

Minutes of the meeting held on 29.12.2015

(Reference Trade Notice No 1/2015)

A meeting was convened on 29.12.2015 at 10.30 am in the Conference Hall in DGAD to discuss the suggestions/comments received from various interested parties for amending provisions of Annexure III of Antidumping Rules, which details the methodology for determination of Non-injurious price. The meeting was chaired by AS&DA and attended by all the officers of DGAD. Consultant (GR) was also present in the meeting.

Various individual domestic producers and Associations had challenged the Annexure III to the Antidumping Rules in the Hon'ble High Court of Delhi. Subsequently, all the petitioners had forwarded their suggestions to amend the provisions contained in Annexure III and mentioned through a separate letter that they were prepared to withdraw the pending writ petitions filed by them in the Delhi High Court if their suggestions for amending Annexure III were agreed to by the Government.

Since the petitioners constituted a small proportion of the interested parties, a decision was taken to place the amendments suggested by the petitioners on the website of DGAD through Trade Notice no 1/2015 and seek views of other domestic producers and interested parties like exporters and importers who have also stake in NIP Rules. All the responses received from various stakeholders were discussed threadbare in the meeting and the following decisions were taken:-

Issue	Decision	Reasons
a) Treatment of freight from factory to Depot	Not agreed	To arrive at injury margin, NIP at ex-factory level is compared with landed value at first port of import. In terms of clause 4(vii)(b) of Annexure III, NIP is determined at ex-factory level and post manufacturing expenses like freight outward are not considered in the computation of NIP. Similarly, freight incurred by the importer in transferring the goods from the sea port to the premises/depot of the importer is not considered to arrive at the landed

		<p>value. This is necessary to bring the importer and the domestic producer at par to determine the injury. Therefore, allowing the inland freight from factory to depot level would confer an undue benefit to the domestic producers not contemplated under ADD Rules. As such, the present practice is logical and in conformity with the spirit of ADD Rules.</p>
<p>b) Valuation of captive inputs</p>	<p>Not agreed</p>	<p>In terms of Clause (3) of Annexure III, NIP is required to be determined by considering the information or data relating to cost of production for the period of investigation in respect of the producers constituting domestic industry. Captive inputs are considered as reflected in the audited books of accounts viz. cost of production, market value etc. If domestic industry accounts for the captively produced inputs at cost of production, an additional return @ 22% on capital employed for assets utilized for producing such inputs is also allowed. In case, the company transfers the captively produced inputs at market value consistently and show it as such in the books of accounts, then such market value of captively produced inputs only is adopted for determination of NIP. Actual costs reflected in the books of accounts are real numbers and thus considering any other notional number would be devoid of merits and contrary to facts.</p>
<p>c) Presumption about utilization of inputs and production facilities</p>	<p>Agreed with modification. In place of suggested text "There</p>	<p>Clause 4(i), (ii) and (iii) stating that the best utilization of raw materials/utilities/production capacities aim at nullifying injury caused to the domestic industry by inefficient utilization of raw material, utilities, and production capacities. Domestic Industry contends</p>

	shall be no presumption that mere increase in consumption..” it will be modified as “There shall be rebuttable presumption that mere increase in consumption..”	that the increase in consumption may not be necessarily due to inefficiencies and mere presumption may not be the correct approach. The Designated Authority has reviewed the text and considers that in case the domestic industry has cogent reasons to support their argument; they may submit the same for consideration of the Authority depending on merits of the case. Accordingly, the suggested text that “There shall be no presumption that mere increase in consumption implies inefficient utilization of raw materials/utilities/ production facilities” may be modified to “There shall be rebuttable presumption that mere increase in consumption implies inefficient utilization of raw materials/utilities/ production facilities”
d) Treatment of interest bearing credit purchase in determination of NIP	Not agreed	Since the Authority considers cost of raw materials as reflected in the audited books of accounts maintained by the domestic industry, such raw material cost also includes the incidence of extended credit cost and other incidental costs. Further, the exporter does not raise any separate invoice relating to the incidence of inbuilt credit cost. The borrowing rates also vary from company to company based on its credit rating and past records. Further, it would not be easy to segregate the incidence of supplier’s credit from the combined invoice of sales of raw material. Therefore, the present practice of dealing such extended suppliers’ credit as current liability is logical and does not suffer from any infirmity.
e) Other proposed amendments in	Some of the suggestions	Clause (3) – insertion of <u>all</u> is accepted. Deletion of <u>cost</u> is not agreed as costing records maintained by

<p>the Text of Annexure III</p>	<p>made by the domestic industry agreed upon.</p>	<p>the company are the backbone of determination of cost of production.</p> <p>Clause (4)(i),(ii) and (iii)- Accepted with modification that <u>no presumption</u> replaced with <u>rebuttable presumption</u>.</p> <p><u>Clause (4)(iv)</u>: In view of above not accepted.</p> <p>Clause (4) (vii)(g): insertion of <u>abnormal</u> accepted.</p>
<p>f) Current practice on Return on Capital Employed @ 22%.</p>	<p>Not agreed</p>	<p>The return on capital employed is provided to service borrowed funds, corporate taxes and return on owner's capital. Therefore, domestic industry does not get whole of the return, rather only a portion out of 22% return considered in NIP, after serving interest on borrowed funds and discharging the corporate tax liability will be available to the domestic industry. Hence, the existing provisions do not warrant any change at this stage.</p>