

File No. 15/17/2015-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
Jeevan Tara Building, 4th Floor 5, Parliament Street, New Delhi-110001

Dated the 22nd July, 2017

NOTIFICATION

FINAL FINDINGS

Subject: Mid-term Review (MTR) Anti-dumping investigation concerning imports of ‘Soda Ash’, originating in or exported from Turkey and Russia.

15/17/2015-DGAD- Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the Rules) thereof.

A. Background of the case:

1. Whereas, the Designated Authority (hereinafter referred to as the Authority), had issued final findings vide Notification No. 14/3/2011-DGAD dated 9th February 2013, 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 Turkey and Russia (hereinafter referred to as the subject countries). The definitive anti- dumping duties were accordingly imposed by the Central Government vide Notification No. 08/2013 – Customs (ADD) dated 18th April 2013.
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 on 1st Oct 2015 requesting for initiation of a mid-term 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 claimed that the circumstances that were prevalent during the period of investigation of the original investigation had changed significantly leading to a situation where the existing anti-dumping duties were no longer warranted.
3. Whereas, the applicant submitted that the import prices as well as the domestic selling prices of the subject goods had increased significantly It was also submitted that that the cost of major raw materials had 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 further submitted that the significant increase in import prices led to increase in the landed value of imports resulting in decline of the injury margin and as a consequence the need for reviewing the current level of duties had 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. And whereas having regard to the information provided by the applicant, substantiating the need for such review and indicating changed circumstances necessitating prima facie a review of the measure in force, the Authority vide Notification No. 15/17/2015-DGAD dated 1st October, 2015, initiated the present Mid-term Review (MTR) investigation of the final findings notified vide Notification No. 08/2013 – Customs (ADD) dated 18th April 2013.
6. And whereas the Designated Authority issued disclosure statements in terms of Rule 16 of the Rules on 14.09.2016 and sought comments from the interested parties.
7. And whereas the Designated Authority issued final findings on 23.09.2016 after considering the comments of the interested parties.
8. And whereas Nirma Ltd and DCW Ltd filed writ petitions before Hon'ble High Court of Gujarat initially challenging the disclosure statements dated 14.09.2016 issued by the Designated Authority in the present Mid-term Review thereafter also challenged the respective final findings dated 23.09.2016 by amending their writ petitions.
9. And whereas Hon'ble Gujarat High Court vide its common judgment dated 23.02.2016 quashed the disclosure statements dated 14.09.2016, final findings dated 23.09.2016 as well as subsequent notifications issued by the Central Government under rule 18 of the rules and restored the proceedings to the Designated Authority, directing the Designated Authority to issue fresh disclosure statement, in consonance with the relevant statutory provisions and in the light of the observations made in the judgment
10. And whereas the Designated Authority conducted another oral hearing on 25.04.2017 giving opportunity to the interested parties to present their views orally. The interested parties were allowed opportunity to file written submissions and thereafter rejoinder to the submissions made by other interested parties.

B. Procedure

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

- i. The Authority sent copies of the initiation notification dated 1st October, 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:

Soda Sanayii A.S. Turkey TurkiyeSiseVe Cam Fabrikalari A.S. Is Kuleleri, Kule – 334330 4, Levent Istanbul Turkiye
ETI Soda, Ciner Group, Pasalimani Cad No.4, Uskudar 34674, Istanbul Turkey
SASS SODA ASH SALES & SERVICES M. Tolmachevskiy per. 10 Office 7, 8 119017 Moscow Russia
JSC Bashkirian Chemistry 8, B PoluyaroslavsiyPereulok, Moscow, 105 120, Russia

- v. In response to the initiation of the subject investigation, following producers/exporters from Turkey responded by filing questionnaire response and made submissions:
 - i. Soda Sanayii A.S.
 - ii. ETI Soda.
- 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 Plnt 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 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 foreign producers/exporters, importers/users, domestic producers and their representatives, the following domestic producers and interested 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, foreign 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 in addition to 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.
- 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 for the relevant information/data from the interested parties for post POI (1st April 2015 to 30th Sep. 2015) for conducting likelihood analysis. The Authority also obtained further data on post- POI from DGCI&S to further supplement the 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 the

oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

- xvi. In accordance with Rule 6(6) of the Anti-dumping Rules, judgment of Gujarat High Court the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 25th April, 2017. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- 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 of the investigation were disclosed by the Authority to the known interested parties vide a disclosure statement issued on 7th June, 2017 and comments received on the same, to the extent considered relevant by the Authority, have been examined and addressed in this finding. Earlier disclosure statement dated 14.9.2016 was quashed by the Hon'ble High Court
- xix. Wherever any 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 disclosure 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

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

12. 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.”

13. 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. 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. DOMESTIC INDUSTRY AND STANDING

Submissions made by the Petitioner and other interested parties

14. 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 have been 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 a separate 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
 - 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.

Submissions made by Domestic Industry

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

- i. Petitioner has not identified the Domestic Industry. Application seeking withdrawal of anti-dumping duty is incomplete unless the applicant has identified "a domestic industry", particularly when the allegation is that there is no injury to the domestic industry. The entire proceedings and the investigations are required to be terminated for this reason
- ii. Barring GHCL and Tata Chemicals, none of the companies have themselves imported the subject goods during the POI.
- iii. The imports by GHCL were only to maintain market presence in order to afford continuity when enhanced capacities are made available.
- iv. 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 by this related company located in USA have been directly
- v. DCW does not have any related producer-exporter outside India.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. As regards oral hearing being ineffective, it is to mention that it was incumbent upon the applicant importer association to identify the domestic industry and thereafter establish no injury and no likelihood therein.
- x. 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

16. 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”.

17. 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—to-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.

18. The Authority notes that in the original investigation also the some of the domestic producers 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 has clearly dealt with Domestic Industry and its standing. The Authority had considered GHCL, Nirma Ltd and DCW Limited as “domestic industry”, in accordance the requirements of Rule 2(b) read with Rule 5(3) of the Anti-dumping Rules. For the purpose of present investigation the Authority has decided to accept the conclusion drawn at the time of original investigation.

E. MISCELLANEOUS SUBMISSION

Submissions made by the Applicant and other Interested Parties

19. 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.
- x. The subject goods are covered under Cost Accounting Record Rules(CAR). Therefore the Cost of production of the domestic industry to be considered on the basis of CAR. Therefore the Authority to consider COP of the domestic industry based of CAR and if the same is not provided already the Authority may call for the relevant information.
- xi. Information submitted by the Domestic Industry (DI) is not in the prescribed format of the DA. Selective information with regard to capital employed like net fixed assets and working capital is only provided whereas the prescribed format requires capital employed based on the books of accounts for a particular period.
- xii. Dumping Margin is irrelevant in the MTR investigation as per Rule 23 as duty can be withdrawn where the injury to the DI is not likely to continue or recur, if the duty is withdrawn. Even positive dumping margin cannot justify the continuation of the duty.

Submissions made By Domestic Industry

20. 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 the provisions prescribed under Annexure III to the Anti Dumping Rules were being practiced earlier and were being followed by the Authority prior to introduction of law.
- iv. As regards difference in production data in the standing table and injury statement, it is stated that it was a clerical error which is regrettable but it cannot be said to cause serious prejudice to the interested parties.
- v. There is no prescribed requirement for filing of certificate of correctness with the information filed. The domestic industry cannot be penalized on the basis of clerical human errors by 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 refused any 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 has shortage 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.
- x. Authority is required to determine injury margin only in those cases where the Designated Authority finds that the imports are causing injury – whether it is a fresh case or a midterm review or a sunset review. Injury margin is not to be calculated if the finding is based on likelihood and merely same quantum of ADD as existed is confirmed as has been the practice of the Authority.

EXAMINATION OF THE AUTHORITY

21. 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.

22. 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.
23. 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 years. The domestic industry also 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 that may arise when anti-dumping duty is withdrawn.
24. 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.

25. 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.
26. 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 Gujarat High Court has held that NIP is not required to be determined in the present case when there is no material injury being caused to the domestic industry.
27. 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 related to two different final findings and duty notifications involving different set of countries and therefore, it would not be appropriate to combine both these mid-term reviews .
28. 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 does 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. The Authority also notes that GHCL and Nirma were expanding their capacities during the present POI and the same have now gone commercial.
29. 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.

F. Determination of Dumping Margin

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

Submissions made by the Applicant and Other Interested Parties

30. 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. 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.
- iii. 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.
- iv. Since the imposition of anti-dumping duties by India against Russian imports, the Russian exports of Soda Ash to India have gone down drastically.
- v. Worldwide increase in soda ash prices is the result of increase in the prices of raw materials. Therefore, the impact of Russian prices on Indian soda ash sector is not possible in the foreseeable future.
- vi. The export price of soda ash of ETI and Soda Sanayii has gone up significantly. Exports by ETI Soda Ash are not causing any injury to the domestic industry.
- vii. The Authority has to disclose the methodology and basis for the normal value computation for Russia and China as per Rule 17 of the AD Rules and Articles 12.2.2 of GATT. Further mere statement that it is on the *basis of best information available* is not sufficient as in the case of Kenya and Iran. So, the basis and data used for computation has to be disclosed.

Submissions made by the domestic industry

31. The submissions made by the domestic industry with regard to market economy, normal value, export price and dumping margin are as follows:
- i. 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.
 - ii. 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.
 - iii. The dumping margins are not only de-minimis but also substantial.
 - iv. 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.
 - v. The domestic industry has provided price prevailing in the country which is what needs to be considered.

- vi. The domestic industry has followed conservative approach with respect to evidence taken for various adjustments.
- vii. The Authority should take the highest normal value and lowest export price transaction in order to determine dumping margin for non-cooperative exporters.

G. DETERMINATION OF NORMAL VALUE

Normal value in case of Turkey

32. The Authority notes that exporter's questionnaire response has been submitted by only two producers/exporters of Turkey namely Soda Sanayii A.S. and ETI Soda. The same has been accepted by the Authority and considered for the purpose of determination of normal value, export price and dumping margin.

Soda Sanayii A.S, Turkey

33. Soda Sanayii A.S, Turkey has reported total domestic sales of ***** MT of subject goods during POI with gross invoice value of ***** TL. Adjustment has been claimed on account of discount, inland freight, warehouse charges, credit cost and inventory carrying cost. The Authority has admitted the adjustments as claimed and determined the normal value at ex-factory level in respect of Soda Sanayii A.S, Turkey. The normal value so determined for Soda Sanayii A.S, Turkey has been mentioned in the dumping margin table given below.

ETI Soda, Turkey

34. ETI Soda, Turkey has reported total domestic sales of ***** MT of subject goods during POI with gross invoice value of ***** TL. Adjustment has been claimed on account of inland freight and credit cost. The Authority has admitted the adjustments as claimed and determined the normal value at ex-factory level in respect of ETI Soda, Turkey. The normal value so determined for ETI Soda, Turkey has been mentioned in the dumping margin table given below.

Non Cooperative exporters of Turkey

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

Normal value in case of Russia

36. The Authority notes that none of the producers/exporters from Russia has cooperated

and 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 Russia. The normal value so determined for Russia has been mentioned in the dumping margin table given below.

H. EXPORT PRICE

Turkey

Soda Sanayii A.S, Turkey

37. As per the exporter's questionnaire, during the POI, Soda Sanayii A.S, exported **** MT of subject goods to India for the gross invoice value of US\$ ****. The company claimed adjustment on account of inland freight, clearing and handling charges, credit cost, net forex gain/loss, duty draw back. However, the Authority notes that the claimed adjustments on account of net forex gain/loss cannot be accepted since the same is not directly related to the export sales. As regards claimed adjustment on account of duty drawback, the same cannot be acceded without being substantiated with supportive documents. Therefore, after making the price adjustments on account of inland freight, clearing and handling charges and credit cost, the net export price, at ex-factory level, has been determined. The details of the net export price so determined for Soda Sanayii A.S have been mentioned in the dumping margin table given below.

ETI Soda, Turkey

38. As per the exporter's questionnaire, during the POI, ETI Soda, Turkey exported ****MT of subject goods to India for the gross invoice value of US\$ ****. The company claimed adjustment on account of inland freight, overseas transport, overseas insurance, and bank charges. After making price adjustments, as claimed by the Company, the net export price, at ex-factory level, has been determined. The details of the net export price so determined for ETI Soda, Turkey have been mentioned in the dumping margin table given below.

All other exporters of Turkey

39. The Authority notes that no other exporter from Turkey 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 of Turkey as the net export price after making the due adjustments. The net export price so determined for the non-cooperative exporters from Turkey has been mentioned in the dumping margin table given below.

All exporters of Russia

40. The Authority notes that none of the exporters/producers of subject goods from Russia

has cooperated and responded to the Authority in the form and manner prescribed. In the absence of exporter's questionnaire response from the producers/exporters from Russia, the Authority has determined the export price on the basis of best available information in terms of Rule 6(8) of the Rules. The export price so determined at ex-factory level for all exporters of Russia has been mentioned in the dumping margin table given below.

I. DUMPING MARGIN

41. 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.. The dumping margin during post- POI has come down drastically and has become negative in case of Turkey . There is however marginal increase in dumping margin in the post-POI in case of Russia

POI(2014-15)

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
Turkey	Soda Sanayii A.S	****	****	****	****	20-30
	ETI Soda	****	****	****	****	0-10
	Non- Cooperative	****	****	****	****	25-35
Russia	All	****	****	****	****	25-35

Post POI(April 2015 – Sep 2015)

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
Turkey	Soda Sanayii A.S	****	****	****	****	Negative
	ETI Soda	****	****	****	****	Negative
	Non- Cooperative	****	****	****	****	10-20
Russia	All	****	****	****	****	30-35

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

Submissions made by the Applicant and Other Interested Parties

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

- i. Import is occurring only because domestic producers are 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. 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.
- iv. Net Sales Realisation (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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. 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.

- x. 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.
- xi. 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.
- xii. 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.
- xiii. 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.
- xiv. 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.
- xv. 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.
- xvi. The capacity of the domestic producers has not increased from the period of 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
- xvii. 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.

- xviii. There is no injury to the domestic producers for last two years from imports , examined with or without Anti-dumping Duty. It can thus be concluded that there is no need to continue Anti-dumping Duty, which is an unnecessary burden on the users.
- xix. 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 then 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.
- xx. 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 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.
- xxi. 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.
- xxii. Annexure III under the AD Rules clearly says that 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.
- xxiii. The claim that the duties should be continued to protect an anticipated future investment which is not of any concrete nature has no tenability.
- xxiv. 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.
- xxv. 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 effect on various industrial and consumer items.

- xxvi. 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.
- xxvii. 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.
- xxviii. There is no relation between import volume and prices. 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.
- xxix. The price at which imported goods 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.
- xxx. 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. 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.
- xxxiii. 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.
- xxxiiii. 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.

- xxxiv. 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 but are 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.
- xxxv. 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.
- xxxvi. 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.
- xxxvii. 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.
- xxxviii. 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.
- xxxix. 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.

- xl. DI contended that Freight charges needs to be included in the NIP calculation, the issue is *sub-judice* before the Delhi high court. Annexure III of the AD Rules clearly says that freight outward, which is a post manufacturing expense shall not be considered for the purpose of NIP.
- xli. There is no evidence to establish that injury is being suffered by the DI. Further imports and market share of imports from subject countries have declined therefore volume of imports from subject countries have become insignificant and incapable of having negative impact on the DI.
- xlii. Di's stand is that Authority should not allow any import at a price lower than the DI selling price. However, DI is arbitrarily fixing a very high selling price and trying to block the imports from all significant producers of soda ash overseas.
- xlili. Imports are not suppressing or depressing the price as the selling price of the DI has increased by 23% in the POI as compared to the base year while the cost of sales has increased by 6% only whereas post --POI selling price of the DI increased but the cost of sales has decreased.
- xliv. The performance of DI has improved in respect to all economic parameters. Production and sales have increased, capacity utilization has remained above 80%, inventories have decreased, profits have increased including cash profits and ROI and even the employment have increased marginally,
- xlv. There is massive increase in profitability and NSR with no effect of price suppression and depression. Except the export performance l DI has overall performed very well.
- xlvi. Price undercutting is relevant only in case where there is price suppression or depression caused by the imports. But in present case there is no price suppression or depression and so it has no relevance in the present case,
- xlvii. During the POI DI has sold its goods at par with the landed price of imports even then DI have earned a ROI which is more than 22%. So, withdrawal of duty will not change the situation,
- xlviii. Capacity expansion by the DI is vague without the date of commencement of such capacity addition. Further the DI should get ROI of Rs. 8839/- Per MT to make any investment viable.

SUBMISSIONS MADE BY THE DOMESTIC INDUSTRY

43. 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 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.
- 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.
- ix. The reliance on Brazilian practices related to lesser duty rule 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 for certain 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.
- 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.
- 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. 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 the imports occurring at present are materially below the NIP of domestic industry even considering the imports in terms of Indian rupee
- xv. 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 and thus there is no decline in consumption of Soda Ash for production of detergent.
- xvi. There is no evidence or basis for the claim that comparison of landed value with NIP and NSR with the price of resold imported goods, which were higher than the landed value shown at the port of import.
- xvii. As regards ROCE, the plants being operated by industry are depreciated yielding very low returns. Since net fixed assets don't represent true value the domestic producers have considered present value of investment for calculating ROCE.
- xviii. 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.
- xix. 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.
- xx. As regards the argument that the landed value simply 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.

- xxi. As regards the profit margin being considered unreasonable, it is submitted that any business making investment would legitimately expect such a return.
- xxii. As regards the allegation of adjustment of 20% in price, the domestic industry claims no such adjustment.
- xxiii. There is no evidence to support the possibilities that there may be grades that are not substitutable.
- xxiv. 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.
- xxv. As regards the domestic industry's proximity to raw material availability is concerned, such proximity has lowered cost in favor 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.
- xxvi. 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.1290 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.
- xxvii. The price reported by IHS Chemical Global Soda Ash 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.
- xxviii. The increase in landed price of imports was 32% and not 56% as claimed by the interested parties.
- xxix. 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.
- xxx. Profitability of domestic industry is far adverse in Southern and Eastern regions due to import competition.
- xxxi. The overall demand has increased over the injury period. Imports have increased over the injury period despite antidumping duty in force.

- xxxii. Imports have also increased in relation to production
- xxxiii. Price would be significantly positive in the event of revocation of anti-dumping duty.
- xxxiv. 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.
- xxxv. 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.
- xxxvi. 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.
- xxxvii. 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.
- xxxviii. The causal link has already been established in the original investigation. The dumped imports from subject countries have increased despite antidumping duties in force.
- xxxix. 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.
- xl. 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.
- xli. 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.
- xlii. 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.
- xliii. 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.
- xliv. A comparison of non injurious price of the domestic industry with landed price of

imports without including associated freight will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry.

- xlvi. 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.
- xlvi. 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.
- xlvi. 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 therefrom, 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.
- xlvi. Volume of the exports from subject countries to India during the POI and post POI shows a massive growth in exports and also at dumped prices. In the event of premature withdrawal of the anti-dumping duties, dumping shall not only continue but also intensify
- xlvi. There exists significant level of past and current dumping which has not been disputed by the exporters.
 - i. Heavy discounts are being given by the domestic industry on the list prices. Therefore, selling price (after discounts) are materially below the price lists
 - ii. The plants being operated by industry are depreciated. NFA don't represent true value of the domestic producers' assets value. The Authority should consider present value of investment for calculating ROCE. Capital employed by domestic industry at net book value is not appropriate figure for determining return on capital employed. Present capital employed is against capacity of 29,94,435 MT; whereas 4,025 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.
 - iii. Price undercutting is significantly positive in the event of revocation of anti-dumping duty. Transportation cost forms a very substantial portion of the cost of production and the incidence of which is substantial. Thus selling price should be compared with the landed price of imports only after adding the transportation costs. The rule does not provide how undercutting needs to be determined, therefore there is no bar in considering application of principles of fair comparison for determination of price undercutting
 - iiii. India's position before the WTO is also that the comparison of the imported product price be made with the domestic industry price as close as possible to the point of consumption. It would be discrimination against the domestic industry in case the same

- is not applied by its own Authority
- liv. Authority has in past have adopted different methodologies such as Product type wise (PCN wise) determination of price undercutting, Month wise or quarterly determination of price undercutting, adjustment of post sales expenses - warrantees, guarantees, mandatory spare parts, Indian office expenses, which shows recognition and acceptance of the principles of fair comparison by the Directorate
 - lv. The purpose of determining price undercutting is to determine the effect of the dumped imports. These prices can only mean delivered prices at the consumers place, as this is the only place whether the dumped imports affect the domestic industry.
 - lvi. The issue of freight is being contended by the domestic industry in the context of price undercutting and injury margin, whereas it is being considered by the Directorate in the context of determination of NIP. The issue has been diverted to NIP determination by interested parties in order to protect their malafide interests
 - lvii. In the matter of white cement, the authority had allowed freight cost for determination of price undercutting and injury margin at the stage of original investigation as well as first sunset review. However, the authority was misled into believing that the freight cost is an issue of NIP determination and since India has introduced NIP law by them, the freight cost could not be permitted for determination of injury margin

EXAMINATION BY THE AUTHORITY

44. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury.
45. 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.
46. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.

K. Cumulative assessment

47. 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.

48. 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 supplied from various subject countries and by the domestic industry are 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.

49. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from Turkey and Russia 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.

50. 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.

51. 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.”

52. 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.

53. 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

54. 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:

Particular	UO M	2011- 12	2012- 13	2013- 14	POI(2014- 15)	Post POI	Post POI Annual ized
Demand in India-Including Captive							
Sales of Domestic Industry	MT	14,31, 825	15,19, 990	15,78, 148	16,01, 302	8,22,6 79	16,45,3 57
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>110</i>	<i>112</i>	<i>115</i>	<i>115</i>
Sales of Other Indian producers	MT	7,51,4 93	7,26,4 75	7,37,5 88	7,55,1 69	3,79,5 82	7,59,16 4
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>98</i>	<i>100</i>	<i>101</i>	<i>101</i>
Total Domestic Sales	MT	21,83, 318	22,46, 466	23,15, 737	23,56, 471	12,02, 261	24,04,5 21

<i>Trend</i>	<i>Indexed</i>	100	103	106	108	110	110
Imports- Subject Countries	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	35	35
Imports- Other Countries attracting duties	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	211	211
Imports- 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	57	57
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>	100	112	110	117	119	119
Market Share in Demand							
Domestic Industry	%	54.49	51.72	54.73	51.98	52.40	52.40
Other Indian Producers	%	28.60	24.72	25.58	24.51	24.18	24.18
Indian Producers as a whole	%	83.09	76.44	80.31	76.50	76.57	76.57
Subject Countries	%	4.21	4.05	2.15	1.59	1.23	1.23
Other Countries attracting duties	%	12.55	18.83	16.97	21.87	22.13	22.13
Other Countries	%	0.15	0.67	0.56	0.04	0.07	0.07

Note : Post-POI : (April 15-Sept 15)

55. 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.

L. Volume Effects of Dumped Imports

Import Volume and Market Share

56. 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 (2014-15)	Post POI (April 15-Sept 15)	Post POI Annualized
Import Volume							
Turkey	MT	61,670	89,842	62,103	42,114	10,125	20,250
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>146</i>	<i>101</i>	<i>68</i>	<i>33</i>	<i>33</i>
Russia	MT	49,025	29,171	-	6,957	9,180	18,361
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>60</i>	<i>-</i>	<i>14</i>	<i>37</i>	<i>37</i>
Subject Countries	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>35</i>	<i>35</i>
Other Countries attracting duties	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>211</i>	<i>211</i>
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>57</i>	<i>57</i>
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>	<i>100</i>	<i>156</i>	<i>128</i>	<i>163</i>	<i>166</i>	<i>166</i>
Market Share							
Turkey	%	13.87	12.98	10.94	5.82	2.75	2.75
Russia	%	11.03	4.21	-	0.96	2.50	2.50
Subject Countries	%	24.90	17.19	10.94	6.78	5.25	5.25
Other Countries attracting duties	%	74.21	79.95	86.20	93.06	94.45	94.45
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

57. The Authority notes that from the subject countries as a whole, imports have decreased in absolute terms from 1,10,695 MT in the base year to 49,071 MT in the POI. The decline has been sharp (more than 60% as compared to the base year). Subject country wise analysis reveals that import from Turkey has declined whereas that from Russia has declined sharply in POI and then increased during post POI .

58. The market share of the subject countries has witnessed a steep decline (from share of 24.90% in the base year to 5.25% in the post POI

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

59. 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.

60. Price suppression and depression effects of the dumped imports:

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	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	100	126	122	136	149
Cost of Sales	Rs./MT	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	100	101	110	106	102
Selling Price	Rs./MT	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	100	108	113	123	125

61. . The selling price has increased consistently year on year establishing the absence of depressing effect on the domestic price. The increase in selling price has however not kept pace with the increase in landed value of imports except during 2013-14 . Sales price has continuously gone up despite decline in cost of sales POI and post-POI

Price Undercutting

62 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 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. The domestic industry contended that freight should be included for determination of price undercutting. The Authority however notes that the product under consideration was determined at the time of original investigation after excluding freight from the selling price and the present review is only a mid-term review of existing ADD. The Authority has therefore continued to determine price undercutting by considering domestic industry selling price at ex-factory levels.

Particulars	Unit	2011-12	2012-13	2013-14	POI	Post POI
Turkey						
Landed price of imports	Rs./MT	11,610	15,295	14,730	16,548	19,475
Net Sales Realisation	Rs./MT	****	****	****	****	****
Price Undercutting	Rs./MT	****	****	****	****	****
Price Undercutting	%	****	****	****	****	****
Price Undercutting	% Range	20-25	0-5	10-15	5-10	Negative
Russia						
Landed price of imports	Rs./MT	12,714	15,003	-	16,265	16,330
Net Sales Realisation	Rs./MT	****	****	****	****	****
Price Undercutting	Rs./MT	****	****	****	****	****
Price Undercutting	%	****	****	****	****	****
Price Undercutting	% Range	10-15	5-10		10-15	10-15
Subject countries as a whole						
Landed price of imports	Rs./MT	12,099	15,223	14,730	16,508	17,979
Net Sales Realisation	Rs./MT	****	****	****	****	****
Price Undercutting	Rs./MT	****	****	****	****	****
Price Undercutting	%	****	****	****	****	****
Price Undercutting	% Range	15-20	5-10	10-15	5-10	0-5

63 The Authority notes that while in case of Russia the price undercutting has increased during POI and further marginally during post POI, in case of Turkey the price undercutting has declined during POI and has become negative during post POI by declining further.

N. Examination of other Economic Parameters of Domestic Industry

Production, Capacity, Sales and Capacity Utilization

64 The Production, Capacity and Capacity Utilization details are as follows:

Particulars	UOM	2011-12	2012-13	2013-14	POI	Annualised Post POI
Installed capacity	MT	19,61,000	19,61,000	19,61,000	19,61,000	20,31,000

Particulars	UOM	2011- 12	2012- 13	2013-14	POI	Annualised Post POI
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>104</i>
Production	MT	15,78,674	16,11,377	16,02,002	16,45,154	16,96,272
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>101</i>	<i>104</i>	<i>108</i>
Capacity Utilization	%	80.50%	82.17%	81.69%	83.89%	83.52%
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>101</i>	<i>104</i>	<i>104</i>
Domestic Sales	MT	12,67,561	13,86,286	14,66,643	15,03,224	15,36,499
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>109</i>	<i>116</i>	<i>119</i>	<i>122</i>
Demand	MT	26,27,793	29,38,694	28,83,324	30,80,449	31,40,157
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>112</i>	<i>110</i>	<i>117</i>	<i>119</i>

65 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:

66 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>

67 It is noted that average inventories has more or less remained constant prior to POI , then witnessed decline during POI and then increase during the post-POI period .

Profits and actual and potential effects on the cash flow

68 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. The return on investment has also witnessed significant growth and has improved further in the post POI. The domestic industry contended that the Authority should take into account that (a) the present assets are significantly depreciated and net fixed assets values are not representative and (b) the domestic industry has added capacity incurring significant investment. The Authority has however determined profit, cash profit and ROI on the basis of its consistent practice. In any case, the Authority notes that the future investments are not relevant to determine past injury and return on investment.

Particulars	Unit	2011-12	2012-13	2013-14	POI	Annualised Post POI
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>
Profit/Loss	Rs/MT	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>176</i>	<i>146</i>	<i>293</i>	<i>356</i>
Profit/Loss	Rs.Lacs	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>193</i>	<i>169</i>	<i>347</i>	<i>432</i>
PBIT	Rs.Lacs	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>146</i>	<i>133</i>	<i>215</i>	<i>256</i>
Cash Profit	Rs.Lacs	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>168</i>	<i>153</i>	<i>270</i>	<i>342</i>
Return of investment	%	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>141</i>	<i>140</i>	<i>233</i>	<i>279</i>

Employment, wages and productivity

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

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

It is noted by the Authority that though the increase in the number of employees during POI has been very marginal as compared to the base year yet there has been constant rising trend in respect of wages and employee productivity since 2012-13

O. Magnitude of dumping

70 It is observed that the dumping margin during post- POI has come down drastically and has become negative in case of Turkey. There is however marginal increase in dumping margin in the post-POI in case of Russia.

Growth

71 The Authority notes that the growth of the domestic industry was positive during POI as well post POI. in respect of selling price, profitability and return on investment. Growth in these parameters during post POI weakens domestic industry's argument of likelihood of injury

Ability to raise funds:

72 It is noted that the domestic industry has not enhanced its capacity of production of the subject goods from the base year to POI. However, the domestic industry has been incurring significant capital investment at present and has planned a gross investment of Rs. 1025 crores in enhancing capacities. This signifies that their ability to raise capital investment has not been affected adversely.

P. Conclusion on material injury

73 The Authority notes that during injury period, while the capacity of production has remained constant throughout the injury period, the performance of the domestic industry has improved 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. Thus, the Authority notes that the economic parameters of the domestic industry do not exhibit any injury suffered by them. Even the domestic industry has admitted that it was not suffering injury during the present period.

Q. Other Known Factors & Causal Link

74 Having examined the existence of injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting 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	Annualised Post POI
Exports	MT	****	****	****	****	****
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>28</i>	<i>34</i>	<i>14</i>	<i>8</i>

75 The Authority notes that the exports by the domestic industry have declined drastically during the POI as compared to the base year. The domestic industry contended at the time of original investigation that they were forced to export the product in view of dumping of the product in the Country, as recorded by the Authority under para 146 of the final findings of the original investigations. With the imposition of ADD, the domestic industry was able to increase domestic sales and reduce /lower exports.

76 From the above analysis, the Authority notes that neither the listed known parameters nor the other factors analysed above show any continued injury to the domestic industry either during POI or post POI. The economic health of the domestic industry has improved.

R. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

77 However, in a review investigation, the Authority has to determine as to whether the subject goods are continuing to enter or likely to enter the Indian market at dumped prices and 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 of 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 as;

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

b. Sufficiently 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

78 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 undergone 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 the duty cannot be withdrawn unless the dumping ceased or that there was no likelihood of recurrence of dumping, 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 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 incapacity 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 that 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. The price of subject goods from Turkey have increased significantly and volumes reduced and the price at which the subject goods were imported are not making any injurious effect on the domestic industry. Thus, there is no likelihood of continuation or recurrence of dumping in case of withdrawal of duty.
- viii. ETI Soda 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 ETI Soda is not under any volume pressure not it has any imminent fresh additional available volume. The company isn't having any significant inventory levels also. The inventories were less 1% of the total production by the company.
- ix. The circumstance in which anti-dumping duty was imposed has undergone substantial changes of lasting nature without any injury to the domestic industry and no likelihood of recurrence. Therefore, the duty needs to be withdrawn.
- x. 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 as are reflected in the world market and increase in export price to India is not a standalone event.
- xi. Further if the duties are removed exporters are going to increase the prices further due to demand supply gap present in India. DI is not able to meet the Indian demand including captive even after several year of duty imposition and having around 80% capacity utilization in the entire injury period.
- xii. There is no Likelihood of injury on account of additional capacities coming in Turkey. As there is no such additional capacity under POI or Post POI, thus there is no change in circumstances.
- xiii. Authority is required to examine surplus capacity and inventories with respect to the exporters in order to comply with requirement of Annexure II. In view of *Rishiroop Polymer Pvt. Ltd. Vs. DA* it has held that the inquiry has to be limited to the information received with respect to change in the various parameters.

Therefore, Authority can note insufficient or no information with respect to any aspect of investigation.

- xiv. Soda Ash consumption globally increasing @ 2-2.25% per annum and global production is 55 million MT. So, whatever is produced is consumed which leads to a further requirement of 1.25-1.50 MT extra soda ash annually to meet the demand.
- xv. Purpose of ADD is to eliminate the trade distorting effect of injurious dumping and not to continue the duty to protect the expected capacity additions. Decision of EC in the matter of imports of pure silk typewriter ribbon fabric originating in the China PR is placed in this reference,
- xvi. A case of threat of material injury and likelihood of injury are clearly different phenomenon in the AD agreement and they cannot be put together. Under the same basket. Rules does not talk about Principles of para (vii) of Annexure II I the context of the Review, the authority should not make it mandatory to adopt the said principles in the present case.

Submissions made by the Domestic Industry

79 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 even 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 but shall become operational in near future.
- iii. The dumping margin determined in previous investigations and present investigation is significant. Significant positive dumping margins itself warrants continuation of antidumping duty.
- iv. Parameters laid down for examining threat of material injury in fact shows that there is likelihood of injury to the domestic industry in the event of premature withdrawal of ADD.
- v. The injury margin was found negative in the review investigation period for the cases on Polypropylene from Singapore, Coumarin from China PR, Zinc Oxide from China PR, 'Front Axle Beam' and 'Steering Knuckles' from China PR, Chloroquine phosphate from China PR, Diclofenac Sodium from China PR, Acetone from European Union, South Africa, Singapore and USA. However, duties were extended in these cases.
- vi. Reference is invited to Acetone and Phenol review cases wherein Negative IM

- in POI for India and Positive IM for third countries in Period of Investigation were determined and thus duties were extended
- vii. Reference has been made to Polypropylene review case wherein Negative IM in POI for India & third countries, Negative IM in post-POI for India and Positive IM in third countries in post Period of Investigation, were determined and thus duties were extended
 - viii. Reference has been made to Ductile iron pipes, Caustic Soda from Taiwan, Potassium carbonate from Korea review cases wherein Negative IM in POI for India & third countries, Negative IM in post-POI for India and third countries were determined and the volume of injurious exports to India or third countries were found to be significant and thus duties were extended
 - ix. Reference has been made to Persulphates, Vitamin E, Sodium Formaldehyde Sulphoxlate, PVC Flex Film, Phenol review cases wherein Positive IM in POI for India, Positive IM in Post POI for Third Countries were determined and thus duties were extended
 - x. Reference has been made to White Cement, Zinc Oxide from China wherein Negative IM in POI for India & third countries, Negative IM in post-POI for India Negative IM in third countries in post POI were determined and thus duties were revoked
 - xi. Whenever the Designated Authority has found negative injury margin in these midterm reviews, the Designated Authority has examined as a matter of mandatory obligation under Rule 23(1)(a) whether the injury to the domestic industry is likely to recur or not in case the said antidumping duty is withdrawn.
 - xii. CESTAT has held in the matter of Kothari Sugars & Chemicals Limited Versus Designated Authority that in a situation where weighted average injury margin is negative, the authority is required to consider the volume of exports which were below NIP. This decision is in the fresh investigation and has been applied in number of cases in sunset reviews. While this decision is in the context of injury margin, the same is required to be applied to price undercutting also
 - xiii. The domestic industry submits that price underselling is entirely irrelevant for determining price attractiveness. There is no way exporters would consider the NIP of the domestic industry and determine whether the Indian market is attractive to them.
 - xiv. Significant exports from each of the subject countries to a number of countries in the world are at such low prices that the resultant price undercutting is positive. There are significant unutilized capacities in subject countries. This clearly establishes likelihood of injury.
 - xv. Price attractiveness of Indian market shows that the exporters would divert their third countries exports and/or utilize their surplus capacities to export significant volumes to Indian market at lower prices
 - xvi. Significant volume of exports from subject countries to other countries in the world are having positive dumping margin and price undercutting, diversion of these exports from third countries to India is imminent in view of price attractiveness of Indian market.
 - xvii. Authority is required to undertake following tests for examining recurrence of injury, namely, whether price undercutting in respect of exports to India during

- POI is positive, whether price undercutting in respect of exports to India during post-POI is positive, whether price undercutting in respect of exports to various third countries during the POI is positive, whether price undercutting in respect of exports to various third countries during the post POI is positive and the volume of exports to third countries during POI which was at a price below (i) selling price of the domestic industry and (ii) export price to India and whether such volume of exports is significant having regard to Indian demand
- xviii. Exporters have not filed SSR questionnaire part II which requires information such as expansions including planned dates and capacity/production quantities involved, and the reasons for such change, the markets (countries) to which such additional capacity or production would be directed with evidences; Identification of export markets (other than India) developed as a result of the antidumping duty, significance of the existing ADD in terms of its effect on production capacity, production, home market shipments, exports to India and other markets, and inventories, changes expected with withdrawal of ADD. Further information is sought for production, exporter and other exporter sales in domestic market, demand, exports by the exporter and other exporter to third countries, for three years period and potential information for two years.

Examination by the Authority

- 80 The Authority examined the likelihood of continuation or recurrence of injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules keeping in view the directions of the Hon'ble High Court of Gujarat in SCA 16426 to 16429 of 2016. The Hon'ble High Court, *inter alia*, has observed as under:

Thus, though most of the factors which are required to be taken into consideration for the purpose of determination of injury, namely, increase in volume, increase in dumping, increase in margin of dumping and price undercutting are all positive and only price suppression and price depression are absent, the designated authority, instead of relying upon the said factors for the purpose of basing his decision as to whether or not to continue with the determinative measures, has placed reliance upon an irrelevant factor, viz., injury margin, which is not required to be taken into consideration while considering the likelihood aspect under clause (vii) of Annexure II to the rules. Clause (vii) of Annexure II to the rules provides for four factors which are required to be taken into consideration, viz.: (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 markets, 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 increase demand for further imports; and (d) inventories of the article being investigated.

Out of the above four factors, the designated authority has taken into consideration the factors prescribed under sub-clauses (a) and (c). However, insofar as sub-clause (c) is concerned, the designated authority has placed reliance upon incorrect facts, namely, though the price undercutting is positive, it has considered the same to be negative and drawn its conclusions accordingly.

Insofar as the factors prescribed under sub-clauses (b) and (d) of clause (vii) of Annexure II to the rules are concerned, it, however, has been contended on behalf of the respondents

that the designated authority has also considered those factors. In this regard, a perusal of the disclosure statement shows that while the designated authority has taken into consideration the above two factors, it is manifest that while doing so, it has taken into consideration incorrect facts, inasmuch as, instead of considering the capacity of production

of the exporters indicating the likelihood of substantially increased dumped exports to Indian markets, as contemplated under sub-clause (b), it has taken into consideration the capacity of production of the domestic industry; and instead of taking into consideration the existence of inventories of the dumped imports that could meet any increase or future demand for the imports, has taken into consideration the inventories of the domestic industry. Evidently therefore, the designated authority has failed to follow the procedure laid down under clause (vii) of Annexure-II to the rules for the purpose of determination of threat of material injury in the manner prescribed thereunder.

The Hon'ble Court further observed that

Thus, the designated authority has based its findings on essential facts based upon the "injury margin" and "price underselling" as well as the fact that price undercutting is negative. As noted hereinabove, insofar as the injury margin and price underselling are concerned, the same are not relevant factors at the stage of examination of likelihood of injury in a disclosure statement. The designated authority was, therefore, not justified in placing reliance upon factors like "injury margin" and the "price underselling" while considering the question of likelihood of injury to the domestic industry in case of revocation of duties.

- 81 In view of above, while considering the likelihood aspect under clause (vii) of Annexure II to the Rules the Authority considered, inter alia, following factors as:

Whether there is significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

- 82 Subject country wise analysis reveals that import from Turkey has declined continuously from 2012-13 till 2016-17 whereas that from Russia has declined sharply in POI and then increased during 2015-16 and 2016-17 for which DGCI&S data was obtained by the Authority .

Whether there is sufficient freely disposable or an imminent, substantial increase in capacity of the exporter

83 This parameter for ascertaining the threat of material injury requires evaluation of existing surplus capacities and capacity addition, if any , to explore the possibility of diversion of disposable quantity to Indian market . Domestic industry has claimed that the producers in subject countries are already faced with significant surplus capacities. The domestic industry has furnished copies of I H S Chemical journal which provides information regarding Soda Ash manufacturing in the subject countries viz. existing capacity, existing production , unutilized capacity and capacity expansion etc. . The table below reveals that against Indian demand of approx. 3 million MT, the unutilized capacity in the subject countries is approx. 1.146 million MT and capacity expansion (undertaken already as well as upcoming) is to the extent of 3.08 million MT. This data however is based on the premise that all Soda Ash manufacturing companies are to operate at 100% capacity utilization which may not actually be the case in reality. Some of the interested parties have even contended that the optimum capacity utilization of soda ash plants is approximately 80% only. The rule for determining likelihood analysis clearly prescribes that the analysis should be based on hard facts and not mere on conjectures or remote possibility.

Particulars	UOM	Subject Countries		
		Turkey	Russia	Total
Existing Capacity*	MT	21,70,000	37,84,000	59,54,000
Existing Production*	MT	19,11,750	28,95,750	48,07,500
Unutilized Capacity	MT	2,58,250	8,88,250	11,46,500
Capacity Expansion**	MT	30,80,000		30,80,000
Total Exports	MT	12,95,517	4,79,848	17,75,365
Export Orientation	MT	68%	17%	37%
Export to India***	MT	18,725	10,366	29,091
FOB Export Price to India***	USD/MT	253.38	196.63	
Export to Third Countries- Volume				
Total***	MT	12,76,792	4,69,483	17,46,275
Price Lower than India***	MT	12,53,510	31,179	12,84,689
Price Higher than India***	MT	23,282	4,38,304	4,61,586
Export to Third Countries-Price				

Total***	USD/MT	190.45	217.60	
Price Lower than India***	USD/MT	188.53	189.86	
Price Higher than India***	USD/MT	293.49	219.57	

Source:

*IHS Chemical Supplement September 2015

** IHS Chemical Global

*** World Trade Atlas

Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices

84. On analysis of the data , it is noted that the selling price has increased consistently year on year establishing the absence of depressing effect on the domestic price. The increase in selling price has however not kept pace with the increase in landed value of imports except during 2013-14 . Sales price has continuously gone up despite decline in cost of sales POI and post-POI

Level of inventories

85. The level of inventories available with the producers in subject countries could not be ascertained in view of lack of sufficient cooperation. Accordingly, this parameter for ascertaining threat of injury/likelihood of injury could not be examined by the Authority

Export Orientation-

86. Export orientation of subject countries as a whole is 37% . While for Turkey this is 68% , it is only 17% in case of Russia .

Price attractiveness of Indian market

87. The Authority notes that the landed value of imports from the subject countries as a whole is lower than selling price of the domestic industry thus showing positive price undercutting during POI as well as post POI. However, individual country-wise analysis indicates that for Turkey the price undercutting has not only declined during POI but has reached negative zone during post –POI . Further, WTA (World Trade Atlas) data establishes that exports from subject countries to a number of other countries have been found at a price lower than the export price from these countries to India. The volume of such exports is 1.28 Million MT amounting to 41.55% of existing demand

in India . However, to conclude that on revocation of anti-dumping duty the volume of such low-priced exports would get diverted to the Indian market would be too far-fetched .Such analysis can throw misleading results if the low volume export transaction has been made to India at a relatively higher price. Then the price is related to the grade of the product as well. Moreover, it is not so easy to switch the market just on the possibility of a hike in export price by few notches on account of withdrawal of anti-dumping duty. So, the analysis on this criterion is full of conjectures and possibilities and does not lead to any definite conclusive result.

S. POST DISCLOSURE COMMENTS

88. The post disclosure submissions have been received from the interested parties. Majority of the issues raised therein have already been raised earlier during the investigation and also addressed appropriately. Additional submissions have been analysed as under:

Submissions made by the Applicant and Other Interested Parties

89. The submissions made by the applicant and other interested parties have been summarized as below:
- i. Gujarat HC remanded the matter on limited points; no new facts should be entertained at this belated stage. Rule 16 of AD Rules does not envisage submission of any new information or evidence. Thus proceeding not in accordance with observations of Gujarat HC.
 - ii. The oral hearing on 24/4/17 can't be said to be effective because interested parties were not provided by relevant data/information relied upon by the DA for arising at the basic facts under consideration. The World Trade Atlas/IHS data which has been relied upon has not been provided. Not providing the data is in contravention of basic requirement of law and principal of natural justice.
 - iii. Documents on record do not support the observation of the DA regarding new capacities of DI. DA should provide documents relating to Capacity enhancement, when the information relating to capacity enhancement was brought to DA's Notice.
 - iv. If data was available before first disclosure the authority ought to inform interested parties earlier, but if same has been submitted at a later stage, it amounts to new information hence it can't be injected in the present statement
 - v. There is no injury to DI from the dumped imports as they themselves admitted
 - vi. Price underselling may not be the decisive factor for likelihood but it is still essential ingredient to decide injury and must be analyzed
 - vii. Authority has backtracked from its previous stance in the earlier disclosure comments. Mere export orientation of the producers is not sufficient to prove that there will be dumped imports in the domestic market; it is dependent on other factors as well
 - viii. The Authority has incorrectly shifted the onus on the exporters to prove that there has been no change in production capacity, instead of asking the applicants to prove that there has been an increase in production capacity.

- ix. The Authority has deviated from previous disclosure statement where it said that the Landed Value of Imports was above NIP in the Indian market. However they have changed their stance, without any justification, to state that landed value as a whole from subject countries is lower than domestic selling price.
- x. Russia is providing exports at a price more than the Indian market; hence Indian market is not attractive to Russia. Turkey's exports have a negative dumping margin.
- xi. Combined analysis of subject countries with other countries attracting ADD is without authority of law. Causal link to be done for subject countries only. Combined analysis gives perverse results
- xii. Authority failed to note the decrease in quantum of imports from subject countries, rather relying on combined imports from all ADD attracting countries
- xiii. Authority has changed its stance from previous investigations where status as DI was denied on the ground of relation with importer/exporter. Here applicant is importer hence should be denied status as DI
- xiv. With regard to correctness of the information, failure of the domestic producers to provide correct information cannot be brushed aside on ground that verification had subsequently taken place.
- xv. Correct information ought to be provided to interested parties. Exporter response has been rejected on grounds of clerical mistake, improper address etc. in previous instances, why is a different approach being taken in the present case
- xvi. The data relied upon by the Hon'ble Designated Authority is outdated since it is for the post-POI period which is two years ago.
 - 1. Lack of disposable capacity in various subject countries clearly indicates that there is no likelihood of increasing imports from these countries.
- xvii. The capacity utilization as per the data provided in the disclosure statement indicates that capacity utilization in subject countries is around 80-85%. However, though there are unutilized capacities in the subject countries, these can't be classified as 'freely disposable capacities'.
- xviii. Historical data sourced from IHS clearly shows that Soda Ash plants operate at optimal levels with capacities of 80-85%;
- xix. Capacity utilization in the subject countries is already at optimal or near-optimal levels i.e. around 80-85% ;
- xx. Even the domestic industry (which has admitted it is not injured) is operating at a capacity utilization of about 83-84% in the POI and post-POI period
- xxi. As per IHS there is substantial demand for the product under consideration in the subject countries as well as other export destinations (other than India) whereby these markets can readily absorb the increased exports;
- xxii. The sales (about 0.03 million MT) from Russia amount to less than 1% of India's demand and are clearly negligible. Therefore, these figures may be out rightly ignored.
- xxiii. Although the exports to countries at price lower than India have taken place, the price of these exports is USD 196.63/MT – which is which only 6.77 USD/MT less than the price to India i.e. the difference between prices is barely 3%;
- xxiv. It seems highly unlikely that Chinese exporters will change their channel of sales and divert all these quantities to India for a mere 0.5% increase in price.
- xxv. As per the IHS Global Soda Ash Supplement (February 2017), the Indian market presently accounts for barely 7% of Russia's exports;

- xxvi. The main focus of Russia based producers in recent periods has been certain select export markets such as Kazakhstan and Belarus
- xxvii. The main focus of Turkey based producers in recent periods has been certain select export markets such as European Union, Middle East and Africa.
- xxviii. Revocation of anti-dumping duty would not cause Turkey to re-route its PUC to India since it has an already established in EU and more than 70% of Turkey's total exports are to the EU.
- xxix. The Petitioner revised its data with respect to the non-injurious price, therefore the Authority may have considered the Cost Accounting Record to calculate the cost of production since the PUC falls under the Cost Accounting Record.
- xxx. Initiation of SSR investigation raises serious questions on the fairness in which the present MTR is now being conducted by the Authority.
- xxxi. The said initiation is loosely subjected to the outcome of this MTR. However, it appears that the Authority has made up its mind to reverse its own earlier finding of no likelihood of injury else it would not have reached to any prima facie view on the SSR application filed by the domestic industry.
- xxxii. The Authority did not do the needful to complete the investigation in 60 days as directed by the High Court and now acted in a haste to initiate the SSR by citing certain technicalities which is highly tilted towards the interest of the domestic industry and have no judicious logic behind it.
- xxxiii. The level of increase in profits and overall performance of the domestic industry during the entire injury period and POI and also post POI period conclusively shows that there is not even an iota of chance that the injury is likely to continue or recur if the current duties are withdrawn.
- xxxiv. The anti- dumping duties on soda ash are being misused by the Soda Ash producers in India to resort to excessive profiteering.
- xxxv. The positive dumping margin found has no bearing on the performance of the domestic industry and such positive dumping margin does not vitiate the absence of likelihood of injury.
- xxxvi. Performance of the domestic industry has been extremely strong on all injury parameters in the entire injury period and also in the POI of present MTR and a similar trend followed in the post POI period as well. Even in original case the domestic industry was being able to sell at price higher than the NIP.
- xxxvii. The mandate of the remand back do not permit perusal of a fresh set of data and a decision has to be taken on what is there in the file of the Authority already particularly when such data is being relied upon without even disclosing such reports in its entirety.
- xxxviii. Some selected and sporadic pages from "IHS Chemical-Global Soda Ash cannot be relied upon to conclude on a crucial parameter like 'likelihood. Interested parties cannot provide their rebuttals until the complete report is provided
- xxxix. In fact the domestic industry had relied upon some pages from the same report in their written submissions and it was pointed out by us in our rejoinder submission that the very report contradicts the claims of domestic industry in certain other pages of the report.
- xl. The 9 pages document placed in the public file have the source of the report provided in the header of the document and month of the publication on the footer except page

number 7 and 8 [information about Turkey etc]. It appears like the page is manufactured. The report appears to be of a time after completion of the investigation.

- xli. WTA data relied upon by the Authority is also not provided to us.
- xlii. When the rule does not state that the likelihood should be examined as per the principles of Annexure II para (vii), the Authority adopting such principles directly is not understood.
- xliii. Marginally positive price undercutting do not suggest any likelihood of injury with the given state of extremely high levels of profit. The positive price undercutting is the result of extremely high price increases carried out by the domestic industry by misusing the AD duties on Soda Ash
- xliv. Certain exporters have participated in the present investigation and wherever there has been participation, the likelihood examination should be based on the data collected from such cooperation exporters and the Authority should not adopt facts available merely.
- xlv. There has not been any injury caused to the domestic industry on account of exports by ETI Soda neither in the POI nor in the post POI period. Also, there is no likelihood of injury with the price at which exports are made to India by ETI Soda
- xlvi. Scope of the review is restricted to the decision of the Gujarat High Court. Matter has been remanded back to complete investigation and issue final finding in 60 days. Considering 7 days for receipt of order from high court still the time frame has lapsed.
- xlvii. Most of the observations are on procedural part. Even if 4 factors for threat to material injury is taken into account the industry still does not suffer injury
- xlviii. Price undercutting analysis is irrelevant in cases where there is no price suppression and depression. Domestic industry is keeping its prices at a particular level and has thus not been impacted by the imports from the subject countries. Imports from the subject countries are not even causing negative effect on the prices of the DI.
- xlix. Although the volume of imports from the subject countries has increased, the same is purely for the reason that the domestic industry is incapable of meeting the rising demand
 - i. The United States has no plans for capacity expansion in the future and further nearly all its exports have been at prices above those to India. The data is an indication therefore that there is no reason to consider that there is a likelihood of increase in imports from the United States
 - ii. Merely the presence of an export orientation is not an indication of the fact that imports will increase to India if anti-dumping duties are withdrawn.
 - iii. If the duty is removed on imports of the subject goods, the exporters will only increase their prices further. As there is a demand supply gap present in the Indian market, there is no reason for the exporters to not capitalize on the rising demand as their customer base is already prepared to pay these higher prices.

Submission made by the Domestic Industry

90. The submissions made by the domestic industry have been summarized as below:

- i. The Designated Authority is requested to first decide the preliminary objection raised as to jurisdiction to carry midterm review without evidence of likelihood of injury

- ii. The onus to prove absence of continued injury and no likelihood of recurrence of injury to the domestic industry is onto the applicant before the Designated Authority. The said onus is not onto the domestic industry
- iii. The selling price of the domestic industry should be compared with the landed price of imports only after adding the transportation costs as transportation cost forms a very substantial portion of the cost of production.
- iv. The principles of fair comparison demand that the domestic price is compared with import price at the same level of trade. While such level of trade may normally be ex-plant vs. ex-factory level, there is no reason to believe that the level of trade is required to be invariably kept at ex-factory level as far as domestic industry is concerned.
- v. India's position before the WTO clearly supports the contentions of the domestic industry that the comparison of the imported product price be made with the domestic industry price as close as possible to the point of consumption.
- vi. There is significant increase in dumped imports during PPOI and post POI.
- vii. If ADD are withdrawn, the imports shall have significant suppressing or depressing effect on the prices of the domestic industry in the market.
- viii. There are significant exports from the subject countries to a number of countries globally where the prices are materially below the Indian prices. Further, the combined volume of these exports is much higher than the Indian demand for the PUC. The exporters are holding significant surplus and unutilized capacities and are therefore likely to enhance their exports significantly in the event of cessation of present anti-dumping duties
- ix. In a situation, where the duties have had a desired effect, there is sufficient evidence of likelihood of recurrence of injury and thus the Authority needs to extend the duties as imposed. It is a settled position of the Directorate that when there is no injury past duties, as imposed, are extended. Reference is made investigation on Polypropylene, Zinc Oxide, Potassium carbonate from Korea, Caustic Soda from Taiwan, and Ductile Iron Pipes from China etc..

Examination by the Authority

91. Submissions made by the interested parties have been examined as under:

- i As regards the submission that WTA and IHS data has not been provided and no new facts can be brought in, it is noted that no new facts have been entertained by the authority at this stage. The domestic industry has merely repeated their earlier submissions/information in their present post hearing written submissions. Information on exports from the exporting countries to various countries as per customs data of the exporting countries were provided by the domestic industry during the course of original review investigations. The Authority has merely used World Trade Atlas data to cross verify correctness of the claims made by the domestic industry. As regards disclosure of this WTA data to interested parties, it is clarified that WTA data is not a public domain information and is accessible to Govt. of India under an agreement signed with an international data compiling agency. This agreement with the agency prohibits Govt. of India from circulating this information to any interested party and public at large. The Authority has used this information only for cross verification of the claims of the domestic industry from its own sources. The domestic industry has adopted customs data of the exporting countries in order to establish their claim of likelihood. The authority has co-

related these customs data adopted by the domestic industry with world trade atlas and has found that the data corroborates. Thus, WTA data in the form of third countries' exports has in a way already been made available by the domestic industry in the form of customs data of the exporting countries. Merely because sources are different it does not mean that the information has not been disclosed to the interested parties.

ii As regards the argument that documents on record do not support the observation of the Designated Authority regarding new capacities of domestic industry, the Authority notes that the claims of capacity enhancement and related documents were provided by the domestic industry from the beginning of the investigation. Further, the capacities added by the domestic industry or the expenditure made towards it have not been considered in the present Findings.

iii As regards the argument that price underselling should have been examined, the Authority notes that having determined no injury to the domestic industry as also admitted by the domestic industry, the Authority has, in view of the order issued by the Hon'ble Gujarat High Court, not determined price underselling.

iv As regards the argument that the Authority has backtracked from the previous findings, the Authority notes that the previous findings have been quashed by the High Court of Gujarat and is non-existent now. Thus any reference to the previous findings holds no ground. Moreover, no conclusion has been reached at the disclosure stage and therefore it was premature on the part of interested parties to make any observation in this regard

v As regards the argument that Causal link analysis should be done for subject countries only, the Authority notes that the causal link has been done for the subject countries only.

vi As regards the argument that selected and sporadic pages from "IHS Chemical-Global Soda Ash cannot be relied upon and that the pages submitted by the domestic industry on likelihood appears to be manufactured , the Authority notes these documents were placed in the public file and opposing parties had ample opportunity to question the authenticity of these documents with evidence.

vii As regards the argument that the rule does not state that the likelihood should be examined as per the principles of Annexure II para (vii), the Authority notes that there is no set principles for determining likelihood of dumping and injury. However, the Authority has been applying these provisions for determination of likelihood of injury in review cases. The decision of the Gujarat High Court clearly states that the threat parameters laid down under the law are to be applied for likelihood examination. Further, the Authority has not restricted its analysis only on the basis of these parameters but has also examined other injury parameters brought out by the interested parties for examination of likelihood of injury to the domestic industry.

viii As regards the argument that the likelihood examination should be based on the data collected from cooperative exporters, it is noted that no information have been provided by such cooperating exporters on likelihood of injury and therefore the Authority has considered the best information available with the Authority.

ix As regards the argument that there is no likelihood of injury with respect to cooperating exporters, the Authority notes that the likelihood analysis is not based on individual exporters. Rather, the same is country specific.

x As regards imports from Russia, the Authority notes that though the dumping margin in case of imports from Russia is positive it does not have high export orientation. The dumping margin in case of imports from Turkey has declined in the post-POI and has become negative.

CONCLUSIONS

92. The Authority notes that the present investigation being a midterm review investigation, there should be evidence of likelihood of injury to the domestic industry in order to warrant continuation of duties. The relevant rule for determination of threat of injury/likelihood of injury in Annexure II (vii) of the Indian Anti-Dumping Rules states that “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”
93. The Authority on detailed scrutiny of facts has come to the conclusion that (i) No definite or conclusive trend is noticeable in respect of rate of increase of dumped imports. In fact, there is drastic decline in imports from Turkey not only during POI but also during subsequent two years (ii) There is no depressing effect on domestic prices caused by the import, leave alone significant depressing effect. There is no clear trend in regard to suppression effect also (iii) No examination of the inventories of the product under consideration with the exporters was possible on account of unavailability of this information due to lack of cooperation from the exporters (iv) There seems apparent availability of disposable capacity with the exporting countries but this estimate is based on variety of factors including the one that all Soda Ash plants are to run on 100% capacity utilisation which is a bit too far fetched and based on unrealistic possibility rather than on verifiable concrete evidence available in the public domain.
94. In view of above the Authority concludes that there is no likelihood of recurrence of injury on revocation of duty and therefore the continuation of anti-dumping duty is no longer warranted.

RECOMMENDATIONS

95. The Authority notes that the review investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link and likelihood of injury in terms of the AD Rules, the Authority does not recommend to continue the anti-dumping duty imposed earlier on

imports of subject goods from the subject countries as recommended vide Notification 14/3/2011-DGAD dated 9th February 2013, and imposed by the Central Government vide Notification No. 08/2013 – Customs (ADD) dated 18th April 2013.

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

(Dr. Inder Jit Singh)
Additional Secretary & Designated Authority