

**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

**Written Submissions made post Second Public Hearing
held on 3rd October 2011 representing
The All India Glass Manufacturers Federation**



**Represented by Economic Laws Practice
Advocates and Solicitors
Mumbai • Delhi • Ahmedabad • Pune**

Written Submissions post Second Public Hearing held on 3rd of October, 2011

This submission is being made on behalf of our clients, The All India Glass Manufacturers” Federation, (hereinafter referred to as “**AIGMF**”/“**the Opposing Interested Party**”). 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. AIGMF would like to thank the Directorate General of Anti-Dumping & Allied Duties (hereinafter referred to as “**Hon’ble Designated Authority**”) for granting it an opportunity to present its views at the Public hearing held on 3rd October, 2011. For the sake of brevity, the earlier submissions made prior to the hearing are not being repeated and are deemed to be incorporated herein.

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 glass.

1. Objections to Preliminary Findings:

- (i) It is observed that the preliminary findings have failed to acknowledge the participation of the All India Glass Manufacturers Federation and its members in the proceedings even though elaborate submissions were made by AIGMF.
- (ii) In fact, post initiation the following members filed importers questionnaires with the Hon'ble Designated Authority in the prescribed format within permitted time restrictions:
 - a. AGI Glaspac
 - b. Empire Industries Ltd.
 - c. Haldyn Glass Gujarat Ltd.

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- d. Hindustan National Glass & Industries Ltd.
 - e. Piramal Glass Ltd.
 - f. HNG Float Glass Ltd.
- (iii) In paragraph 2(xiii) of the Preliminary Findings issued by the Hon'ble Designated Authority has not even acknowledged the participation of the above AIGMF members and the acceptance of their respective importers questionnaires. Attached herewith as "**Exhibit 1**" are the acknowledged cover letters of all six importers' questionnaires.
- (iv) It is also undisputed that AIGMF was represented at the public hearing on 13th May, 2010. Post hearing, AIGMF's representations were filed in the form of detailed written submissions vide communication dated 23rd May, 2011. Subsequently the rejoinder to the domestic industry's written submission was filed on 30th May, 2011. AIGMF submitted another representation on 20th June, 2011. Attached as "**Exhibit 2**" are the acknowledged cover letters of the Written Submissions post public hearing and the Rejoinder filed by AIGMF.
- (v) Clearly, AIGMF's members have been active participants in the present investigation right from the stage of initiation and filing of questionnaires to the second public hearing which was held on 3rd October, 2011. AIGMF has provided all information asked of it, in the form and manner prescribed by the Hon'ble Designated Authority. Further, AIGMF has unequivocally and explicitly expressed its views in both oral and written form, and submitted its averments within time limits.
- (vi) Yet, there is no mention of these views in the Preliminary Findings. By excluding AIGMF's submissions in entirety from the Preliminary Finding, it is apparent that several of the pertinent issues raised by them have not been considered at all.
- (vii) Exclusion of AIGMF's timely filed submissions has prejudiced the Finding against them and is in clear violation of the Principles of Natural Justice. Their

submissions of the importers questionnaire ought to have been acknowledged in the Preliminary Finding and the relevant arguments raised by AIGMF ought to have been examined on merit. Instead, it appears as though they were not even considered.

- (viii) AIGMF therefore requests the Hon'ble Designated Authority to take cognizance of their arguments and come to a conclusion after taking into account all the issues raised by them.

2. Misuse of Anti Dumping Duty by the Domestic Industry

- (i) It is submitted that glass manufacturers are among one of the largest consumers of Soda Ash in India. They consume almost 40% of the soda ash available in India. It is noted that the Alkali Manufacturers Association of India is a habitual user of anti-dumping as well as safeguard duty laws of the country. The provisional duty has been recommended on almost all viable sources for imports for users in India, to the extent that over 96% of all import sources are now subject to anti-dumping duty as acknowledged in paragraph 88 of the Preliminary Findings. Such widespread levy of duty is bound to have a negative impact on downstream industries such as pharmaceuticals, detergents, ferro-alloys etc.
- (ii) The following table clearly illustrates the abuse of Anti-Dumping duties for various products such as Soda Ash and Caustic Soda:

Year	Product and Countries	Type of Investigation
1999	Soda Ash from China	Original Initiation and Provisional Findings
2000	Caustic Soda from Saudi Arabia, Iran, Japan, USA, France	Original Initiation
	Caustic Soda from Qatar	Original Initiation
	Soda Ash from China	Final Findings

2001	Caustic Soda from Saudi Arabia, Iran, Japan, USA, France	Final Findings and Duty imposed
2002	Caustic Soda from Peoples Republic of China, Korea RP Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France) Qatar	Initiation Initiation Duty imposed on Original Investigation
2003	Caustic Soda from Peoples Republic of China, Korea RP Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France)	Duty imposed Duty imposed
2005	Caustic Soda from Saudi Arabia, Iran, Japan, USA, France Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France)	SSR Initiated MTR Initiated
2006	Caustic Soda from Saudi Arabia, Iran, Japan, USA, France Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France)	SSR – Duty imposed MTR – Duty imposed
2007	Caustic Soda from Qatar Caustic Soda from Peoples Republic of China, Korea RP	SSR – Initiation SSR – Initiation
2008	Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France) Caustic Soda from Qatar Caustic Soda from Peoples Republic of	SSR – Initiation SSR - Duty imposed SSR - Duty imposed

	China, Korea RP	
2009	Caustic Soda from Chinese Taipei, Indonesia, EU(excluding France) Caustic Soda from Safeguard Measures for Caustic Soda Soda Ash Safeguards Measures	SSR – Duty imposed (excluding Chinese Taipei) Initiation and Provisional duty imposed Initiation, Provisional Findings and Final Findings
2010	Caustic Soda from Saudi Arabia, Iran, Japan, USA, France Caustic Soda from Peoples Republic of China, Korea RP Caustic Soda from Thailand, Chinese Taipei and Norway Safeguard Measures for Caustic Soda Soda Ash from China PR, EU, Kenya, Pakistan, Iran, Ukraine and USA. Soda Ash Safeguard Measures Review	MTR – Initiation MTR – Initiation Initiation Final Findings Initiation Initiation and Final Findings
2011	Soda Ash from China PR, EU, Kenya, Pakistan, Iran, Ukraine and USA Caustic Soda from Peoples Republic of China, Korea RP Caustic Soda from Thailand, Chinese Taipei and Norway Caustic Soda from Saudi Arabia, Iran, Japan, USA, and France	Provisional Findings Final Findings Final Findings SSR Initiation

Source: www.commerce.nic.in

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- (iii) As is evident, the petitioners have over the course of the last 12 years continuously abused the protection available under anti-dumping law in order to gain unfair advantage over competition from imports. Through these trade barriers, domestic manufacturers are misusing the Anti Dumping process and continuously raising prices of essential chemical products including soda ash in the domestic market. In fact, the domestic industry has raised prices substantially by nearly 20% after the initiation of the investigation and with the levy of Anti-dumping duty these prices are expected to rise further.
- (iv) It is humbly prayed that the Hon'ble Designated Authority take note of the continued exploitation of Anti-dumping law and adjudicate accordingly on the issue of injury and dumping.

3. Domestic Industry

- (i) With regard to the Hon'ble Designated Authority's conclusion on domestic industry, AIGMF respectfully disagrees with the Preliminary Findings.
- (ii) The Authority has decided to consider GHCL, Nirma, Saurashtra Chemicals and DCW Limited as the domestic industry under Rule 2(b) of the AD Rules. Accordingly, the Authority has determined that the application satisfies the requirements of Rule 2(b) read with Rule 5(3) of the AD Rules.
- (iii) It is interesting to note that the Authority has examined only the present imports of the related entities of the domestic industry members while exercising its discretion. There is no apparent consideration given to the threat of future imports or even an examination of the surplus capacities in these related entities. It is also not apparent if any verified information has been filed by these related entities on the basis of which this conclusion has been arrived at.

- (iv) It is also important to note that the related parties in these countries have not participated in this investigation. If these related exporters have not taken part in this investigation, it is unknown as how the following information has been relied upon by the Hon'ble Designated Authority:
- a. Who has provided the data of imports;
 - b. Why the import data have been taken on record without no cooperation of the exporting related parties; and
 - c. What data has been provided to come to a conclusion
- (v) In addition to the above, it is submitted that the Hon'ble Designated Authority has failed to consider the following:
- a. The information relating to the import of the subject goods from the domestic producers was not made available during the filing of the petition or initiation of the investigation. It seems to be an afterthought, subsequent to the proceedings in the Hon'ble High Court.
 - b. The Hon'ble Designated Authority has concluded by including all the domestic producers with related parties producers in the subject countries within the definition of Domestic Industry without considering whether the activities of sales conducted in India by the related entity in the subject country is solely carried out by them or is there any facility provided by the Indian entity in making or marketing of these sales.
 - c. The sales structure of the related exporting entity has not been considered by the Hon'ble Designated Authority. This is pertinent to determine, as apart from the impact of the costs involved, whether the Indian entity is involved in facilitating these sales in India.
 - d. Any agreement on sharing of the markets between the related parties has also not been disclosed.

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- (vi) It is submitted that the level or long-term nature of the commitment shown by the importing producer to domestic production as opposed to continued importation also ought to be examined while deciding upon the exclusion or inclusion of domestic producers which have imported or are related to importers in the subject countries.¹
- (vii) All the aforesaid questions are material to the issue and were required to be disclosed at the time of initiation. It needs to be evaluated whether the Indian entity is promoting their related party sales (from the overseas units) into India for the purposes of costs benefits as well as deliberately limiting their production and sales in order to avail of the Anti-Dumping duties with a view to block exports from the subject countries.
- (viii) Without prejudice to the finding reached by the Hon'ble Designated Authority on this issue, the Association states that based on the decision of the Hon'ble Calcutta High Court in *Century Plyboards (I) Ltd. & Anr. Vs. The Additional Secretary & Designated Authority & Ors. n Writ Petition No. W. P. No.3184 (W) of 2011*, the Hon'ble Judges based on similar facts dismissed the Petition of the sole domestic producer on the basis that he was an importer of the subject goods in question. The Hon'ble Designated Authority contested the case before the Hon'ble High Court, but the decision has been ignored to be made applicable in the facts of this case. It is therefore required that the Hon'ble Designated Authority consider the judgment in these facts too and comes to a fair and just decision on this issue.

¹*Anti-Dumping Measures under the WTO Regime*, by Dr. NeerajVarshney, P. 218

4. Product under Consideration

(i) It is humbly submitted that the Hon'ble Designated Authority has been misguided on the issue of product under consideration. Clearly, an issue as vital as product under consideration goes to the root of the matter and therefore requires a re-examination by the Hon'ble Designated Authority.

(ii) While examining the issue of product under consideration, the Hon'ble Designated Authority held as follows in paragraph 4(iv) of the Preliminary Finding:

“The Authority notes that the difference in light & dense soda ash is in bulk density. The product characteristics, production process, manufacturing technology, raw materials, plant & equipment, manpower, functions & uses, customs classification and pricing of the light & dense soda ash are however the same. It is possible that some end application might require light or dense soda ash only.”

(iii) The basic conclusion drawn by the Hon'ble Designated Authority that:

(a) Natural & Synthetic Soda Ash and

(b) Light and Dense Soda Ash are technically and commercially substitutable is erroneous.

(iv) It is submitted that some of the following factors to be considered while coming to a conclusion that light soda ash and dense soda ash are one and the same and therefore like article. Some of the factual differences as regards both the products is highlighted herein:

a. Characteristics: Dense Soda ash has an entirely different bulk density from Light Soda Ash. Light Soda Ash has bulk density of 0.55 to 0.72 gm/cm³ as against over 1.00 to 1.20 gm/cm³ bulk density of Dense Soda Ash.

b. Common End uses: Light soda ash is used in the detergent industry whereas Dense soda ash is used in the glass industry.

c. Manufacturing process and the costs associated therewith: There are clear differences in the manner in which light soda ash and dense soda

ash are produced. Natural Soda Ash is Dense Soda Ash available in natural form. . In synthetic process, Light Soda Ash is produced which is further processed to increase its bulk density (a very important characteristic) to make it Dense Soda Ash. The process of converting light soda ash to dense soda ash increases the cost by approx. Rs. 300/MT.

- (v) In fact, even GHCL in its Annual Report 2010-11 (on page 11) has clearly differentiated between the Soda Ash consumer markets:

“The Indian Soda Ash market constitutes of two varieties – Light (used in detergent industry) and Dense (used in glass industry) with a share of 70% and 30% respectively.”

- (vi) Moreover, even customs classification of Dense and Light Soda ash is different:

- a. 2836 20 10: Di-Sodium Carbonate Dense
- b. 2836 20 20: Di-Sodium Carbonate Light

- (vii) It is also admitted that customs classification for anti-dumping is for indicative purposes only but it is to be appreciated that the World Customs Organization including the Indian Customs have accepted the fact that the product being different has been placed under two separate customs tariff code.

- (viii) Natural Soda Ash available from Magadi Soda Co. Ltd., Kenya has a purity of 97 - 98% (as against domestic Soda Ash purity of 99.40%) and this Soda Ash can be used only for making Amber, Green and low quality white glass containers. This low quality Soda Ash cannot be used for making good quality White Glass Containers and Float Glass. Low purity Natural Soda Ash from Kenya is US \$30 TO \$40 cheaper compared to high quality Synthetic Soda Ash and is not available in India. Attached as “Exhibit 3” are invoices recording these price differences.

- (ix) Light Soda Ash has bulk density of 0.55 to 0.72 gm/cm³ as against over 1.00 to 1.20 gm/cm³ BD of Dense Soda Ash. Light Soda Ash is used for making

detergents and it cannot be used for making Glass Containers & Float Glass. Glass Industry can use only Dense Soda Ash. Light Soda Ash is cheaper compared to Dense Soda Ash.

- (x) Thus Magadi Natural Soda Ash of low purity is not comparable to high purity Soda as produced in India as the cost and sales price of Magadi Natural Soda Ash is much less compared to Soda Ash produced by chemical process in the country. In fact, depending upon the use of Magadi Natural Soda Ash meant for selective use, the Glass Manufacturers are being denied to take advantage of this Soda Ash which is not produced in the country. Imposing Anti Dumping Duty on this grade of Soda Ash which is not produced in India is a deliberate attempt of the Petitioners against the interest of the user industries.
- (xi) It is submitted that a substitute for Magadi Natural Soda Ash of purity 97-98% is not available in India and therefore this Soda Ash should be excluded from Anti Dumping investigation.
- (xii) Based on the above facts, it is requested that the Hon'ble Designated Authority considers the differences and accordingly comes to a decision based on facts and law available on record. It is thus concluded that the manner in which the investigation is being conducted and the preliminary finding recommended thereto is ab initio void considering differences between light soda ash and dense soda ash being two different product with respect to cost of production, selling price, production, market capacity and imports etc.
- (xiii) Without prejudice while the Hon'ble Designated Authority in case rejects the submissions made by the Association, it is requested to kindly exclude natural soda ash from the purview of the product under consideration as none of the Petitioners produced the said grade in India. This particular grade is used in producing amber, green and low quality white glass containers and was demonstrated at the public hearing.

5. **Unusual Period of Investigation**

(i) The period of investigation (April 2009 to March 2010) chosen by Petitioners is inappropriate for an ideal injury and dumping analysis. It is submitted that the present period of investigation was a time of global meltdown and economic recession as a result of which demand for Soda Ash drastically came down resulting in a fall in the international price of this commodity. Thus, the entire Soda Ash industry including present domestic industry members was affected and global prices of Soda Ash declined.

(ii) Presently, the international economic situation is stabilizing and price of imported Soda Ash has gone up by almost 20%. Attached herewith is "**Exhibit 4**" reflecting the change in import prices. The domestic Soda Ash Industry is operating at higher levels as compared to the period of investigation. The testimony to the statement is the news report of the most efficient soda ash producer in India i.e. Tata Chemicals. As observed by Shri Ratan Tata, Chairman, Tata Chemicals Ltd. in the Annual Report 2010–11:

"Demand growth of Soda Ash in FY 2010 – 11 was driven by growth of all key Soda Ash consuming segments. The announcement of new float glass and container glass projects by glass companies in the near future provide on indication that demand of Soda Ash will continue to remain robust in the foreseeable future. The other key consuming sectors such as detergents and chemicals are also expected to grow on the back of National Economy. Company sold 93% Soda Ash in domestic market compared to 87% in FY 2009-10."

(iii) Similar observations were also made in the Annual Report 2010 – 11 of GHCL on page 5:

"The Global Soda Ash demand was 46 million tons in 2010 with a capacity of 57 million tons. After growing at an average annual rate of almost 5 percent per year since 2004, world soda ash demand fell by about 9.5 percent in 2009. In 2010 the markets have recovered much faster than the earlier expectation. Demand for Soda Ash remained robust during the year, price pressure from key inputs such as salt and energy weighed heavily. However,

there has been a noticeable improvement in the soda ash prices from the fourth quarter onwards and the industry is optimistic about the price trend. Emerging economies – particularly in China and the wider Southeast Asia region, the Middle East, South Asia and South America continue to be “growth driver” for Soda Ash. Rising GDPs and urbanization in these regions have led to a higher per capita consumption of products manufactured using soda ash. Demand for glass and detergents in emerging world markets surged in the last few years. Hence the global outlook looks promising for soda ash.”

- (iv) Considering the fact that period of investigation was the period of global melt down and depression and the market has recovered since, imposition of anti-dumping duties now and too recommended on fixed duty basis would be unfair and excessive. The import prices at present rates along with the fixed duty are commercially unviable. It is also a fact that the Petitioners have virtually sold their Soda Ash stock and do not have the required capacities, alternatively they are holding their stocks to sell at extra-ordinary prices. Further, it must be noted that the glass industry is already functioning with thin margins and competing with a growing plastic industry. It is also submitted that the soda ash industry relies heavily on the glass industry and if the glass industry suffers it will be a disadvantage to the soda ash producers as well.

6. Injury

- (i) Injury to domestic industry is summarized in para 76(xxii) of the Preliminary Findings which reads as under :-

“The domestic industry was earning a profit of about 25% on its selling price which declined to a level below 12% in the period of investigation. Thus profitability as a percentage of selling price declined steeply over the injury period.”

- (ii) As mentioned earlier, the period of investigation was a year of global depression. It is well known that during this period, globally many companies made losses and shutdown their businesses. In such a scenario, a 12% profit (as made by the domestic industry) ought to be a more than acceptable

performance when juxtaposed with the dismal losses and shutdowns of innumerable industries worldwide and in India. After the period of investigation, the domestic industry has made predominantly higher profits as can be verified from their annual reports. With regard to the period of investigation, the domestic industry's overall profits and dividend payouts as per Prowess are as follows:

		Mar-07	Mar-08	Mar-09	Mar-10
		15 mths	12 mths	12 mths	12 mths
GHCL	Dividend(Rs.Million)	268.8	314.9	280.3	234.1
	Operating Profit (Rs.Million)	1,567.6	3,751.1	2,474.1	2,664.8
NIRMA	Dividend(Rs.Million)	1,383.0	26.1	747.2	744.3
	Operating Profit (Rs.Million)	5,218.6	4,908.4	5,914.6	7,351.2
DCW	Dividend(Rs.Million)	51.8	51.8	58.8	58.8
	Operating Profit (Rs.Million)	642.2	924.4	882	1,780.6

Source:Prowess

- (iii) Clearly, profits have risen over the injury period, along with handsome dividend deductions. Further, the profitability of domestic industry member companies post period of investigation has also been impressive as can be seen from the Annual Reports of the domestic industry member companies.
- (iv) M/s. Tata Chemicals Ltd., one of the most efficient Soda Ash Manufacturers in the country made a profit of Rs. 933 crores during 2009 – 10 and paid 90% dividend. In the fiscal year 2010 – 11 they made a profit of Rs. 1121 crore and paid 100% dividend. The same can be verified from page 21 of their annual report for the year 2010-11.
- (v) GHCL made profit of Rs. 155 crores, paid 20% dividend during the year 2010 – 11. In the year 2009 – 10 they made profit of 122 crores and paid 20% dividend. The same is apparent from page 5 of the annual report 2010-11.

- (vi) GHCL is making good profit from its domestic Soda Ash operations but they are making losses in almost all their other segments. Attached as “**Exhibit 5**” is data indicating the performance of GHCL on a segment wise basis. The Hon'ble Designated Authority has to take into consideration and verify that the costs, expenses and interests of each of the businesses have been properly allocated which are directly and indirect attributable for that business only.
- (vii) DCW Ltd. made a profit of Rs. 94.46 crores during the fiscal year 2009 – 10 as against Rs. 20.02 crore during the year 2008 – 09. The same can be found at page 2 of the Annual Report for 2009-10.
- (viii) This is what Dr. S. C. Jain, Chairman & MD of DCW Ltd. has to say about Company's operations during the fiscal year 2009 – 10:
- “The Company achieved record profits during the financial year on account of improved working of all Divisions of the Company as compared to the previous year”.*
- (ix) Nirma Ltd. made a profit of Rs. 249 crores during the fiscal year 2009 – 10 and paid 90% dividend as can be verified from page 2 of their annual report for that year.
- (x) The above references from the respective annual reports can be found as extracts attached herewith as “**Exhibit 6**”. Clearly, all three companies mentioned above have done extremely well over the injury period to the extent that they have even chosen to pay high dividends.
- (xi) With regard to Capacity utilization is it submitted that the capacity expansion took place in 2006-07 whereas the Hon'ble Designated Authority has wrongly noted the expansion to be in 2007-08. It is submitted that the same be taken into account.
- (xii) With regard to stock it is submitted that one of the arguments made by the domestic industry was with regard to increase and piling up of stock. It is humbly submitted that post the period of investigation, there has been a

considerable improvement in the situation. For instance, GHCL's stock has gone down from 19 days production to 7 days production in March 2011.

GHCL	Opening Stock	Production	Sales	Captive Consumption	Closing Stock	%	No of Days
2008-09	17258	617566	562516	39316	32992	5.34	19
2009-10	32992	676079	656684	41958	10429	1.54	6
2010-11	10429	710012	656969	49512	13960	1.97	7

Source: Annual Reports of GHCL

- (xiii) Further, from the information disclosed in the Preliminary Findings it has been observed that the Net Selling price of the domestic industry has been higher than the Non-injurious price as found by the Hon'ble Designated Authority. Non-injurious price being the price at which the domestic industry needs to sell in order to not be injured, this appears to be a clear admission that the domestic industry is indeed not in any way injured by the allegedly dumped imports. It is humbly requested that the same be taken into account while coming to a conclusion on injury.

7. Injury to users of Soda Ash and Final Product Consumers

- (i) Soda Ash is an essential ingredient in the manufacture of window glass, float glass, glass containers soaps, detergents, clearing compounds used for packing medicines, hair oil, ink, honey etc. etc. It should be appreciated that these are the items consumed by crores of consumers in India. The major consumers are predominantly middle and lower middle class (over fifty crore consumers) and these items are manufactured by thousands of SMEs all over the country.
- (ii) The Designated Authority has concluded that imposition of anti-dumping measures would not restrict imports in any way and would not affect the availability of the product to the consumers (as held in paragraph 103 of the preliminary findings). It is humbly submitted that Soda Ash imports from China

came down drastically when Safe Guard Duty was imposed. The same outcome is expected if Anti-dumping duties are levied in the present case.

- (iii) As averred above, Domestic Soda Ash Manufacturers have already increased their price by 20%. It is possible that after levy of Anti-dumping duty, the domestic industry prices shall increase further. As demonstrated above, the domestic industry's stocks of Soda Ash are at an all time low and if the Anti-dumping duty is imposed, imports will become unviable. In fact imports from certain areas show higher prices as compared to the Domestic Soda Ash. This can be demonstrated from the Crisil Research's Report on Chlor Alkalies for the month of September, 2011. The relevant extract is attached herewith as "**Exhibit 7**".
- (iv) Based on earlier experiences of the Industry, if duties are imposed, there is bound to be a shortage of Soda Ash and the user industry will suffer. With the recommendation of duties as well the economic situation improving, there are no capacities available with the Domestic Manufacturers and the industry will be forced to import as there would be no support of the domestic manufacturers. This will result in sure death of thousands of SMEs.
- (v) It would not be out of the place to mention here that the Glass Industry and its ancillaries alone provide employment to nearly lakhs of people, considerably more than the employment provided by the Soda Ash Industry. In addition to that there are soap & detergent manufacturers who also employ lakhs of people.
- (vi) The Glass Industry alone provides substantial revenue to Central & State Governments – more than Rs. 1000 crores per annum which will be jeopardized by the Designated Authority's recommendation to impose Anti Dumping Duty on its basic raw material. Some of the larger members of the Glass Industry like the Soda Ash Industry will make strategic investments abroad, which will deprive the Government the agenda employment as well as the collection of taxes .

(vii) The Ministry of Commerce and Industry on one hand has been encouraging industries in the field of manufacturing and services to double its exports. There have been meeting held in this behalf wherein the Glass Industry has also been represented to meet its targets. On the other hand, it is unfortunate that Designated Authority coming under the same Ministry has recommended imposition of ADD on import of Soda Ash – a vital raw material for the industry. If finally Anti-dumping Duty is imposed, the industry will not be able to even sustain its current exports (Rs. 2000 crore in 2010-11) leave apart increasing it.

(viii) As demonstrated throughout the investigation in AIGMF's previous submissions, domestic Soda Ash manufacturers are making profits and paying handsome dividends. As acknowledged by the various heads of the Industry, they are confident of future growth on the back of expansion plans of Glass Industry. Given their performances, it certainly does not appear as though they require protection from the impugned imports.

(ix) On the contrary if the Anti-dumping duty is imposed, it will cause injury to thousands of SMEs all over the country who use Soda Ash & to crores of poor, middle and lower middle class people in the country who use end products. Moreover, it will lead to an avoidable and unnecessary increase in prices. This will also add to inflation which Government of India and Reserve Bank of India are struggling to bring under control.

(x) This has been acknowledged by the authorities in para 104 on page 58 of recommendation which reads as follows:

"104. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of these product."

(xi) The impact of duty on soda ash prices and its cascading effect on the downstream products can best be understood by an analogy of the diesel prices:

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- a. Diesel is mostly used for transportation. Since items like Glass Containers, detergents, soaps etc. are made all over the country, average cost of transportation from producer to consumer is around Rs. 1 per kg. In this cost of diesel is around 40paise. If Government of India allows increase in price of diesel by say 5% average cost of transportation will go up by just 2 paise per kg. But, in view of high inflation, Government is not allowing even 5% increase in Diesel Price.
- b. The Hon'ble Designated Authority has recommended US\$ 40.89 per ton ADD on Soda Ash which will increase its price by Rs. 2000/- per ton – which is 100 times the price increase which 5% increase in diesel price will cause. It is humbly submitted that this would not be justified. Further this recommendation is not in consonance with the actions of the Government & RBI vis-à-vis the larger interest of the Nation.

(xii) It is therefore submitted that for preserving public interest, the Hon'ble Designated Authority kindly take note of the repercussions of the impact that levying of anti-dumping duties might have.

8. Causal Link

a. **Export Performance of the Domestic Industry**

- (i) The Domestic industry had stated that, had there been no dumped imports, it could have sold the entire quantity of exports in the domestic market and could have not only avoided the loss but also made some profit.
- (ii) Although, the Hon'ble Designated Authority has excluded the losses on account of exports and determined the injury in respect of domestic sales on account of dumped imports, it is submitted that the geographical conditions in India, which are concentrated in the western coastal region in the state of Gujarat, are concentrated towards exports, catering to the demand arising out of the Middle East.

- (iii) Evidently, exports were occurring at prices 20% lower than the Indian domestic selling price. Any imposition of duty on the premise that the domestic Indian consumer must entirely consume domestic production is clearly misplaced and can be damaging to the user industry and Indian economy.
- (iv) Further, the Preliminary Findings have categorically held (at paragraph 98(e)) that the Export Sales of the domestic industry in the period of investigation were Rs. 174424 Lacs. Taking an export price of USD 200/MT (since the domestic industry has claimed that export prices by them are 20% lower than normal import prices) and with an exchange rate of Rs. 45 per USD, the total tonnage comes to 1,938,044 MT. As per paragraph 95(i) of the Preliminary Finding, the Total Capacity of the Domestic Industry was 1,961,000 MT and actual production was 1,349,725 MT for the period of investigation. Domestic industry could not have exported more than production of the subject goods. Clearly, there is a disparity between the reported figures and the same needs to be verified and corrected immediately.

b. Peculiar Geographical make up of the Indian Industry

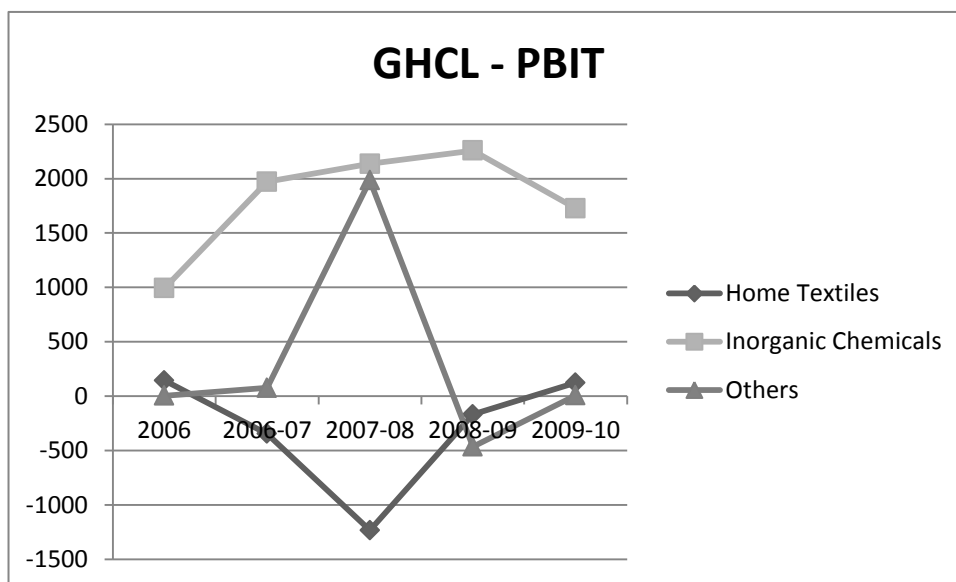
- (v) The location of the Petitioners is concentrated in the western coast and the user plants are located throughout the country. This leads to high transportation cost. Thus making imports into certain parts of India e.g. south and east inevitable. This is an ongoing phenomena and has little to do with any alleged dumping. In fact, the counsel for the Petitioners categorically requested the Hon'ble Designated Authority to include freight in the calculation of Non-Injurious Price. It is humbly submitted that such a request for inclusion of freight in the calculation of NIP only indicates that the landed value is not truly hurting the domestic industry. Further, such an inclusion should not be allowed as it would lead to a lopsided calculation of NIP.

(vi) While the proposed change in NIP is ridiculous and therefore disputed by AIGMF, it is interesting to note that the Petitioners do acknowledge transport cost as a major cutback on earnings.

(vii) In the preliminary findings, the Hon'ble Designated Authority has failed to address this issue raised by interested party. It is humbly requested that given the Petitioners' own acceptance of the existence of this factor, the issue should be taken into consideration while coming to a conclusion on injury.

c. GHCL's Textile Segment Decline

(i) It is submitted that the chief reason for GHCL's decline in performance is not due to dumping, but rather due to below par returns on their textiles segment. Already attached as an exhibit are the Profit and Loss as well as Production and Sales figures for GHCL, divided segment-wise. From the Exhibit it is apparent that the company has been severely hampered by the performance of its textile segment which has been making heavy losses up to 2008-09 and even its profits in 2009-10 are minimal.



Source: Prowess

(ii) As is clear, Home Textiles have consistently been a loss making venture for GHCL, rising above break-even only in 2009-10. In contrast, GHCL has

always made high profits from the inorganic chemicals segment, which is predominantly Soda Ash.

d. Consistent Poor performance of Saurashtra Chemicals and Nirma:

- (iii) Saurashtra Chemicals Ltd. has been suffering from injuries on account of operational and technical problems and is undergoing a financial restructuring under the BIFR. This injury should not and cannot be attributed to dumping. This Hon'ble Designated Authority has failed to address this issue as a factor affecting the causal link.
- (iv) It is observed that Nirma's cost of production is also not as efficient as the other domestic producers. In fact, a derived cost per ton for Soda Ash based on the data in the Annual Reports is as follows:

Soda Ash Cost per Ton

	01.04.2008	31.03.2009	31.03.2010	31.03.2011
GHCL	7018	8629	8552	8801
NIRMA	9970	14324	10246	12838
TATA CHEMICALS	7623	8371	9976	10745

Source: Annual Reports

- (v) It is a matter of fact that Nirma Ltd has also registered capacity utilization of 61% and 69% during the periods starting 2008-09 to 2009-2010. It is surprising to find that inspite of no increase in capacity as well as protection of safeguard duty the capacity of Nirma has always been lower.
- (vi) Thus, the inherent poor performance between some of the Petitioners vis-à-vis the efficient producers should not be used by them to show losses due to dumping.

9. Environmental Impact

- (i) As mentioned earlier, the Glass Container Industry is facing stiff competition from substitutes of packaging like plastics (PET/PP/HDPE etc.)². Glass containers are inert and environment friendly material. 100% available broken

²http://www.amcor.com/about_us/media_centre/news/88554957.html

glass is used for making fresh glass containers. Yet, the Pharmaceutical Industry along with other user industries continues to switch to PET and other plastic materials because of price. Attached as "**Exhibit 8**" are certain letters from the Pharmaceutical industry clearly detailing their objection to higher prices of glass and the possibility of these buyers shifting to alternatives.

- (ii) The Pharmaceutical Industry has already switched over to PET to the extent of 50% of their requirement. Plastic waste is a hazardous material. That is why Many States have banned use of plastic bags (in fact Himachal Pradesh is a plastic free state). It is therefore requested that the Hon'ble Designated Authority keep the environmental repercussions of higher soda ash prices in mind while coming to a final conclusion.

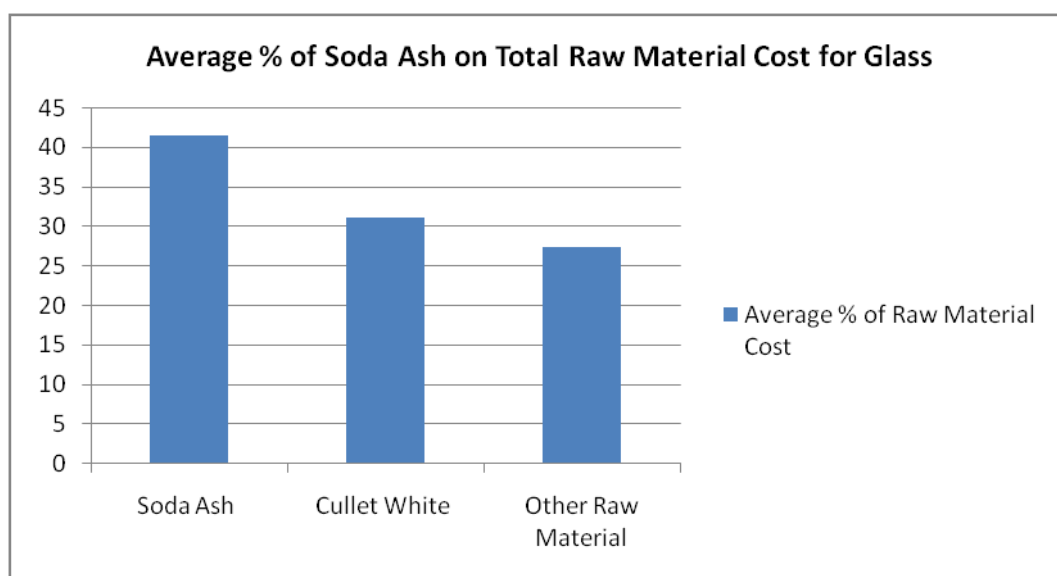
10. Reference Price v. Fixed Price

- (i) The Hon'ble Designated Authority is requested to change the fixed duties to reference price duties. Although there is no clear and stipulated basis on which reference or fixed duties are determined, there are some guidelines based on which a product may be ideally suited for fixed or variable duty.
- (ii) Due to their nature, fixed and *ad valorem* duties are easier to apply. However, fixed duties do not account for a volatile market, where prices may rise above the NIP. In such a scenario, the fixed duty would have a negative impact on exporter/producer. For such situations, variable duty is normally used by the authorities.
- (iii) 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. Further, these fluctuations are usually not observed to be in a predictable pattern or trajectory. For instance, as placed on record, there is already a hike in import prices post period of investigation.
- (iv) In fact, taking into consideration such facts, even the previous Anti-Dumping investigation concerning imports of Soda Ash from China had duties levied on a reference price basis and the same has been observed in the Caustic Soda investigations. Hence, it is in the larger interests of the domestic consumers of

the subject goods that an affirmative recommendation of anti-dumping duty, if any, made by the Hon'ble Designated Authority be made only on a **reference price basis**.

11. Levy of Anti-dumping Duty is against Public Interest

- (i) It may be noted that Soda Ash is the single largest constituent in the entire batch of the raw materials used in glass manufacture and constitutes about 40-45% of the total raw material cost per MT of glass manufactured. Levy of Anti-dumping Duty on import of Soda Ash will bear a direct adverse impact the cost of production of glass and its selling price. The Charts below present the significance of Soda Ash in production of glass.



Source: Importer Data

- (ii) Further the glass industry directly and indirectly provide employment to lakhs of people. The closure of some of the units due to the already inflationary effects and now with the imposition of duties will clearly affect these people. This will impact the export revenues of the Glass Industry and in turn the foreign exchange earned for the country.
- (iii) Thus, any levy of anti-dumping duty on Soda Ash will materially affect the interests of the consumers at large and hence would be contrary to larger public interest.

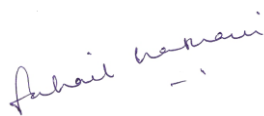
Conclusion:

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

- (1) The arguments and submissions of AIGMF have not been considered in coming to a conclusion in the Preliminary Findings.
- (2) The domestic industry is misusing the Anti-dumping duty in order to get record profits from their sales of Soda Ash
- (3) The definition of product under consideration is not accurate and the difference between light and dense soda ash as well as natural and synthetic soda ash should be acknowledged by the Hon'ble Designated Authority and all calculations should be done accordingly. The Hon'ble Designated Authority should also review the exclusion of the grade not produced by the Domestic Industry.
- (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 poor performance of GHCL's textile division and 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. However, relentless imposition of duties has completely distorted the price of this critical raw material for user industries such as Glass manufacturers.
- (6) If any duties must be levied at all, it is humbly prayed that these duties be levied in reference price form and not in fixed duty form.

For and on behalf of All India Glass Manufacturers' Federation

Dated this 10th day of October, 2011



SuhailNathani

Partner