facie determines that the petitioner constitutes domestic Industry within the meaning of the rule 2(b) of the AD Rules.”
 6. By contrast, in other investigations before it, the Hon’ble Designated Authority has examined the issue of Domestic Industry and stated as under:

- a. In Initiation of Anti-dumping investigation concerning imports of Vinyl Acetate Monomer from Singapore and Iran into India (Notification No. 58/1/2001-DGAD dated 13th November, 2001):

“DOMESTIC INDUSTRY

3. The petition has been filed by M/s. Vam Organic Chemicals limited, Noida. Besides the petitioner, Vinyl Acetate Monomer is produced in India by another company viz. M/s. Vinyl Chemicals (India) Limited. However, M/s Vinyl Chemicals (India) Limited is an importer of the subject goods. The production of subject goods by the petitioner constitutes a major proportion of the total domestic production. Therefore, the petitioner represents the domestic industry and the petitioner satisfies the criteria of standing to file the petition in terms of Rule 5(3) (a) of the Rules supra.”

- b. In Initiation of Anti-dumping Investigations concerning import of Ceftriaxone Sodium Sterile originating in or exported from China PR in to India (Notification No. 14/18/2006-DGAD dated 4th April, 2007):

“4. Domestic industry and Standing

The application has been filed by M/s Aurobindo Pharma Ltd, Hyderabad, Andhra Pradesh, India one of the major producers of the subject goods in India. The Authority notes that there are other small producers of the subject goods in India i.e., M/s Orchid Chemicals, Chennai; M/s Lupin lab, MP; M/s Nectar Life Science, Chandigarh and M/s Kopran Ltd. Mumbai. It has been brought to the notice of the Authority that M/s Orchid Chemicals is a 100% EOU and has imported the subject goods during the POI and therefore, do not qualify to be considered as a domestic industry in terms of Rule 2(b) of the Rules. On the basis of the estimated capacities and production volumes of other domestic producers, the applicant commands a major proportion of the production of the subject goods in India. Therefore, the Authority holds that for the purpose of this investigation the applicant M/s Aurobindo Pharma Ltd. commands the standing in terms of Rule 5(3) and constitutes the domestic industry in terms of Rule 2(b). The Authority may however, call information from other known domestic producers for injury and Injury margin determination.”

- c. In Initiation of anti-dumping investigation concerning imports of Partially Oriented Yarn (POY) from Indonesia, Taiwan, Thailand and Malaysia (Notification No. 19/1/2000-DGAD, dated 10th November, 2000):

“2. **Domestic Industry Standing:** The petition is filed by the Association of Synthetic Fibre Industry, 125, Uday Park, 1st Floor, New Delhi-110049 on behalf of the domestic industry for POY. There are 39 producers of POY in the country out of which five producers companies, eligible to form part of the domestic industry under the Rules, have expressly supported the petition. Two other producers supporting the petition namely, M/s. Indorama and M/s.DCL Polyesters, are found ineligible to form part of domestic industry

under the Rules as they are related to the exporter of the dumped articles (Indorama) and importers of the allegedly dumped articles themselves. The total production of the subject goods of the five eligible producers, namely, M/s. Century Enka, M/s. JCT Limited, M/s. Raymonds Synthetics, M/s. Sanghi Polyesters Ltd. and M/s. Reliance Industries, during the POI, constitutes 54% of the total production of the domestic industry. Therefore, the petitioner having the express support of the said five eligible producers, prime-facie, has the requisite standing to file the petition on behalf of the domestic industry.”

7. Thus, the Hon’ble Designated Authority has been consistently providing reasons for the manner in which it constitutes the Domestic Industry which is clearly lacking in the present case.
8. It is pertinent to note that at page 9 of their submissions, the Petitioners have submitted that Hon’ble Designated Authority must ascertain the impact of relationship of producers or exporters from the subject countries with the Domestic Industry prior to including or excluding such related domestic producers from the scope of the Domestic Industry. The grounds submitted by the Petitioners are:
 - a. Whether the behavior of the related parties distinct and different as compared to unrelated parties;
 - b. Whether there is some evidence to show that such related producer triggered or intensified dumping in the Indian market
 - c. Whether the related domestic producer shielded from effects of dumping or unduly benefited from it
 - d. Whether the related domestic producer seeking to stifle the competition in the Indian market
 - e. Whether there is a case of self-inflicted injury
9. Each of the above is a critical issue which admittedly needs to be examined by the Hon’ble Designated Authority in order to determine the “Domestic Industry”.

10. By way of example, it has been the case of the opposition that on account of the concentration of the Indian Soda Ash industry on the west coast, users in the east coast need to import Soda Ash given the freight costs. Thus, the Hon'ble Designated Authority must also analyze whether the imports from the related foreign producers/exporters were made only to the western coast of India where the Domestic Industry is situated or to other parts of India as an overall strategy to meet the Indian demand. Clearly such imports are not defensive, but rather for commercial reasons. Such domestic producers must be excluded from the purview of Domestic Industry on the basis of criteria propounded by the Petitioners themselves.
11. Arguing that there is no need for the Hon'ble Designated Authority to provide reasons at the time of initiation, the Petitioners seek refuge under WTO case law. Admittedly, they acknowledge the supremacy of Indian law over WTO law; still they rely on WTO law.
12. In the case of M/s Entertainment Network (India) Ltd. vs. M/s Super Cassette Industries Ltd (Reported at [2008 (9) SCALE 69]) the Hon'ble Supreme Court established that in cases of conflict between domestic law and international law, domestic law would prevail. It was held as under:
- “Beginning from the decision of this court in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225], there is indeed no dearth of case laws where this Court has applied the norms of international laws and in particular the international covenants to interpret domestic legislation. In all these cases, this court has categorically held that there would be no inconsistency in the use of international norms to the domestic legislation, if by reason thereof the tenor of domestic law is not breached and in case of any such inconsistency, the domestic legislation should prevail.”
13. Hence, in light of the decision of the Hon'ble Supreme Court in the Automotive Tyre Manufacturers Association Vs. The Designated Authority &

Ors. case referred to above is clear that Hon'ble Designated Authority must be provide reasons for the exercise of its discretion as per Indian Law

14. Further, even the doctrine of '*legitimate expectation*' clearly applies to this case, as in the past the Hon'ble Designated Authority has provided reasons for the exercise of its discretion at the time of initiation.

a. In Confederation Of Ex-Servicemen Associations & Ors. Vs. Union Of India & Ors. (reported at AIR 2006 SC 2945) the Hon'ble Supreme Court held as under:

"...The doctrine of 'legitimate expectation' is a 'latest recruit' to a long list of concepts fashioned by Courts for review of administrative actions. No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to 'judicial review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue.

The expression 'legitimate expectation' appears to have been originated by Lord Denning, M.R. in the leading decision of Schmidt v. Secretary of State, [(1969) 1 All ER 904 : (1969) 2 WLR 337 : (1969) 2 Ch D 149]. In Attorney General of Hong Kong v. Ng Yuen Shiu, [(1983) 2 All ER 346 : (1983) 2 AC 629], Lord Fraser referring to Schmidt stated;

"The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry. (emphasis supplied)

In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised...."

15. Given that the Hon'ble Designated Authority has in the past given reasons for exercise of its discretion at the time of initiation, (see para 6 above) there is no apparent reason that it was not done in the case at hand.

16. From the initiation notification it is further made clear that the Hon'ble Designated Authority in its wisdom *suo moto* extended the Period of Investigation from April 2009 to March 2010 i.e. by a period of 3 months without any justification:

“The applicant has proposed April'09 to Dec'09 (Nine months) as period of investigation. While adopting this period as POI only for the purpose of initiation, the Authority has considered April'09 to March'10 as the POI for the purpose of present investigation. The injury investigation period will however cover the periods April, 2006–March, 2007; April, 2007–March, 2008; April, 2008–March,2009; and the POI.”

17. Without prejudice to the fact that the extension of the period of Investigation resulted in inadequate data for the Hon'ble Designated Authority to determine dumping, injury and causal link; and assuming that the Hon'ble Designated Authority has the authority to extend the Period of Investigation, it is respectfully submitted that reasons must be provided for doing so. In the Anti-dumping investigations involving imports of Acetone originating in or exported from European Union, Chinese Taipei, Singapore, South Africa & USA (Final Findings dated 4th January 2008) the Hon'ble Designated Authority thoroughly examined the issue regarding extension of the Period of Investigation provided detailed reasons for the extension. The relevant portion of the Final Findings is reproduced below:

“19. M/s Mitsui & Co. Ltd. has raised the issue that the domestic industry had submitted the information for 9 months whereas period of investigation chosen by the Designated Authority is 12 months, therefore, the data/information on which the Designated Authority had initiated the investigation were inadequate. It has also been stated that S. Korea was named as one of the countries against which investigation was sought whereas the investigation has not been initiated against S. Korea. It has been contended that by changing the period of investigation and countries, the injury and dumping analysis would change, therefore, the information provided were inadequate for initiation of the investigation under Rule 5 (3) of the Anti-Dumping Rules.

20. After the preliminary findings it was again pointed out that there is violation of obligation under Article 6.1.3 of the Anti-dumping Agreement. It has been submitted that the initial application filed by the domestic industry contained the data only for 9 months' period of investigation i.e. June 2005 to March 2006 and the information in the petition was inclusive of the information on Korea. The non-confidential version of the petition (which was also incomplete) was provided to them after the time limit for submitting the response to the exporter's questionnaire was over whereas the Designated Authority is required to supply the full text of the petition to all the known exporters as soon as the investigations are initiated. The undue delay for not providing the complete petition to the known exporters has resulted in violation of India's obligation under Article 6.1.3.

21. The Authority notes that the application was filed with the information for period of nine months and proposed period of investigation was 9 months. The Authority after examining the evidence of injury and dumping decided to initiate the investigation. The Authority, however, chosen the period of investigation as 12 months to capture effect of cyclical changes, if any. The Authority holds that the investigation was properly initiated after examining the adequacy and accuracy of the information provided. The updated information was called from domestic industry after initiation and placed in Public File for inspection of all interested parties. In respect of the allegation of dumping against S. Korea, the Authority observed that the 9 months data did not show the imports which could be considered as sufficient to initiate the investigation against the country, therefore, investigation was not initiated against Korea ROK. It has also been noted that subsequently the investigation has also been initiated against Korea ROK on receipt of data for period of 12 months which indicated that the imports were more than de minimis."

B. Dumping

With regard to the submissions of the Petitioners at paragraph 36 to paragraph 69 of Written Submissions of the Petitioners on Dumping, the AIGMF submits its reply as under:

1. It is submitted that production of Soda Ash by chemical process, as is the case in India, other issues like environment clearance and approvals, are affecting the further expansion and establishing newer plants in India. Whereas, leading soda ash Manufactures like Tata Chemicals Ltd. and Nirma Ltd. have acquired Natural Soda Ash manufacturing facilities in Kenya and USA. In fact, according to Media Report attached at "Annexure 1", Tata Chemicals Ltd. has also formed a joint venture with the Government of Tanzania for setting up a Soda Ash plant at Lake Natron, which is a source of natural soda ash.

2. Natural Soda Ash from Magadi, Kenya and other countries is much cheaper compared Soda Ash made from Chemical Process and lower prices cannot be attributed to any alleged dumping of the subject goods.

C. Injury, Threat of Injury and Causal Link

With regard to the submissions of the Petitioners at paragraph 70 to paragraph 121 of Written Submissions of the Petitioners on Injury and Causal Link, the AIGMF submits its reply as under:

a. Injury Period should be considered from the year 2005-06

1. The Petitioners at paragraph 76 have submitted that for the fair assessment of injury base year should be taken as 05-06. Without prejudice to the fact that the Indian Anti-dumping Rules do not provide for the extension of the Injury Period and the Hon'ble Designated Authority has defined the injury period to begin from the year 2006-07, the Petitioners are merely trying to secure their best year as the base for the purposes for comparison. Evidently, the Petitioners could not establish dumping in 2008-2009 (i.e. one year prior to the current Period of Investigation), and are now trying to have duties imposed using that as their best base year. Fortunately, the law and jurisprudence both completely prohibit such self serving manipulation.
2. The Petitioners have relied upon a Recommendation of the Committee on Anti-dumping Practices¹ ("Recommendation") in support of their submissions to extend the Period of Investigation.

¹ Recommendation of the Committee on Anti-dumping Practices (G/ADP/6 – 16th May, 2000

3. It is pertinent to note that the Recommendation they rely upon states that the period of data collection for injury investigations should normally be at least three years unless *a party from whom data is being gathered has existed for a lesser period*. The relevant portion of the said recommendation has been reproduced below:

“1. As a general rule:

(a) *the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months,¹ ending as close to the date of initiation as is practicable;*

(b) *the period of data collection for investigating sales below cost¹, and the period of data collection for dumping investigations, normally should coincide in a particular investigation;*

(c) *the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation . . .*”

4. In the present case, the Hon'ble Designated Authority has clearly followed the said Recommendation and the submission of the Petitioners that the period for the purposes of injury should be considered from the year 2005-06 is completely untenable and the additional information submitted by the Petitioners must be disregarded.

b. Transport Costs from west coast to east coast be included in comparison with Net Sales Realisation

1. The Petitioners have submitted that the selling price of the Domestic Industry should be compared with the landed price of imports only after adding the transportation costs for delivering the goods from the west coast of India, where the Domestic Industry is located to the users of the subject goods.
2. It the respectful submission of the AIGMF that the said claim of the Petitioners is highly misplaced and baseless. Inclusion of include post-factory expenses, within

the domestic price of the subject goods is clearly violative of the Anti-dumping Rules.

3. The reliance placed by the Petitioners the judgement of the CESTAT in the case of Nippon Zeon Co. Ltd. vs. Designated Authority (Reported at 1997 (96) E.L.T 126) and on cases such as Anti-dumping investigation concerning imports of Borax Decahydrate originating in or exported from the Turkey and China PR (No. 14/40/2002-DGAD dated 21st November 2003) and Anti-dumping Investigation concerning import of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia (No. 14/6/2009-DGAD dated 5th August 2009) to that state that Indian industry must be taken as it exists is completely misconstrued. It is submitted that those cases dealt with the efficiencies and costs of inputs not transportations costs *after* production of the subject goods. The location of producers and consumers is a fact that impacts domestic supplies of the subject goods and is not a factor in order to consider the state of the Domestic Industry as it exists. It is respectfully submitted that the claim of the Petitioners effectively seeks a subsidy on freight costs on transportation of finished goods. This is tantamount to seeking a transport subsidy and must be summararily disregarded by the Hon'ble Designated Authority.
4. What is more pertinent to note is that the Petitioners have clearly admitted that the high cost of transportation of subject goods from the west coast where the Domestic Industry is concentrated to different parts of the country are substantial and materially affect the prices of the subject goods. As per GHCL's Annual Report for 2009-10, which states as under:

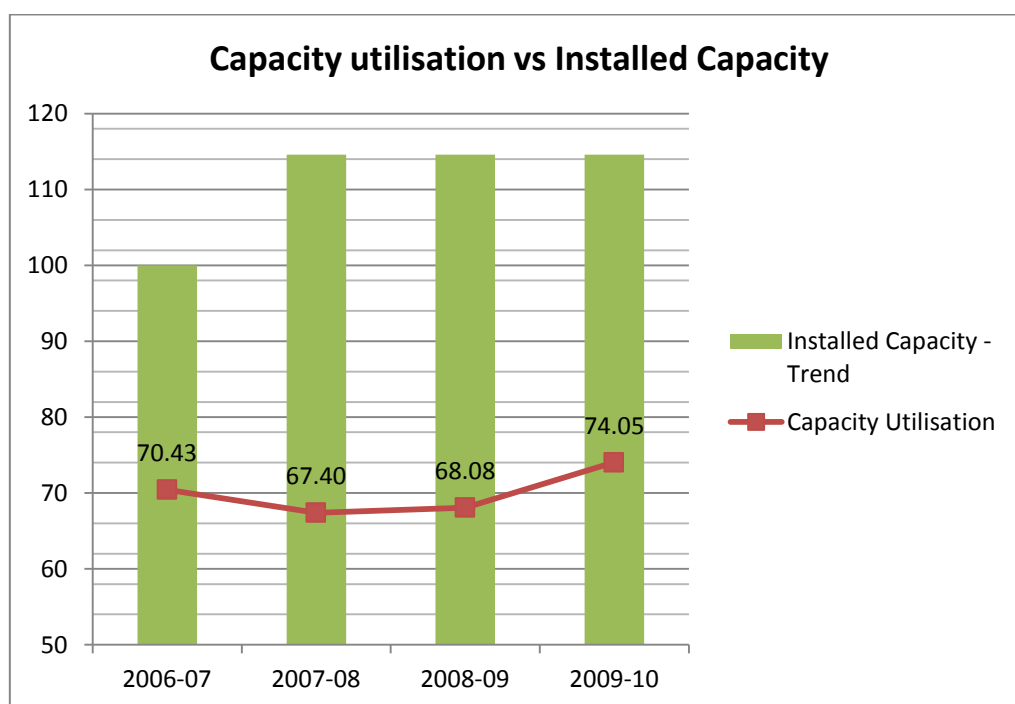
“The industry suffers from the weaknesses of concentration of 95% capacity in Gujarat and the cost of transport to markets in South and East India, which constitutes 30% of consumption, is high as compared to the ocean freights to South and East India where product is imported from China/Kenya and Europe.”

5. It is respectfully submitted that this transportation burden is the cause of injury and not any alleged dumping of the subject goods from the subject countries.

c. Relevant Economic Parameters

i. Capacity, Production and Capacity Utilisation

1. It is pertinent to note that the Petitioners have themselves claimed a loss of capacities in 06-07 because of floods. However, they increased their installed capacity substantially in 2007-2008. Given the increased capacity, the capacity utilisation of the Domestic Industry has consistently improved and is the highest in the Period of Investigation i.e. 2009-2010. The Petitioners have argued that their capacity utilization has been higher in previous years. This is mis-leading and must be considered in light of the growth in installed capacity and capacity utilization must be considered on the increased base.



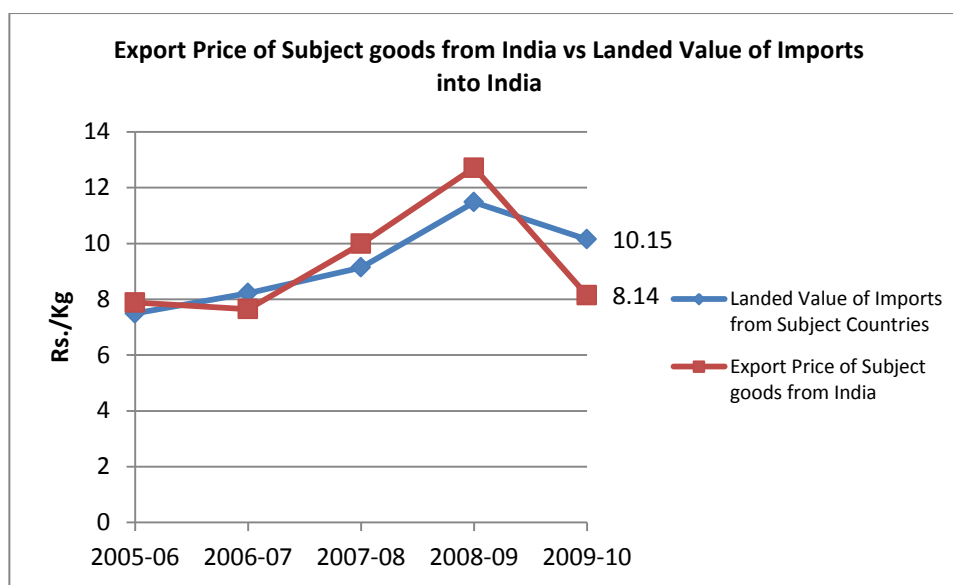
2. It may also be noted that the capacity utilisation of 74.05% has been recorded in the Period of Investigation for the *entire* Domestic Industry, although Saurashtra Chemicals Ltd., a constituent of the Domestic Industry was undergoing a shut-down in the said period for reasons other than alleged dumping.
3. The Petitioners have further submitted that production of the Domestic Industry must be considered net of exports. It is submitted that such a submission is unsubstantiated and unjustified and is an attempt to provide a misleading picture to the Hon'ble Designated Authority.

ii. Sales

1. The Petitioners have submitted that the Domestic Industry is not export oriented and exports are a matter of compulsion and not choice. However, the Annual Reports of the Petitioners clearly states the contrary.
2. They have also submitted that Domestic Sales and Export Sales must be examined separately and Exports must be considered as ill-effects of dumping. It is respectfully submitted that the Petitioners are trying to pass off the effects of the global slowdown in the exports market to the consuming industry in India. Attributing export losses to any alleged dumping in the domestic market will be unprecedented.
3. This baseless submission made by the Petitioners is laid bare by the fact that the landed price of imports in to India was significantly higher than the prices at which the Petitioners exported. The table below reveals that the difference has never been higher and that can only be on account of the global slowdown, which impacted the export markets of the Petitioners – a market they by their own admission were designed to supply.

	Unit	2005-06	2006-07	2007-08	2008-09	2009-10
Landed Value of Imports from Subject Countries	Rs./Kg	7.49	8.22	9.14	11.48	10.15
Export Price of Subject goods from India	Rs./Kg	7.88	7.64	9.99	12.71	8.14

Source: Information provided by Petitioner vide Written Submissions and DGCI&S



4. It is submitted that the domestic sales of the Domestic how improved over the injury period and are the highest in the Period of Investigation. However, the Petitioners have themselves submitted at paragraph 95 (f) of their written submissions that domestic sales of the Domestic Industry declined in 08-09 on account of recession. India was not immune to this recession and the same reasoning must be applied to any impact of sales in the domestic market.

iii. Profitability

1. The Petitioners have themselves claimed an investment of almost Rs.700 crores has been made by the Domestic Industry which clearly explains the significant rise in depreciation and interest costs. This substantiates the submission that the

- decline in profits has been on account of an increase in depreciation and interest costs, and not on account of any alleged dumping.
2. As per the information available in the public domain, the domestic prices of the Soda Ash have been affected by other factors related to shortfall in supply as a result of closure of some domestic units and heavy rainfall, floods, geographical conditions
 3. As can be seen from the chart provided by the Petitioners, it appears that Selling Prices are moving in tandem with the Cost of Sales and are always higher than the cost of sales. Clearly, they are recovering their input costs and more. Thus the issue of losses is clearly on account of the increase in interest and depreciation costs, which must be explained by the Petitioners themselves and cannot be blamed on dumping.
 4. The Petitioners have themselves claimed that the decline in profitability is also attributed to additional exports undertaken by the Domestic Industry and significant losses incurred in the Export Sales and must be considered as a “consequence of dumping”
 5. The losses incurred by the Domestic Industry on account of sales in the export market cannot be attributed to decline in profitability and the submission of the Petitioners that such losses in the export market are on due to dumping is baseless.

D. Other Issues raised by the Petitioners

1. As regards the evidence supplied by the Petitioners on 18th May, 2011 it is submitted that the same was clearly incomplete. It may be noted that in the information circulated by the Petitioners on 18th May, 2011 the page titled “Injury Information of Domestic Industry: Volume Parameters IVA – Part II” containing

data related to demand market share and imports was not been provided to the interested parties. Further, the sales of the Domestic Industry provided in the aforesaid page is incoherent with the sales information provided the information circulated by the Petitioners on the 18th of May, 2011

2. It is reiterated that with the improvement in economy worldwide, import prices of Soda Ash have already become higher by about 30% over the prices in the Period of Investigation and an imposition of anti-dumping duty will make the imports of the subject goods even costlier. It is submitted that keeping in mind the oligopolistic nature of the domestic soda ash industry, imposition of anti-dumping duty, would in fact allow the Domestic Industry to increase their price at will and the costs would be borne by the dependant user industries, such as glass manufacturers and ultimately the consumers. On the other hand, the Hon'ble Designated Authority may also consider that non-imposition of anti-dumping duty on import of Soda Ash would ensure that User industry like glass and detergent can make and sell their products used by common man at reasonable price and the domestic Soda Ash producers will act responsibly while increasing their prices.

3. Without prejudice to the aforesaid, it is humbly submitted that Soda Ash being a commodity product, the prices of the subject goods undergo constant and significant fluctuations in the international markets depending upon demand-supply factors and input costs which also fluctuate. Hence, it is in the larger interests of the domestic consumers of the subject goods that any

recommendation of anti-dumping duty made by the Hon'ble Designated Authority be made only on a reference price basis.

Conclusion:

The Anti-Dumping investigation on imports of Soda Ash should be terminated with immediate effect because:

- (1) The initiation is unlawful as the Petition did not contain sufficient evidence on the basis of which an investigation can be initiated.
- (2) That the Domestic Industry does not have the requisite standing as major producers in India are related to the producers in exporting country as well imports of the subject goods are being made by them;
- (3) The operations of Domestic Industry are clearly profitable during the injury period; hence, there is no evidence of any injury to Domestic Industry from its domestic operations;
- (4) Any injury to the Domestic Industry can be attributed to other factors such as, geographical location of the domestic industry, exports of the Domestic Industry which causes the Petitioners themselves to import the product in large quantities in to India, significant increase in depreciation and interest costs and consistently poor performance of Saurashtra Chemicals Ltd. on account of its own operational and technical incapacities.

(5) Any additional burden by way of Anti-dumping duties would be contrary to public interest especially with Safeguard duty already recommended. However, relentless imposition of duties has completely distorted the price of this critical raw material for user industries such as glass manufacturers.

Respectfully submitted this 30th day of May 2011.

For and on behalf of the All India Glass Manufacturers' Federation

Sanjay Notani

Associate Partner