

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

NOTIFICATION

NEW DELHI, the 7th April 2003

PRELIMINARY FINDINGS

Sub: Anti-Dumping Investigation concerning imports Ammonium Nitrate from Russia and Iran.

No.14/36/2002-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

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

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Gujarat Narmada Valley Fertilizers Company Limited (GNFC), M/s. National Fertilizers Limited (NFL), and M/s. Deepak Fertilizers and Petrochemicals Corporation Limited (DFPCL), on behalf of the domestic industry alleging dumping of Ammonium Nitrate originating in or exported from Russia and Iran (hereinafter referred to as subject country). The petition has been further supported by M/s. Rastriya Chemicals and Fertilizers Ltd.,
- ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from Russia and Iran. The authority notified the Embassies of Russia and Iran in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.

- iv. The Authority issued a public notice dated 20.09.2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom Code 3102.30 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from Russia and Iran.
- v. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by petitioner) and gave them an opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):
- vi. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- viii. The Authority provided a copy of the petition to the known exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential petition was also provided to other interested parties, wherever requested.
- ix. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
 1. JSC NEVINNOMYSSKY AZOT
NEVINNOMYSSK/OTHERS
RUSSIA
 2. ADANI GLOBAL AZE
P O BOX NO. 17186
JEBEL ALI, UAE
- x. The Embassies of the subject countries in New Delhi was informed about the initiation of the investigation in accordance with **Rule 6(2)** with a request to advise all concerned exporters/producers from their country to respond to the questionnaire within the prescribed time schedule. A copy of the letter, petition and questionnaire sent to the known exporter was also sent to the Embassies of the subject countries in accordance with Rule 6(3).
- xi. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
 1. M/s Indian Explosives Ltd., Kolkatta
 2. M/s IDL Industries Ltd., Hyderabad
 3. M/s IBP Company Ltd., Noida (UP)

4. M/s Premier Explosives Ltd., Secunderabad
5. M/s Solar Explosives, Nagpur
6. M/s Navabharat Explosives Company Ltd., Raipur
7. M/s Special Blast Private Ltd., Raipur
8. M/s Blastech (India) Pvt. Ltd., New Delhi
9. M/s Bharat Explosives Ltd., New Delhi
10. M/s Keltech Energies Ltd., Bangalore
11. Explosive Manufacturers Association of India, Nagpur

xii. Response/information to the questionnaire/notification was filed by the following exporters/producers:-

1. 1. M/s Joint Stock Company, Nevinnomyskiy Azot, Nizyaeva Street, Nivnnomyssk, stravropol region, Russia
2. 2. M/s. Joint Stock Company Azot, 618401, Russia, Prmregion, Berzniki
3. 3. M/s. Iran Petrochemical Commercial Company, No. 133-9, Valiasr. Ave, Vanak Sq., Tehran, Iran.

xiii. Response/information to the questionnaire/notification was filed by the following Importers/user/Associations.

1. M/s Keltech Energies Ltd., Bangalore
2. M/s IBP Company Ltd., Noida (UP)
3. M/s Bharat Explosives Ltd., New Delhi
4. M/s Premier Explosives Ltd., Secunderabad
5. Gulf Oil Corporation Ltd., Hyderabad
6. M/s Special Blast Private Ltd., Raipur
7. M/s Indian Explosives Ltd., New Delhi
8. M/s. IDL Industries Ltd., Hyderabad
9. M/s. Canpex Chemical Pvt. Ltd., Kolkata

xiv. Information regarding injury was sought from the petitioner(s), which was also furnished by the petitioner. The injury parameters of the following domestic producers were furnished:-

1. M/s Gujarat Narmada Valley Fertiliser Company Limited, Gujarat
2. M/s. National Fertiliser Ltd., Nagpur
3. M/s. Deepak Fertilisers and Petrochemicals Corpn Ltd., Pune

xv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained

by the Authority and kept open for inspection by the interested parties as per Rule 6(7);

- xvi. Additional information regarding injury was sought from the petitioner, which were also furnished;
- xvii. Some of the interested parties requested for the extension of time to file their responses to the questionnaire, which were granted with due consideration;
- xviii. Public hearing were held on 3rd December 2002, 13th January 2003 and 24th February 2003 in order to provide an opportunity to all interested parties to express their views;
- xix. Cost investigation was also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner. The cost data of the following domestic producers were provided and analysed;
 - 1. M/s Gujarat Narmada Valley Fertiliser Company Limited, Gujarat
 - 2. M/s. National Fertiliser Ltd., Nagpur
 - 3. M/s. Deepak Fertilisers and Petrochemicals Corpn Ltd., Pune
- xx. ****In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxi. Investigation was carried out for the period starting from 1st April 2001 to 30th June 2002 i.e. the period of investigation (POI).
- xxii. Copies of Initiation Notification were also sent to FICCI, CII, ASSOCHAM, etc for wider circulation.

B . VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

1. A. PETITIONER'S VIEWS

- i. The product under consideration in the present petition is Ammonium Nitrate. It is produced in various forms such as melt, prill, crystal, granules, flakes and lumps. The product is first produced in melt form and then it is solidified to obtain other forms. However, all the forms are like articles to each other.
- ii. Melt and solid forms are also like articles. As stated earlier, the product is first produced in melt form, which is then solidified to obtain prills, flakes, lumps etc. Whatever be the form, all High Density Ammonium Nitrate is converted into melt form for end application in the production of Water-gel/Emulsion Explosives. However, production of solid form requires small incremental

- production process and extra cost. Production of low density Ammonium Nitrate of course requires additional investment.
- iii. There is no restriction on imports of Ammonium Nitrate. The product falls under Open General License (OGL) category.
 - iv. It is an inorganic chemical and classified under chapter 31 of Customs sub-headings 3102.30 of the Customs Tariff Act. The Custom classification is indicative only and not binding on the scope of investigation.
 - v. The present petition has been jointly filed by Gujarat Narmada Valley Fertilizers Company Limited (GNFC), National Fertilizers Limited (NFL) and Deepak Fertilizers and Petrochemicals Corporation Limited (DFPCL)., with support of M/s. Rastriya Chemicals and Fertilizers Ltd., representing the domestic industry.
 - vi. There is no known difference in Ammonium Nitrate produced by the domestic industry in particular and Indian Industry in general and Ammonium Nitrate exported from Russia and Iran.
 - vii. There is no known difference in the technology adopted by the domestic industry and the manufactures in Russia and Iran.

DUMPING

- i. There were no imports of subject goods prior to 1999-2000. Exporters from Russia were exporting Ammonium Nitrate to European Union, Australia and USA. However, possibly after the imposition of anti dumping duty on imports of Ammonium Nitrate by European Union, Australia and USA, and recently by Hungary also, the exporters looked for other markets and started dumping Ammonium Nitrate in the Indian Market from the year 2001.
- ii. The product under consideration is classified under sub-heading no. 3102.30 under the Custom Tariff Act 1975. DGCI&S have published data for April 2001-February 2002. Moreover, we have information that large-scale imports of Ammonium Nitrate have taken place after Feb., 02. Therefore, information published by the DGCI&S has not been relied upon for determination of volume and value of imports of Ammonium Nitrate in India.
- iii. The Government of India has amended para 8 of the Rules on 4th Jan. 2002 which states as under:

"Para 8 of Annexure 1-Amended on 04.01.02

- a. The term "non market economy country" means any country which the Designated Authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub paragraph (3)

- b. There shall be a presumption that any country that has been determined to be, or has been treated as a non-market economy country for the purpose of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country.

Provided, however, that a non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the Designated Authority that establishes that such country is not a non market economy country on the basis of criteria specified in sub-paragraph (3)

- c. The Designated Authority shall consider in each case the following criteria as to whether:
 - i. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:
 - ii. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
 - iii. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
 - iv. the exchange rate conversions are carried out at the market rate;

provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

It is evident from the above that para 8, which was inserted on 31.5.2001 has been amended on 04.02.2002 in the following manner:

- a. The countries which have been treated by the Designated Authority or any other investigating authorities, who are members of WTO, as non-market economies during last three preceding years can be considered as non market economy.

- b. Firms, companies in all such countries, may provide relevant information (on market economy) and claim status of market economy treatment.

After determination that country is a non-market economy, The Designated Authority would follow para 7 of Annexure I for determination of normal value which is as under:

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.

- v. In the instant case, Russia is a non-market economy. Russia has been treated as non-market economy by European Commission in the past three years. European Union is member of World Trade Organization.
- vi. With regard to treatment of Russia as non-market economy by other WTO member's countries, European Commission in the matter of Certain grain Oriented Electrical Sheets and Strips (flat-rolled products) of a width not exceeding 50 mm from inter-alia Russia has treated Russia as a non-market economy.
- vii. Russia is a "non-market economy" country. Determination of normal value in Russia is to be done in accordance to the rules relating to non-market economies. Petitioners have estimated normal value on the basis of cost of production, after addition for selling, general and administrative expenses.
- viii. Efforts were made to get information on prices at which Ammonium Nitrate is being sold by the producers in Iran in their domestic market in the ordinary course of trade. It is understood that there is not significant consumption of Ammonium Nitrate in the domestic market of Iran. Otherwise also, no sufficient, reasonable and reliable evidence of published price of Ammonium Nitrate in the domestic market could be traced. Under the circumstances, it is considered appropriate to construct cost of production of Ammonium Nitrate in the domestic market in Iran.

INJURY

- i. The margin of dumping from each of the subject countries are more than the limit prescribed.
- ii. It may be seen that the quantum of imports from each of the subject country is more than the de-minimus limits. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly

compete with the like goods offered by the domestic industry in the Indian market. The Authority is, therefore, requested to assess injury to the domestic industry cumulatively from the subject countries.

- iii. Imports of Ammonium Nitrate from subject countries have increased significantly in absolute terms. The imports have been increasing year by year.
- iv. The imports are primarily coming from these countries only. Share of imports from Russia and Iran is as high as 99% of imports of Ammonium Nitrate.
- v. The export price from Russia has been falling steeply year by year.
- vi. The steep increase in imports in April-June, 02 has forced the domestic industry to curtail or restrict production, as the sales have fallen drastically.
- vii. Sales of the domestic industry have fallen drastically in April – June, 02. This is directly a result of significant volumes of AN imported in this period. Thus the imports have had a direct impact on the sales volumes of the domestic industry.
- viii. The domestic industry was able to increase its sales realization between 1998-99 and 2001-2002. However, the same declined significantly in April – June, 2002, the period in which significant volumes of AN have been imported. Thus, the imports have forced the domestic industry to reduce the selling prices. Further, in spite of reduction in the selling prices, the sales volumes of the domestic industry have declined. Thus, the imports have had both volume and price adverse effect on the domestic industry.
- ix. The imports are dumped at such significant prices that the landed price of imports is significantly below the selling price of the domestic industry. Dumped imports are causing severe price undercutting.
- x. Landed value of dumped imports is significantly below the cost of production of the domestic industry. Should the present trend of prices continue from Russia, the imports would have severe suppressing/depressing effect on the domestic industry.
- xi. The domestic industry is making financial losses from sale of the subject goods. The losses have increased in the current year (2002-03) as compared to previous years.
- xii. The employment level of the company has not undergone any significant change so far due to the prevailing legislation in the Country. Should the industry continue to face the present undercutting and underselling, the domestic industry would be forced to curtail the employment levels.
- xiii. It may thus be seen that the dumped imports of Ammonium Nitrate have caused material injury to the domestic industry. Significant deterioration in the performance of the domestic industry, particularly in April – June, 02 is a direct result of presence of significant volumes of imports in this period. Further, the imports are causing severe threat of material injury for the following reasons:-

1. The rate of increase in imports is significant.
 2. Imports are causing severe price undercutting. In fact, the petitioners understand that a number of consignment are underway.
 3. Russia is holding vast unutilized capacities. With imposition of anti dumping duty by other countries, the pressure on the exporters has increased.
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- xiv. There is a history of dumping, as is borne out by a number of cases faced by the Russian exporters which all have culminated in imposition of anti dumping duty.
 - xv. The importers are well aware that the price at which the material is being exported from Russia is a dumped price as the exporters have already faced anti dumping investigation by other authorities.
 - xvi. The injury is being caused by the producers/exporters from Russia in a short period. There were no imports from Russia till 1999-2000. However, imports are increasing year by year.
 - xvii. In a short time of two months (April and May, 2002), the producer/exporter from Russia and Iran have exported 32800 MT material to India, which represents about 12% on annualized demand. The imports on annualized basis represent about 72% of demand.
 - xviii. The demand of Ammonium Nitrate is increasing possible decline in demand is, therefore, not a reason for injury to the domestic industry.
 - xix. The domestic industry is not having absolute technology. The technology available with the domestic industry is at par with the producers world over. Export performance of the domestic industry has not suffered.
 - xx. Imports of Ammonium Nitrate from subject countries have increased significantly in absolute terms, further, the imports have increased significantly in relation to (i) production; and (ii) consumption in India.
 - xxi. Average stocks of Ammonium Nitrate with the domestic industry have increased significantly.
 - xxii. The profitability of the domestic industry has declined.
 - xxiii. The domestic industry has had positive growth only because other Indian Producers suspended production in this period. However, in spite of positive growth, the profitability suffered.
 - xxiv. Since the petitioner companies are multi product companies with subject goods forming a part of the products other effect of dumping was prevented from affecting the domestic industry on other areas. However, with each product being self sustained activity for each of the petitioner companies, should the present trend of prices continue in the market, the domestic industry has no option but to take other steps to keep its performance. Already, one of the petitioner companies, M/s. NFL has been forced to suspend one of its Ammonia Plant.

M/s. Indian Ammonium Nitrate Manufacturers Association

- i. The domestic industry have the capacity to supply of ammonium nitrate around 7 lac MT per annum against the demand of around 3 lakh MT per annum required by the Explosive Industry.
- ii. Pursuant to heavy anti dumping duties levied by USA, Europe and Australia, the Russian manufacturers have now chosen India as their dumping ground for Ammonium Nitrate. At the prices at which the product is being dumped into India, the domestic ammonium nitrate industry is on the verge of closure with SAIL, FCI and NFL already halting production.
- iii. Department of Fertilizer has requested to Ministry of Commerce to shift ammonium nitrate from OGL to restricted list of imports, and also requested CBEC to increase the custom duty to 100%.

2. IMPORTER/USER'S VIEW

M/s. Special Blasts Pvt. Ltd., and M/s. Indian Explosives Ltd.,

- i. During the period of investigation high density Ammonium Nitrate was imported in Prill form. Since there are no producers of this item in India as such not causing injury to the domestic industry.
- ii. All the domestic producers except Deepak Fertilizers & Petrochemicals Corporation Ltd., and M/s. Smartchem Technology Ltd., are engaged in the manufacture of Ammonium Nitrate in melt form. Ammonium Nitrate in melt, lump form is not a like article to the imported product.
- iii. In the context of the definition of "like article", Ammonium Nitrate in melt form and prill form are not commercially and technically interchangeable. Whereas, prills may to some extent substitute for melt, the reverse is not true.
 - a. Melt is a product, which exists only at a temperature of more than 100 degrees Celsius. Therefore, the storage and transportation of melt requires special equipment. Prills on the other hand, can be stored and transported at room temperature.
 - b. In order to use melt, costly storage tanks of stainless steel are required, which can maintain the required temperature so as to prevent solidification. No special storage is required for prills.
 - c. Expensive machines are to be installed in the user factory for maintaining the temperature at 100 degrees Celsius, around the clock throughout the year. The machines for maintaining the temperature will involve a substantial investment ranging from Rs. 10 lacs to 20 lacs for small units.
 - d. Melt can be transported only in stainless steel tankers, which are heavily insulated so that the temperature is maintained during the transportation. This

makes transportation unfeasible and expensive. The freight charges for melt from Maharashtra to Orissa/West Bengal would come on the higher side since these specialized tanker cannot carry any materials on the return journey and the freight charges cover both the to and fro movement of the tanker.

- e. The manufacturers of melt are mainly located in the Western part of the Country, and it is not practicable to transport the melt to users in distant locations, such as Orissa, and West Bengal. If for any reason there is a delay or mishap in transit, the melt may solidify in the tanks making it difficult to unload and use.
- f. The units engaged in the manufacture of melt are located primarily in Maharashtra, Gujarat and Punjab. Their sales of melt have been made in areas proximate to the factories that is in Maharashtra, UP and Andhra Pradesh. There is negligible quantity of sales of melt to users in West Bengal, Orissa, Madhya Pradesh and Bihar due to practical difficulties.
- g. That melt and prills are not interchangeable or substitutable is evident from the fact that when both prills and melt are available, the price of prills is substantially higher than that of melt.
- h. Prills are costlier by approximately Rs. 2000 per tonne. The physical characteristics of ammonium nitrate determine the utility of the product for the Customer and hence the difference in the price.
- i. The product under import is HDAN (high density ammonium nitrate) in prill form. The manufacturers of melt are not producers of the subject item that is prills or any like article thereto. For this reason, the producers of melt do not fall within the purview of domestic industry since melt is not a like article to prills for the aforesaid reasons. "Like Article" is an article, which is identical, or alike in all respects to the article under investigation. Only manufacturers of prill can be said to manufacture the "like article". For this reason, M/s. GNFC, RCF, National Fertilizers Ltd., Rourkela Steel Plant and Fertilizers Corporation of India should be excluded from the investigation. Melt and all information related to melt can not be considered for the purposes of determining standing, normal value and injury, if any to the domestic industry.
- j. The product under consideration has not been defined with regard to density. In the initiation notification, it has been stated that both products are identical and producers can interchangeably produce the two forms. It has also been held that from the producers and users point of view, both the grades are technically and commercially substitutable for one and other. It is submitted that these findings are not factually correct. High density ammonium nitrate (hereinafter referred to as HDAN) and low density ammonium nitrate (hereinafter referred to as LDAN) are not two grades of the same product, but totally separate commercially known products.

- k. The main distinguishing features are that HDAN prill are known as "fertilizer Ammonium Nitrate" where as LDAN prills are commercially known as "Explosive or Industrial Ammonium Nitrate". High density Ammonium Nitrate in prill form has a bulk density greater than 0.85 g/cc, and purity is about 99.4%. The high density prills are having low porosity and the levels of oil absorption and oil retention are below the dangerous stoichiometric limit. Low density prills have a high density with an oil absorption capacity above 8% and oil retention capacity above 7%. These properties make low density prills detonable and dangerous to use. Whereas high density prills, as they are less porous with less oil absorption are significantly safer to use. The characteristics and properties of HDAN and LDAN are quite different, and consequently they are known as separate and distinct commercial products in the market. The international prices of HDAN and LDAN are also very different. The price of LDAN is almost double the price of HDAN on ex works basis.
- l. M/s. Deepak Fertilisers have certified that M/s. Smartchem Technologies Ltd., which has one common director, had imported one parcel of Ammonium Nitrate from Russia in the month of January 2001.
- iv. M/s. Smartchem has made import of a substantial quantity from Russia. These imports were of high density Ammonium Nitrate prills, which were sold under the name.
- v. The Balance Sheet and Profit & Loss Account of M/s. Deepak Fertilizers, M/s. Smartchem has shown as a related company. This is a conclusive evidence of the relationship between the companies.
- vi. Rule 2 (d) provides that in appropriate cases producers who are themselves importers or related to importers may be excluded from domestic industry. In the present case M/s. Deepak Fertilizers has dealt with the imported products during the period of investigation and, therefore, it is a fit case for exercise of jurisdiction under Rule 2(d). M/s. Deepak can not be allowed to take advantage of its own wrong. It has been one of the important sellers of the imported product from January 2001 onwards. The quantity imported and sold by them in collaboration with M/s. Smartchem is significant and constitutes about ¼ to 1/3 of the total sales of this item in the Indian market. Having been themselves involved in the imports they can not be permitted to seek protection under Section 9C of the Customs Tariff Act. In this regard reliance is placed on the decision of the Designated Authority in the case of Black & White Films imported from UK.
- vii. It is submitted that there is a total absence of dumping of ammonium nitrate in the Indian market. There has been no significant increase of imports during the period of investigation. In fact till January 2001 there were hardly any imports of ammonium nitrate from any country. In January 2001 M/s. Smartchem were

- the first to make imports from Russia. The imports made are insignificant since they meet only about 7% of the total demand in India. The allegation that the Russian exporters have started dumping ammonium nitrate in India is false.
- viii. The Russian producers have inherent advantage on account of the availability of natural gas in Russia and the relatively lower power tariffs. The fact that Russia has the largest resources of natural gas in the World, it is in a position to supply this at a relatively lower cost. In fact the natural gas is a commodity, which is difficult to transport for long distances, and pipelines have often to be laid for its transportation. Therefore, the cost of transportation of the gas being very high, its availability is restricted and prices in other countries are much higher. Therefore, producers of ammonium nitrate around the world who have access to natural gas supply have lower manufacturing costs, since natural gas is the principal raw material for ammonium nitrate and normally constitutes about 70% of the total variable cost of manufacture. Any natural advantage to producers in Russia can not be seen as evidence of dumping.
- ix. It may be relevant to mention that the initiative was taken by the Indian importers/users for import and the volume of trade is insignificant for Russia during POI i.e. 40000 tonnes (1%) in between April 2001 to June 2002, as against their total production of nearly 5500000 tonnes. The cost of production is low mainly because of its low cost and high availability of natural gas used as feedstock and energy, large production capacities, old low cost plants and their experience of producing bulk commodities cost effectively. These factors do not suggest dumping.
- x. The petitioner has claimed that Russia is a non-market economy and, therefore, the constructed cost of production should be derived from the petitioner's cost. There has been significant liberalisation and de-regulation of Government controls, prior to the period of investigation and also during such period. This position has been duly examined by the US Administration and also by the European Union Commission. Both Authorities have found sufficient evidence to treat Russia as a market economy. The Indian Authorities should accord a similar status to Russia. In the alternative, if Russia is treated as a non-market economy the selection of a surrogate country should be notified will in advance so that appropriate response may be filed in this behalf. It is submitted that there is not dumping of ammonium nitrate in India.
- xi. It is submitted that there has been a total absence of injury to the domestic producers consequent to the imports of ammonium nitrate from Russia. On an examination of the balance sheets of the petitioners it can be observed that the production of the Indian producer has increased, their sales have also increased as has their net realisation and profit. The producers have in fact improved their financial position during the period of investigation and the question of any injury, therefore, does not arise.

- xii. In the petition it had been stated that the imports of ammonium nitrate have increased significantly and this increase is unprecedented and phenomenal. As explained earlier there were hardly any imports of ammonium nitrate in India until the initial imports made by M/s. Smartchem in January 2001. The imports can not be said to be phenomenal or substantial as they represent only about 7% of domestic sales during the financial year 2001-02. Moreover, the allegation that the export price from Russia have been declining during the period of investigation is not factually correct. In fact import prices of ammonium nitrate have increased during the period of investigation and in this regard reliance is placed on the confidential response filed by M/s. Special Blast(P) Ltd.
- xiii. The petitioner has stated that the production and capacity utilisation has declined drastically due to the imports. In fact this fact is not borne out by the Proforma IV A enclosed with the petition. The production excluding captive consumption has increased by 68% during the period of investigation as against 1999-2000. Similarly the sales have also increased by more than 67% during the period of investigation as against 1999-2000. Since both the production and sales have demonstrated an upward trend, the averment that the production and sales have fallen drastically is not correct. Capacity for manufacture of ammonia, can be used either for manufacture of ammonium nitrate or for other products such as ammonium nitro phosphate, urea, nitric acid, etc. Therefore, there is no method to identify the production capacity for ammonium nitrate per se. All the relevant indicators show a positive trend, negating the submission regarding injury.
- xiv. It is submitted that there has been no price undercutting. The domestic producers have been selling melt at a price of about Rs. 7200 PMT during the period of investigation. As against this the landed value of the imported product is around Rs. 8,500/- PMT.
- xv. It is submitted that there is no causal link between the imports and injury if any to the domestic industry. Attention is invited to the decision of the Hon'ble Tribunal in the case of PTA imported from Malaysia and other countries. In that case, since landed value of the imports was higher than the non-injurious price of the domestic product, investigation were terminated for want of causal link between the imports and injury if any. As regards, the solid ammonium nitrate manufactured by M/s. Deepak Fertilizers, it is submitted that since the company is itself an importer or related to an importer, it warrants exclusion. Moreover, the imports of high density can not be compared with the production and sales of low density ammonium nitrate. The US Administration as well as the European Commission have accepted this position. In such cases, the Tribunal has also held that since none of the producers are manufacturing the comparable product, that is high density ammonium nitrate in solid, form there can be no causal link between the imports and the injury. In this regard reliance

- is placed on the decision in the CEGAT in the case of fused Magnesia from China (Birla Periclase Vs. Designated Authority). Thus the investigation should be terminated at the earliest in the absence of injury and causal link.
- xvi. The WTO panel has rendered a decision in the Bed Linen case whereby it has been held that all the parameters mentioned in the Annexure to the Rules are to be considered for coming to a determination on the issue of injury. From the petition it is evident that evidence with regard to all the parameters has not been submitted or disclosed. For instance, there is no information regarding the factors affecting domestic prices, returns on investment, productivity, growth, employment etc. It is submitted that it is the obligation of the Designated Authority to enquire into the accuracy and authenticity of the information provided by the domestic industry with regard to the relevant consideration mentioned in the Annexure to the Rule.
- xvii. DFCL have been misrepresenting to various Government authorities for banning imports on various misrepresented facts including the recent writ petition filed by them at Mumbai High Court against the Customs, Ports, Ministry of Fertilizer etc with success in none. Even Mumbai High Court has quashed their plea and they were finally forced to withdraw their petition.

M/s. Premier Explosives Limited

- i. Through their associate company – M/s. Smartchem Technology Ltd., they have imported ammonium nitrate in the year 2000-2001 at a much cheaper price as fertilizer and sold us a part of it also. This was needed to cover the shortage of ammonium nitrate in the country.
- ii. Since other parties have started importing and selling ammonium nitrate at a cheaper price, the business of trading by M/s. Deepak Fertilizers and Petrochemical Corporation Ltd., has been affected, and therefore, they have initiated this procedure.
- iii. They have also filed a writ petition in High Court of Bombay asking for imposition of penalty for importing Ammonium Nitrate as fertilizer and using it as explosive which they themselves carried out in the year 2000 and 2001.
- iv. The main input for explosive industry is ammonium nitrate, which is nearly 70% out of the total weight. Explosives are used mainly by public sector companies like Coal India Ltd., SCCL, NMDC and SAIL etc.,. Whereas the price of explosive has been steadily going down over the years, the price of main input, viz., Ammonium Nitrate has been going up due to cartelisation and manipulation of price.
- v. There is an import duty of 30%+SAD of 4% on imported Ammonium Nitrate which should be more than sufficient margin for Indian manufacturers of the product.

M/s. IBP Co. Limited

- i. As the prices of indigenous Ammonium Nitrate are much higher compared to the International prices because even the gas based plants of DFPL group which produce ammonium nitrate at far more economic and competitive rate in comparison to the Public Sector Naptha based plants had jacked up their prices to match those of the Naptha based plants with the result that the Indian Explosive Manufacturers could no longer compete in the International Export market because of the high cost of their inputs. Consequently, Indian Explosive Industry could not manufacture explosives at competitive prices, with the result that the Indian Explosive Companies in the organised sector have been incurring substantial losses. IBP in its business group (Chemical) has also been suffering losses over the past 2-3 years and it has not been possible to IBP Company to compete in International export market since the last 2-3 years because of uncompetitive prices of raw materials, with the result that it has had to rely entirely on the Indian market. Demand of Indian market is much less than the total production capacity and most of the units are not in a position to operate at economic capacities. Prices of explosives in India are consequently highly competitive and depressed and the only possibility of meaningful survival of the explosive industry in India is by reduction in costs of inputs which would not only make the Indian Explosives Industry competitive in the International export market, but also increase the margins in the domestic market.
- ii. With the opening up of the import market in India, third countries including China (who has been bagging most of the International exports for explosives), will become far more competitive in the Indian market than the indigenous manufacturers, which, in turn, could close down the Indian Explosive Industry unless it also can escape from the clutches of the indigenous monopoly of Ammonium Nitrate sought to be imposed upon it.

M/s. BHARAT EXPLOSIVES LIMITED

- i. With the opening up of imports and companies freely importing Ammonium Nitrate, the availability has eased in the Indian market and it is now available at cheaper price than in previous years and thereby offers some respite to the already harassed explosive manufacturers. Consequently the Indian AN manufacturers have also been compelled to reduce their prices to match the imported Ammonium Nitrate prices, which clearly indicates that they were exploiting the situation earlier, as Fertilizer Corporation of India and Steel Authority of India, Rourkela were closed for production for some time which resulted into in creating a gap between demand and supply.

- ii. The Government of India should reduce the Custom duty on import of Ammonium Nitrate to enable the Indian explosive manufacturers to survive in the world of global competition.

M/s. KELTECH ENERGIES LTD.

- i. The three companies manufacturing the product under consideration is Ammonium Nitrate melt/prill are M/s. GNFC, M/s. NFL and M/s. DFPCL.
- ii. The first two companies are PSU's which do not produce the subject goods i.e. prilled Ammonium Nitrate. The third company which is in private sector manufacturer of Ammonium Nitrate, and markets LDAN prills which is different from the imported Ammonium Nitrate prills. Thus these companies do not have locus standi what so ever in filing the petition for imposition of anti dumping duty on Ammonium Nitrate prills.
- iii. The product under investigation imported from Russia and Iran falling under category of High density prills which is not manufactured the petitioner companies.
- iv. The 3 member bench of the Supreme Court while delivering the Judgement reported under 2002 (145) ELT.241 (S.C.) in the case Haridas Exports V/s. All India Float Glass Mfrs Association had held that "import of material at prices lower than prevailing in India cannot per se be regarded as being prejudicial to the public interest. If the normal or export price of any goods outside India is lower than the selling price of an indigenously produced item, then to say that the import is prejudicial to the public interest would not be correct. The availability of goods outside India at prices lower than those which are indigenously produced would encourage competition amongst the Indian Industry and would not per se result in eliminating the competitor, as was sought to be submitted by the respondents".
- v. Respecting the ratio or this judgement of the Apex Court, the Designated Authority should dismiss further proceedings in the matter.
- vi. It is submitted that the method of arriving at "constructed cost of production with appropriate adjustments, treating Russia and Iran as non-market economy" is erroneous. The cost of manufacture and the prices at which these economies supply the material is indeed based on several ground realities. For instance, it is a matter of common knowledge that the Natural Gas is abundantly available in Russia and is sold at 1/3 rd the price in India. When the input cost is low, the manufacturer can afford to sell his product at international competitive prices. These by no way could be said to the selling the product at below their cost of production.
- vii. Also there are fiscal incentive that can help reduce the export price. For instance, in the Indian economy, several fiscal incentives are given for export

- industry such as exemption of excise duty exemption of sales tax, duty free import entitlement, duty draw back etc., to name a few.
- viii. The capacity utilization statistics of M/s. DFPCL, as presented in the 22nd AGM (2001-02), furnished in Ann-2 certifies that their plant for ANP has progressively increased capacity utilisation from 155% in 1996-97 to 195.59% in 2001-02. This factor alone speaks for the highly profitably and enviable status of the Ammonium Nitrate Industry, especially the sector under control of M/s. DFPCL.
 - ix. M/s. DFPCL has consistently been recording high profits. The segment wise profitability statements presented at the 22nd AGM is ample evidence that their Ammonium Nitrate operation under Industrial Chemicals segment has done well.
 - x. GNFC has also turned out excellent results. The fact that GNFC also wishes to enter into AN prilling facility as per their announced plans indicates profitable nature of operations in AN-Ann. 6.
 - xi. Referring to Rule 5(3) (a), of Customs Tariff (Determination of Injury D.A.) Rules, 1995 it is stated that no investigation will be initiated unless supported by units manufacturing at least 25% total production. The explanation offered states that the application shall be deemed to have been made if supported by domestic products when output is more than 50%. Under Rule 5(3) (a), the petition is disqualified from consideration since not supported by the stipulated minimum 50%.

M/s. CANPEX CHEMICALS PVT. LTD.

- i. For the past few months Ammonium Nitrate is being imported in India from Russia at the cheaper rates. As a result end users like us prefer buying imported ammonium nitrate. As a matter of fact we have stop producing ammonium nitrate in year 2000 due to cheaper imports. It is economically unviable to continue ammonium nitrate production as landed cost of ammonium nitrate is cheaper.

M/s. GULF OIL Corporation Ltd.,

- i. Since the supplies from Rourkela Fertilizer Plant and FCI, Sindhri, became uncertain. Ammonium Nitrate were procured from M/s. Smartchem Technology Ltd., which were locally manufactured but later imported ammonium nitrate were supplied by them and/or its nominee.
- ii. The total production of Ammonium Nitrate manufactured by the domestic industry and sold for use in the Explosive industry was about 227080 MT and 200291 MT for the period 2000-2001 & 2001-2002. Whereas the total

- requirement of the user industry for manufacturing explosives were 241577 MT and 258607 MT during the respective period.
- iii. It is stated that there is no dumping and the domestic industry is not injured by the imports of ammonium nitrate from Russia.
 - iv. Ammonium Nitrate constitutes 65% of total raw material required for manufacture of explosives, hence its availability in price become the critical factor for the explosives plant.
 - v. The rates have been compared of the supplies of Ammonium Nitrate melt/uncoated Ammonium Nitrate by different domestic industry and it was found that the difference of Rs. *****/MT to Rs. *****/MT with the imported Ammonium Nitrate.
 - vi. Russia has seen to be a non market economy and hence the normal value cannot be determined on the presumption that Russia is a non market economy country.
 - vii. The total demand for Ammonium Nitrate for the explosive industry was 258607 MT in 2000-2001 and the total sales of the domestic industry of Ammonium Nitrate was 200291 MT, so the import of roughly 58000 MT during 2001-2002 did not exceed the shortfall in demand.
 - viii. The claim of injury in the context of anti dumping, has to be examined with reference to the total market of the goods including the market covered by the captive consumption and therefore so long as the capacity utilisation of the domestic industry does not suffer on account of increase in the captive consumption no case for anti dumping can be made out. It is therefore imperative that the domestic industry must disclose the production and sales figures and profitability of the Fertilizer Manufacturers by them.
 - ix. The domestic industry is misusing the protection under the anti dumping Laws by ensuring that the losses made by it in the sale of fertilizers are made good by sale of AN in the domestic market at the monopolistic prices.

M/s. Gujarat Explosives Dealer's Association

- i. The import of prilled ammonium nitrate should be allowed as it is more convenient for the explosive industry at a very competitive rate and at the same time domestic industry is not able to fulfil the requirement of the demand of the industry.
- ii. Few of the converters of ammonium nitrate melt into solid form are requesting the Government of India that unless and until the import of ammonium nitrate is not restricted or the import duty on this product is not increased so as to match the prices of ammonium nitrate manufactured by the domestic manufacturers, it would be more and more difficult for us for the survival.

2. EXPORTER'S VIEWS

M/s. JSC Nevinnomyssiky Azot, Russia

- i. The Exporter has a very small percentage of Ammonium Nitrate Business to India which constitutes about 2%. They further claim that they don't receive any subsidy from the State and decision relating to the production, investments etc are dependent on market signals.
- ii. Since Russian Federation works as market economy during the period of investigation, the normal value and export price may be determined on the basis of our information:
- iii. In International trade a distinction is made between High Density Ammonium Nitrate and Low Density Ammonium Nitrate. HDAN is a product which has density greater than as 0.86 and is used principally as a fertilizer or in the manufacture of explosives. LDAN is a explosive material when combined with fuel oil, is referred to as an industrial grade product. The properties of two product are very different in terms of porosity, detonability etc. The two products are sold at very different prices ----LDAN being sold at almost double the price that of HDAN. There is a demand for the both the products in spite of large difference in price, itself suggests that the two products are not interchangeable both technically and commercially.
- iv. Some the Indian producers do manufacture Ammonium nitrate in melt form. This is certainly not a product which can said to be a like product to high density Ammonium Nitrate Prills. In fact there are no significant sales of Ammonium Nitrate melt in the course of international trade, as freight costs and safety norms do not permit this. Therefore, there is no like product manufactured in India and there is no domestic industry, as such the investigation appears to suffer for want of standing of domestic industries.
- v. Under Article 2 of the Agreement on implementation of Article 6 of GATT, the term like product shall mean a product which is identical that is, alike in all respects to the product under consideration or has characteristics closely resembling those of the product under consideration. From the non-confidential version of the petition of the domestic industry it appears that none of them is the producer of High Density Ammonium Nitrate Prills. Thus the product manufactured by the domestic industry cannot be considered like article to the Export product.
- vi. Export prices to India are comparable at par with the export prices to other countries and they are above the cost of production.
- vii. The Normal Value should be determined on the basis of our detailed information rather constructing normal value on the basis of costing information provided by the domestic industry. They claim that their exports are from a market economic country so constructed cost is not applicable in their case.

- viii. The Export Price to India at an ex factory level is higher than both the domestic sales price and the cost of production, therefore there is no evidence of dumping and requested for immediate termination of investigations.

MARKET ECONOMY

- i. M/s.JSC Nevinnomyssiky Azot, Russia is an open joint stock company having no state ownership. Our stocks are freely quoted and for sale by open subscription and the numbers of participant of our company are not limited by law. The company is obliged to maintain accounts as per the general accounting principles and publish a report giving information as per the balance sheet and profit and loss account.
- ii. The production costs and the financial situation are not subject to any significant distortions from the former non-market economy system. As an open Joint Stock Company and Government bodies of Russia do not hold stock in the charter capital. The list of shareholders includes more than 2000 shareholders that are private individuals or companies. There are 7 private companies who have shares of more than 5% of the shares. Major shareholders are neither producers of ammonium nitrate nor companies related to the production and sales of ammonium nitrate.
- iii. It is submitted that all firms and companies are subject to bankruptcy and property laws which guarantee, legal certainty and stability for the operation of the firms.
- iv. The exchange rate conversions are at the market rate.
- v. The export price to India at an ex-factory level is higher than both the domestic sale price and the cost of production, therefore, there is no evidence of dumping. It is submitted that there is no dumping and immediate termination of the investigation is warranted.
- vi. Russia has been granted Market Economy Status by the European Union and USDOC. In this regard the copy of Council Regulation No. 1972/2002 dated 5th November 2002 treated Russia as Market Economy for the purpose of determination of Normal Value. The US Administration has also formally recognized Russia as a Market Economy. This may kindly be taken into consideration for determining the status of Russia in the present proceedings.

M/s. JSC AZOT Berzniki

- i. We understand that the investigations by the Indian Authority with regards to imports of HDAN. To the best of our information, there is no manufacturer of HDAN in prill form in India. HDAN prills and LDAN prills are both manufactured by our company and have entirely different characteristics, price, storage and transport regulations, manufacturing process as well as application.

- ii. The porous low density ammonium nitrate is manufactured by using low concentration AN melt and an intermediate drying arrangement in the prilling tower for rapid cooling, use of additives for imparting porosity and a much higher prilling tower and the process differs on technologies.
- iii. The Porous low density ammonium nitrate prill is manufactured and marketed as a special chemical product and the classification TU 2143 – 635-00209023-99 (UN class 5.1 No. 1942) for making ANFO explosive products. HDAN is manufactured under the classification GOST 2-85 grade B (UN class 5.1 No. 2067) for use as a fertilizer and bulk raw material for explosive manufacture. LDAN is having comparatively very high detonation sensitivity and oil absorption capacity of 6% - 10% making it suitable for making explosives blasting agents like ANFO. It is worth mentioning that 6% diesel oil properly absorbed in Ammonium Nitrate makes the best stoichiometric ratio for making ANFO explosive. The porosity increases the fuel-oxidiser interface/unit volume significantly to acquire very high detonation sensitivity. This renders it totally unsafe to be used as a fertilizer or as a bulk raw material for explosives manufacturing. It is worth mentioning that slurry explosives products and emulsion explosive products are also sensitised by entrapping air bubbles and reducing density for imparting explosive characteristics. The Low Density porous Ammonium Nitrate can never be considered safe to be used as a fertilizer and hence the product is not intersubstitutable. It is not considered as a like product in European Union, USA, South Africa or Australia.
- iv. LDAN in the prill form does not meet the aforesaid requirements. This product is used as an explosive because of its higher detonation sensitivity. The price and cost of LDAN is more than HDAN. This difference in price is partly justified on account of the higher production cost of LDAN and the additional safety precautions associated with the product.
- v. We, therefore, submit that in the absence of manufacture of the like product in India, there is no domestic industry as defined in the anti dumping law. The investigations may, therefore, be terminated in the absence of standing of the petitioners as domestic industry and also in view of the lack of dumping as can be seen from the enclosed questionnaire. We also wish to bring to your notice that Russia has now been declared a market economy both by the United States and European Union and the same status may be granted by the Indian authorities.

M/s. Iran Petrochemical Commercial Company, Iran

- i. Iran Petrochemical Commercial Company have been registered under Laws of Iran Companies Registration and is a limited joint stock company of Iran represented by Board of members. This company is a commercial company or

some other governmental petrochemical complexes such as Arak, Tabriz, Esfahan etc., which are manufacturers, and all of these belong to the same shareholder i.e., National Petrochemical Company of Iran (NPC).

- ii. The exporter has stated that the Designated Authority will examine the accuracy of evidence provided in the application and satisfies itself that there is sufficient evidence regarding dumping, injury and a causal link between such dumped imports and alleged injury to justify the Initiation of investigation.
- iii. On the basis of information provided and details given in the questionnaire the exporter has stated that the subject article had not been dumped and consequently requesting for dismissal against the initiation with respect to the respondent.

Comments of Department of Fertilizer (Ministry of Chemicals & Fertilizers)

- i. The principal application of ammonium nitrate in India is only for manufacturing various types of explosives. AN melt produced by different domestic manufacturers of different grades of concentration from (70% to 83%) and this melt and further transformed into concentration as per requirement of the buyer.
- ii. Regarding the pricing structure of different forms of ammonium nitrate, Department of Fertilizer have provided only for AN melt and HDAN prills. The Department of Fertilizer has stated a difference of Rs. ****/MT to Rs. ****/MT between Ammonium Nitrate melt and Ammonium Nitrate prill is found of the domestic producers.
- iii. The manufacturer produce AN in different grades depending upon production cost/technology. Since AN is important input the explosive industry interchangeability between HDAN prills, LDAN prills and AN melt is possible.
- iv. AN is produced initially in melt form and then converted into various grades of solid either by AN manufacturer or converter depending upon the requirement of the user industry. All the three grades of ammonium nitrate are quite suitable for various types of uses in mines, quarries, stone blasting, road construction and other similar activities. As these products are used in different forms such as solid, dissolved in water to form oxidizer solution or emulsion/slurry form, and end use of these products depends on types of mines/blasting industry the costing factor for making the suitable forms such as solid prills/granuels/crystals are dissolved in liquid forms.

Department of Explosives (Ministry of Commerce & Industry) Nagpur

- i. High Density Ammonium Nitrate prills (also known as Fertilizer grade ammonium nitrate prills) used as bulk raw material for manufacture of explosives. This product is most suited for manufacture of explosives as

- compare to melt and LDAN prills specially for making oxidizer solutions on site bulk loading system and for doped emulsions. All the three products are ideally suited for different application in the explosive and mining industry.
- ii. The imported product has significant advantage both in terms technical and commercial parameters as compared to the locally manufactured product for manufacturing slurry and emulsion explosives.
 - iii. By using the imported product i.e., HDAN prills, the Explosives Manufacturers switched from Low Density Ammonium Nitrate prills to High Density Ammonium Nitrate prills because of advantages of handling and operation.

Submissions filed by domestic industry, exporters, importers/user industries subsequent to the public hearings held on 3/12/02, 13/1/03 and 24/2/03 Domestic Industry

- i. Petitioner wish to bring on record that import of ammonium nitrate as a fertilizer grade is banned by the Government of India.
- ii. Even though commercially ammonium nitrate is classified into two categories in terms of density, it is submitted that the density is not a technical parameter in most of the HDAN specification which is not generally mentioned on the test reports.
- iii. U.S. Department of Commerce had earlier conducted anti dumping investigation into dumping of ammonium nitrate from Russia. It is described by the USDOC that AN with density higher than 53 pounds per cubic feet (equivalent to 0.849 gm/ml) is HDAN.
- iv. With regard to the different forms of HDAN, the production of ammonium nitrate in solid form involves conversion of original melt through prilling tower/rotary vacuum dryer/flakes/drying tray for prills/granuels/crystals/lumps respectively.
- v. Submissions made by Department of Explosive and the consumers are contradictory to each other. The representative from the Department of Explosive claimed during the time of oral hearing that AN melt cannot be transported beyond a distance of 150 k.m. whereas one of a consumer confirmed that AN melt was being transported more than 1500 k.m..
- vi. The petitioner also submit, in regard to the argument that M/s. DFPCL is ineligible as Indian producer domestic industry as M/s. Smartchem has imported ammonium nitrate in the month of January 2001 and is a sister concern of M/s. DFPCL. In this regard this argument is unsupported by the legal provisions, practices, precedence or jurisprudence.
- vii. The representative from Department of Explosives, Nagpur stated that the explosive manufacturers discovered the advantages of suitability and switched to HDAN prills.

- viii. The exporters from Russia has filed insufficient information in support of its treatment under market economy. Natural gas which is a measure raw material required for production of ammonium nitrate, USDOC in the investigation against ammonium nitrate for Russia held natural gas being controlled by Govt. of Russia.
- ix. The domestic industry has requested for the earliest interim duties and in the form of reference price in terms of US\$ so that erosion in the quantum of protection does not take place on account of changes in the exchange rate.

M/s. GULF OIL Corporation Limited

- i. High Density Ammonium Nitrate is used in the manufacture of explosives.
- ii. HDAN is entirely different from Ammonium Nitrate Melt and Low Density Ammonium Nitrate.
- iii. The conversion of one form of Ammonium Nitrate into another involves complicated procedure.
- iv. Ammonium Nitrate in Melt form cannot be transported safely beyond 150 Kms, as it is prone to solidification.

M/s. JSC AZOT NEVINNOMYSSKIY, M/s. JSC AZOT BREZNIKI, M/s. Indian Explosives Limited and M/s. Special Blasts Limited

- i. The imported material is having a density greater than 0.90 gm/cc whereas prills manufactured in India having bulk density of 0.85 gm/cc or below on the basis of the test reports of M/s. SGS.
- ii. The Law relating to anti dumping seeks to provide redressal to domestic manufacture in the event of dumping of goods by exporters, the contravention of Fertilizer Control Order as stated by representative of Fertilizer during the course of hearing or any other Law is not a ground fall levy anti dumping duty. For the imposition of anti dumping duty there must exist dumping, injury and causal link.
- iii. The Department of Fertilizer has requested for a ban on the import of ammonium nitrate on the ground that it was being classified under heading 3102.30, which covers ammonium nitrate. It was urged that since the main heading covers fertilizers, classification under this heading amounts to importing the material as a fertilizer and is in violation of the Fertilizer Control Order. Since ammonium nitrate is not specified in the FCO, this allegation is totally baseless. Moreover, as both under the customs Tariff and Excise Tariff heading 3102 is identically worded, by parity of reasoning; manufacture and clearance of ammonium nitrate under this heading by the petitioner would also be illegal. Classification of a product the tariff, is merely for levy of duty and is not an infringement of the FOC. In fact Larger Bench of the Tribunal in the case

of Supreme Chemical works Vs. Collector of Central Excise, Jaipur has specifically classified ammonium nitrate in all forms under heading 3102 for the purpose of charging duty of excise. In view of this decision, we submit that classification of ammonium nitrate in heading 3102 for the purpose of levy of customs duty or for the purpose of levy of excise duty does not amount to infringement of the Fertilizer Control order.

- iv. The Hon'ble High Court Bombay was of the view that the petition, filed by M/s. DFPCL against import of ammonium nitrate for seeking a bon on import under Fertilizer Control Order 1995 issued under the provisions of Essential Commodities Act 1995, was devoid of merit and therefore allowed the petitioner to withdraw the petition with liberty to file proper petition.
- v. An affidavit was filed on behalf of M/s. Indian Explosives Ltd., wherein it is reinstated that imported Ammonium Nitrate from Russia was purchased on high sea sale basis from M/s. Special Blast Pvt. Ltd. having density above 0.90 gm/cc. None of the Indian manufacturers have ever offered or sold HDAN prills to M/s. Indian Explosives Ltd. There are two manufacturers of Ammonium Nitrate in prill form in India. These manufacturers are M/s. DFPCL and M/s. Smartchem Technology Ltd. and the materials sold to M/s. Indian Explosives Ltd., have density ranging between 0.81 to 0.85 gm/cc and classified as porous low density ammonium nitrate.

M/s. IBP Co. Limited

- i. M/s. IBP has entered into a contract with India based trader Adani Exports Limited for supplying 11000 MT of HDAN at a price ***/MT. Ex-Vizag net of CVD. M/s. IBP has respective contracts with M/s. DFPCL at Rs. ***/MT (net of excise duty and sales tax), with M/s. STL at Rs. ***/MT (net of excise duty and sales tax) and M/s. GNFC at Rs. ***/MT for AN Melt.
- ii. The Explosive Industry will not be able to survive if the domestic industry will not supply the ammonium nitrate at the competitive rate which will lead to the presence of foreign explosive manufactures like China into India.

Rejoinders to the Public Hearing held on 24th February 2003.

Domestic Industry

- i. The contention of the opposite interested parties that indigenous manufactured products is ammonium nitrate low density prills or ammonium melt is factually incorrect. Domestic industry produces ammonium nitrate which has density and other product characteristics comparable to the imported product. The domestically produced product is comparable in terms of physical & chemical properties, manufacturing process & technology, raw materials content,

functions & uses, pricing and product classification. The only difference between AN melt and AN solid is in physical characteristics. However, differences in physical characteristics between AN melt and AN solids does not render any significant difference in the product in view of interchangeable use of the product.

- ii. Admittedly, the imported product has the density of 0.90g/cc. It would be worthy to mention that whereas these opposing interested parties were earlier arguing that such HDAN has density of around 0.85g/cc, now the same parties are arguing that the density of the imported material was 0.90g/cc. Petitioners got density of the imported product checked and found that the density of the imported product was in fact in the region of 0.85g/cc. In any case, density of the domestically produced product is comparable to the imported product.
- iii. The opposing interested parties has projected that density is one of the most important parameters in AN. While the petitioners submit that density as a parameter was not even being used either by the producing industry or by the consuming industry, the parameter has been introduced by the opposing interested parties only before the Designated Authority. Even today, after initiation of present investigation and in spite of so strong argument by these interested parties with regard to density, these interested parties do not mention density while procuring the material even through global tender of HDAN.
- iv. With regard to density of HDAN, petitioners so far have come across only the findings of the US ITC in the matter of Ammonium Nitrate from Russia, wherein the USA has described AN with density higher than 53 pounds per cubic foot (equivalent to 0.849 g/ml) as HDAN. ISI or any other such institutions in India have not classified HDAN with any density value.
- v. It is stated by the Department of Explosives that imported product, i.e., HDAN prill is preferred over melt and LDAN. This also establishes that the two are substitutable, particularly when it is argued by these interested parties that identical product does not exist. Incidentally, AN is not an explosive under the Indian Explosive Act & Rules and thus AN does not come under the purview of Department of Explosives.
- vi. As regarding the claim of M/s. Indian Explosives Ltd., in the affidavit submitted along with written submission dated 4th March 2003 that none of the Indian manufacturers have ever offered or sold HDAN prills to M/s. IEL and the material sold by them have density ranging from 0.81 to 0.85 gm/cc are classified as porous LDAN. M/s. DFPCCL claims and produce evidence demonstrating that M/s. IEL has purchased LDAN prills (Optiblast), HDAN prills (Optiform) and AN melt, hence statement made on the affidavit is not factual. We also certify that the average density of various forms of AN produced and supplied by us having densities 1.38 gm/ml, 0.85 gm/ml and

0.78-0.80 gm/ml respectively for AN melt, HDAN prills(optiform) and LDAN prills (optimix/optiblast).

M/s. JSC AZOT NEVINNOMYSSKIY, M/s. JSC AZOT BREZNIKI, M/s. Indian Explosives Limited and M/s. Special Blasts Limited

- i. M/s. Smartchem Technology were the first to import HDAN prill from Russia. Since M/s. Smartchem Technology is one of the affiliate of domestic industry so they are very well aware of the fact that there is no restrictions on the import of HDAN prill.
- ii. The Writ filed by the domestic industry before the Hon'ble Mumbai High Court where in they appeal that the HDAN prill is banned was not accepted and the Court allowed the petitioner to withdraw as to avoid a dismissal on merit.
- iii. The product under consideration or the imported product should be defined as HDAN prills having density greater than 0.85gm. Other products LDAN prills (quoaated or unquoaated) or HDAN melt crystal, granuels, flakes and lumps have not been imported. Therefore, product under consideration should be defined clearly and precisely.
- iv. We submit that no comparison can be made between melt and HDAN prill as melt exist only at a very high temperature and has a limited applicability. The petitioner claim that the manufacture HDAN in prill forms is false and baseless.
- v. We submit that the density with regard to solid product and not to a liquid product in the findings of USDOC concerning import of Ammonium Nitrate from Russia. If fact ammonium nitrate in liquid form (90% concentration) would invariably a density of above 1.30/ml.
- vi. The different forms of Ammonium Nitrate such as lumps, crystals and flakes have not been manufactured in substantial quantities by the petitioner for the explosive industry during the period of investigation. Therefore, submission in this regard should be disregarded.
- vii. It has been stated by the petitioner that the statement that due to the closure of FCI Sindhri, and Rourkela Steel Plant has created a shortage in the Eastern Region is itself is an admission on the issue of like article. We submit that HDAN substitute the melt to some extent, however the reverse is not true.
- viii. Natural Gas is abundance in Russia at a relatively low price. We would welcome the Designated Authority or any other officer to verify the factual claims made by us. The selling price of AN is not controlled by any legislative or administrative order. The exporter is free to choose its source of raw material. The cost of technology has not been affected by any state interference. Legislation with regard to Labour Laws, Corporate laws, Bankruptcy laws have been provided.

- ix. No information has been provided with regard to market share, decline in export price and other such factors. Since there is no injury to the petitioner the request for termination on this ground.
- x. The landed value of imports is higher than the selling price of melts prior to the POI. Both prior and subsequent to the imports melt is being sold at lower price than the landed value. Therefore there is no causal link and requesting for termination of the investigation.
- xi. **Submissions were also made by M/s. IBP Co. Ltd.,** but most of the issue are repetitive nature as already raised other interested parties. Therefore for the sake of brevity arguments are not reproduced.

C. EXAMINATION AND FINDING BY AUTHORITY

The submission made by the imports, exporters, users, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

1. Product Under Consideration:

- i. The product under consideration in the present investigation is Ammonium Nitrate. It is produced in various forms such as melt, prill, crystal, granules, flakes and lumps. The product is first produced in melt form, which is then solidified to obtain prills, flakes, lumps etc. Ammonium Nitrate is manufactured by synthesizing vapour Ammonia with Nitric Acid (60% concentration) in a circular type neutralizer. Then the Ammonium Nitrate solution (72 – 74% concentration) is sent to evaporator, concentrated (upto 82% for Ammonium Nitrate Melt merchant sale and upto 96% for prilling) and stored in Melt tank. Thereafter AN melt is used for prilling process (prilling, pre drying, drying, cooling, condensing and bagging) to produce AN prills.
 - a. With regard to density, Ammonium Nitrate is classified in two forms:-
 - b. High Density Ammonium Nitrate covering all forms like melt, crystal, granules, flakes, lump, prills.
 - c. Low Density Ammonium Nitrate, usually in prill form.
- ii. Coating is another parameter. Ammonium Nitrate can be uncoated or chemically coated. Chemically coated and uncoated forms are like article, the only difference between the two being that of coating. Coating is done in order to minimize moisture pick-up during storage, in turn, avoid caking/hard lump formation.

- iii. It is an inorganic chemical and classified under chapter 31 of Customs sub-headings 3102.30 of the Customs Tariff Act 1975. The Custom classification is indicative only and not binding on the scope of investigation. Ammonium Nitrate is used in water gel/slurry explosives, emulsion explosives which have the following applications like open cast mining, under ground metalliferrous mining construction industries, project etc, where as low density Ammonium Nitrate is preferred over granules/crystals for making Ammonium Nitrate fuel oil (ANFO) which is used as blasting agents as well as emulsified (ANFO). Whatever be the form, all High Density Ammonium Nitrate is converted into melt form for end application in the production of Water-gel/Emulsion Explosives. However, production of solid form requires small incremental production process and extra cost. Production of low density Ammonium Nitrate of course requires further additional investment.
- iv. The exporters/importers have described the product as High Density Ammonium Nitrate/Ammonium Nitrate(Fertilizer Grade)/Ammonium Nitrate/High Density Ammonium Nitrate(Fertilizer Grade) . USDOC in the anti dumping investigation concerning import of Ammonium Nitrate from Russia described AN with density higher than 53 pounds per cubic foot (equivalent to 0.849 gm/ml) is HDAN while AN with lower density is LDAN. The petitioner claims that they produce Ammonium Nitrate with density higher than 0.85 gm/ml to 1.39 gm/ml. Whereas interested parties have claimed the petitioners are producing only Low Density Ammonium Nitrate having density less than 0.85 gm/ml apart from AN prills. The interested parties have also admitted in their submissions that none of the other domestic industry except M/s. DFPCL produce Ammonium Nitrate prills but i.e., LDAN prills. The petitioner have claimed that M/s. DFPCL is the sole producer of both High and Low density Ammonium Nitrate prills and which are sold with the brand name Optiform (HDAN prills) and Optimix (LDAN prills). To this effect they have produced SGS test report stating that Optiform has a density of 0.85 gm/ml whereas the consumers have produced the SGS test certificate of unquoaated Ammonium Nitrate prills having density less than 0.85 gm/ml. The Authority notes that the documentary evidence furnished by the petitioner could not very categorically establish that the Ammonium Nitrate prills sold as Optiform is identical to HDAN prills exported by Russian and Iranian exporters.
- v. Petitioners have claimed that even though commercially Ammonium Nitrate is classified into two categories in terms of density, density as a technical parameter is not specified in most of the product specifications. Even the test reports of the material normally do not mention density of the material. The classification is more relevant in the market parlance rather than as a technical requirement. The interested parties have raised arguments at different stages of their submissions that the imported HDAN prills are not the like article to those

being produced by the domestic industry. They have further stressed that domestic industry is producing all other forms of Ammonium Nitrate except HDAN prill on the basis of the evidence and documents furnished by the petitioners and interested parties. The Authority notes that the word HDAN was not in domestic commercial transaction practice prior to imports and during the domestic verification of manufacturing units it was observed from their sales/ supplies documents of various consumers that the producers have never described the product as HDAN prill or HDAN melt rather supplied as AN prill or AN melt.

- vi. As regards the HDAN prill, the Authority has considered the view expressed by the petitioner, exporters, and importers/users. Rule 2 (d) of the Anti Dumping Rules defines the like article as,

"like article means an article which is identical or like in all respect to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects has characteristics closely resembling those of the articles under investigation."

- vii. As regards the arguments of exporter, importer/users that the imported product is not identical or alike in all respect to the article under investigation, the Authority notes that the petitioners have stated inter alia that there is a great amount of substitutability between the various forms of Ammonium Nitrates, there is a close resemblance in terms of characteristics of domestically produced Ammonium Nitrate and imported HDAN prill which is also used for production of explosives only. On the basis of evidence furnished both by the petitioners and interested parties the Authority is constrained to establish that all types of Ammonium Nitrate produced by the domestic industry are not identical or alike in all respects to HDAN prills, one of the products under investigation. In the absence of an identical product the next parameter for determination whether the products being produced by the domestic industries which although not alike in all respects, have closely resembling those of the articles under investigation. As per the own admission by one of the interested parties that due to the closure/periodic shutdown of two of the units manufacturing Ammonium Nitrate mainly SAIL, Rourkela and Fertilizer Corporation of India, Sindhri, the Explosives Industries located in Eastern India have no other option but to resort to the imports which were comparatively cheaper and more user friendly compared to sourcing Ammonium Nitrate from other parts of India. The user industry has also admitted in their submissions that because of gap in demand and supply, they prefer the imported Ammonium Nitrate prills over the domestic supplies of Ammonium Nitrate Melt/solids due to it being cheaper and convenient in handling. One of the consumers has even admitted in his submissions that due to the difference in

landed price of imported HDAN prills and sourcing Ammonium Nitrate melt/solids constitute a minimal difference of Rs. ****/MT to Rs ****/MT. Therefor the Authority notes that domestically produced AN melt/ AN solid are substitutable and interchangeable to a great extent to the imported HDAN prill as per the admission of interested parties.

- viii. From the documentary evidence provided by the domestic industries regarding the sales of Ammonium Nitrate for the period April 2001 to February 2003 i.e., beyond the POI it is found that majority of Explosives Industries have sourced both AN melt and AN prills. During the course of verification of costing and sales information of the domestic industry it was established from their sales and excise register that Explosive Industry is using both HDAN melt/solids for manufacturing explosives. From consumers' point of view, the consumers have also consumed the two interchangeably. The Authority notes that one form has been imported and consumed where the other form was being consumed establishes technical and commercial substitution of the two forms.
- ix. It is important to note that there were hardly any imports of AN earlier. Consumers of imported material were meeting their requirement from domestic source only. Even the Department of Explosive, Nagpur has informed that by using the imported product, the explosive manufacturers found it advantageous and switched to HDANP. The Authority holds the view expressed by DOE, Nagpur that both the imported HDAN prills and domestically produced Ammonium Nitrate have been used by explosive industry. The DOE further expressed that because of closure of FCI, Sindri and SAIL, Rourkela, the shortage of AN Melt has been met by the imported HDAN Prills. Secondly, the risk involved in handling melt and LDANP are higher than the HDAN Prills. The Authority holds that preference of one form over the other per se implies that all forms are comparable therefore the Authority does not find merit in the argument of interested parties that HDAN prills cannot be covered as product under consideration i.e., Ammonium Nitrate. Hence the Authority finds logic in the arguments raised by various exporter/importers that price parameter may be looked into as Ammonium Nitrate melt, HDAN prill and LDAN prill as a manufacturing process have additional costing at each stage of production from ANmelt to HDANprill to LDAN prill.
- x. The custom has classified the product under Chapter 31 of Customs Tariff Act 1975 under sub-heading 3102.30 describing the product as Ammonium Nitrate whether or not in aqueous solution. The Authority holds that HDAN prill which is being covered and cleared under the above Custom sub-heading, does substantiate the claim of the petitioner as HDAN prills being a like article to a great extent.
- xi. The petitioner has further claimed that Ammonium Nitrate is generally consumed in melt form only as emulsion explosives. Thus, conversion of

Ammonium Nitrate into solid form is not a technical requirement rather is convenient for storage and handling. The interested parties have also admitted in their submissions that Solids forms of AN transported without specialized tanker whereas transportation of melt requires special tankers with controlled temperature to maintain its technical specification. Thus transportation of AN melt required higher expenditure due to specialized tankers. The Authority notes, from the commercial point of view, it is a cost benefit analysis between additional cost of converting AN melt into solid forms versus higher transportation cost involved for melt. The cost benefit analysis is relevant as a same consumer has procured AN both in solid and melt forms from different producers for the similar application.

- xii. The Authority examined the consumption pattern of the consumers in detail for the period April'2000 to Feb'2003. The Authority has analysed the information with regard to customer wise sales of petitioner companies to various consumers and notes that;
- a. In fairly large number of cases, the consumers have purchased melt. It is also noted that while in some cases such melt has been converted into solid before transportation to the customer's premises. In a fairly large number of cases, such melt has been transported in melt condition itself.
 - b. The same consumer has purchased AN in various forms. For instance, Indian Explosives has purchased AN in prill form, AN in melt form and AN in lump form. There is sufficient evidence to suggest reasonably good level of interchangeability in the instant case.
 - c. While it may be true that some form may be preferred over another, preference of one form over another does not render the two product as dislike products. In fact, the existence of preference per se establishes that the products can be interchangeably used.

The Authority notes that the use of HDAN Prills over domestically produced AN Melt/Solids may offer certain advantages however the basic properties of both the material remains same as both are used for manufacturing explosives. The Authority further notes that manufacturing process and technology or consumption of different raw materials are same for both imported HDAN Prills and AN Melt/Solids.

- xiii. The Authority in view of submission made by the petitioners and other interested parties, thereby keeping in view of substitutability and consumed interchangeably by the same consumers of the subject goods, exported from subject countries and those produced by the domestic industry, considers the subject goods exported and domestically produced subject goods as like article

as per Rule 2(d) for the purpose of preliminary determination. The Authority keeping in views of the petitioners, importers, exporters, the aspect relating to like article, dumping, injury, causal link may be examined in greater detailed for the purpose of final finding

2. Domestic Industry

- i. The present petition has jointly been filed by Gujarat Narmada Valley Fertilizers Company Limited (GNFC), National Fertilizers Limited (NFL) and Deepak Fertilizers and Petrochemicals Corporation Limited (DFPCL). Production of the subject goods by the petitioners constitute a major proportion of production of like article in India. Petitioners satisfy the standing to file the application under anti dumping Rules. Further the petition has been supported by Rashtriya Chemicals and Fertilizer Ltd.,
- ii. Arguments have been raised by many interested parties that M/s. DFPCL is not eligible to file the present petition as its affiliate has imported the subject goods and does not constitute the domestic industry. The Authority has examined the position with regard to standing of M/s. Deepak Fertilizer and Petrochemical Corporation Ltd., and holds that M/s. Smartchem Technology Ltd., an affiliate of M/s. DFPCL has imported the material prior to the period of investigation.
- iii. As regards the standing of the domestic industry, the Authority has considered the view expressed by the petitioner, exporters and importers/users. Rule 2 (b) of the Anti dumping rules defines domestic industry as,

" 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 which case (such producers may be deemed) not to form part of domestic industry.

The Authority, therefore notes that for the purpose of present investigations, the imports under investigation period is relevant, as already been held by the Designated Authority and CEGAT.

- iv. The Authority notes that the petitioners constitute 58% of the production of the domestic industry and with support of M/s. Rastriya Chemicals and Fertilizers Ltd., domestic industry represents 74% of total production. Therefore the petitioners have the standing to file the petition on behalf of the domestic industry as per Rule 5 (3) (a) and (b) of the anti dumping Rules and also represent domestic industry in terms of Rule 2 (b).

3. NORMAL VALUE & EXPORT PRICE

Under Section 9A(1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section(6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

The normal value and ex-factory export price determination is illustrated below.

- i. The Authority sent questionnaire to the all known exporter for the purpose of determination of normal value in accordance with Section 9 A (1) (C). The Authority received responses from two exporters from Russia and one exporter from Iran. However, the responses filed by the exporter are found to be grossly insufficient and incomplete for the reasons as mentioned in detail here in below.

Iran

M/s. Iran Petrochemicals Commercial Company, Tehran

Normal Value

- i. M/s. IPCC, Tehran responded to the questionnaire giving information relating to exports and domestic sales of Ammonium Nitrate. As per the anti dumping rules Annexure 1 (2) sales of the like product in the domestic market of the exporting country has to be in the ordinary course of trade. The Authority finds the response furnished by the exporter has grossly deficient due to the following observation,
1. transaction wise details of the domestic sales has not been furnished in Appendix 1,
 2. the exporter has not provided the complete information regarding exports to India, domestic market sales and exports to third countries and is required to furnish the information for preceding two years and month wise information for the period of investigation, in Appendix 3,
 3. in Appendix 2 the information has been provided for FOB Bandar Abas Iran, whereas the overseas freight in Appendix 4 is showing NIL this needs clarification and supporting document for freight ,marine insurance and commission.,
 4. in Appendix 4 all charges/expenses to be adjusted have not been indicated. Full details with supporting documents needs to be provided,
 5. Appendix 5 is incomplete as the selling price of Ammonium Nitrate has not been indicated and documentary evidence needs to be provided for adjustment claimed with regard to arrive at ex-factory cost,
 6. In Appendix 7 quantity and value in respect of opening stock, production, sales and closing stock needs to be furnished. In addition detailed information required to be provided for other products as it is a multi product group,
 7. Information is required in respect of raw materials and ratio in the final product in Appendix 8, 9 & 10 regarding cost of production as per the exporters questionnaire. As the company is manufacturing other products in addition to the products being investigated detail explanation with basis for allocation of costs like utilities and all elements of overheads needs to be furnished. These expenses should be verifiable from the profit and loss account and quarter wise information related to cost of production is also required for comparison with the quarter wise sales information.
- ii. The company has not provided copies of trading, profit and loss account and balance sheet for the current year and previous two financial years showing the determination of gross profit, details of selling and administration and other costs and net profit.
- iii. In view of the inadequate response filed by the exporter the Authority has decided not to take into account information furnished by the exporter and relied on the facts available as per Rule 6 (8) Supra. Therefore the information

available on the estimated cost of production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out normal value of the subject goods in Iran.

- iv. The normal value is therefore referenced as ****\$/MT for M/s. Iran Petrochemical Commercial Co. Ltd., Tehran for the purpose of preliminary determination pending final determination.

Export Price

- i. The Authority has considered the information regarding the export price furnished by the exporter. The exporter has shown adjustment on account of insurance, port expenses, storage, inland freight, which have been allowed. However the exporter has not shown adjustment on account of Commission and Ocean freight which have been adjusted as made available by the petitioner. The Authority has accepted these adjustment for the purpose of preliminary determination for calculating the net export price at ex-factory level from Iran to India for M/S IPCC Tehran, subject to further examination and verification. The export price is referenced as US\$ ****/MT for the purpose of preliminary determination pending final determination.

Other Exporters/Producers from Iran

Normal Value

- i. The Authority notes that none of the exporters from Iran except M/s. IPCC, Tehran has responded by way of questionnaire response to the initiation notification. The Authority, in view of non cooperation, has constructed the normal value for all other producers/exporters on the basis of best available information in accordance with Rule 6 (8) of anti dumping Rules.
- ii. The normal value is therefore referenced as ****\$/MT for Iran for the purpose of preliminary determination pending final determination.

Export Price

- i. The export price given by the petitioner has been correlated with the data supplied by the cooperative exporter. It is a bulk item of supply, as such not much variation was found in the export price, therefore, the Authority notes and decides to reference the same export price of the cooperative exporter for the purpose of determination of dumping margin.
- ii. ex-factory export price is referenced as ****\$/MT for the purpose of preliminary determination pending final determination.

Russia

Normal Value

M/s. JSC AZOT: BEREZNIKI

- i. M/s. JSC AZOT: BEREZNIKI have responded to the questionnaire which is grossly deficient. The Authority further notes that the exporter has provided incomplete and insufficient information regarding domestic sales price in the home market and export price of subject goods to India.
 - a. The transaction wise details in Appendix 1 of domestic sales with sample invoices needs to be provided.
 - b. In Appendix 2, it is to be clarified whether it is a C & F or CIF price along with the copy of invoice.
 - c. Appendix 3 has not been provided at all,
 - d. In Appendix 4, furnish evidence regarding adjustment claimed to arrive at ex-factory export price,
 - e. Appendix 5 also needs to be furnished with all adjustments along with evidences,
 - f. Appendix 7 is incomplete as details regarding opening stock, production and sales have not been provided as per Performa in exporters questionnaire, In addition to the production under consideration details may be provided for the other products, as it is a multi product group,
 - g. The cost of production in respect to exports to India, the domestic sales and countries other than India are required to be furnished as per exporters questionnaire in Appendix 8, 9 & 10.
- ii. The company has not provided copies of trading, profit and loss account and balance sheet for the current year and previous two financial years showing the determination of gross profit, details of selling and administration and other costs and net profit duly certified on the basis of Generally Accepted Accounting Principles.
- iii. Regarding the arguments of exporters for considering them as Market Economy as EC and USDOC have treated Russia as Market Economy in their findings. Petitioners have claimed that Russia has been treated as non-market economy by EC in last three years in the matter of Certain Grain Oriented Electrical Sheets and Strips (flat-rolled products) of a width not exceeding 50 mm and EC is a member of WTO. Regarding the claim of Market Economy Treatment, the Authority has examined their submissions in the light of various Custom Notification No. 44/99, dated 15th July 1999, No. 28/2001 dated 31st May

2001 and No. 1/2002 dated 4th January 2002 on the anti dumping in respect of issue of Non Market Economy under anti dumping Rules Supra.

- iv. As communicated to the known exporters and to the Embassy of Russia, the Authority proposes to examine the claim of the petitioner in the light of Para 7 & 8 of Annexure 1 of anti dumping Rules as amended. The Authority notes that the exporter has not submitted complete information as mentioned above, the test of domestic sales in the ordinary course of trade is not possible in the given circumstances and to determine the normal value as per provisions contained in Section 9 A 1 (C). The Authority also notes that the exporter has not furnished necessary information/sufficient evidence as mentioned in sub Para 3 of the Paragraph 8 of Annexure 1 of anti dumping Rules to enable the Designated Authority to consider the following criteria as to whether,
- a. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:
 - b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
 - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
 - d. the exchange rate conversions are carried out at the market rate;

provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

- v. Therefore the Authority in view of no rebuttal by the exporter on the issue of non market economy with sufficient evidence in the light of Custom Notification No. 28/2001 dated 31st May 2001 and No. 1/2002 dated 4th January 2002 on the anti dumping in respect of issue of Non Market Economy under anti dumping Rules Supra and the fact that the cost of production of the subject goods has not been made available by the exporter thus not permitting the Authority to apply the ordinary course of trade test and to determine the sales being at arm's length.

- vi. In view of the inadequate response filed by the exporter, the Authority has decided not to take into account information furnished by the exporter and relied on the facts available as per Rule 6 (8) Supra. Therefore the information available on the estimated cost of production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out normal value of the subject goods in Russia.
- vii. The normal value is therefore referenced as ****\$/MT for M/s. JSC AZOT Berzniki, Russia for the purpose of preliminary determination pending final determination.

Export Price

- i. The Authority has consider the information regarding the export price furnished by the exporter. The exporter has shown adjustment on account of ocean freight, port expenses, storage, inland freight, commission which have been allowed. However the exporter has not shown adjustment on account of marine insurance, which has been adjusted as made available by the petitioner. The Authority has accepted these adjustment for the purpose of preliminary determination for calculating the net export price at ex-factory level of M/s. JSC AZOT Berzniki, Russia to India subject to further examination and verification. The export price is referenced as US\$ ****/MT for the purpose of preliminary determination pending final determination.

M/s. JSC Nevinnomysskiy Azot, Russia

Normal Value

- i. M/s. JSC Nevinnomysskiy Azot have responded to the questionnaire. They have not furnished information regarding domestic sales in their home market and export information regarding exports to India in Appendix 1 & 2 respectively. As per the anti dumping Rules Annexure 1 (2) sales of the like product in the domestic market of the exporting country has to be in the ordinary course of trade. And ordinary course of trade to be tested only with availability of information of domestic sales of the subject goods in their home market. In Appendix 4 the adjustment claimed before FOB are without documentary evidence.
- ii. The sales price structure for domestic sales in Appendix 5, adjustment has not been indicated regarding packing, freight, insurance, storage and handling etc.Total sales of the company in appendix 3 is not reconciling with the details provided in appendix 7.

- iii. In Appendix 7 quantity and value in respect of opening stock, production, sales and closing stock needs to be furnished. In addition detail information are required for other products also as it is a multi product group.
- iv. They have furnished the information regarding cost of production for sales on domestic market and sales to other countries which is inclusive export to India also. It is desired that the exporter may furnish cost of production for exports to India separately as solicited in Appendix 8 of the exporters questionnaire.
- v. Regarding the arguments for considering them as Market Economy as EC and USDOC have treated Russia as Market Economy in their findings. Petitioners have claimed that Russia has been treated as non-market economy by EC in last three years in the matter of Certain Grain Oriented Electrical Sheets and Strips (flat-rolled products) of a width not exceeding 50 mm and EC is a member of WTO. Regarding the claim of Market Economy Treatment, the Authority has examined their submissions in the light of various Custom Notification No. 44/99, dated 15th July 1999, No. 28/2001 dated 31st May 2001 and No. 1/2002 dated 4th January 2002 on the anti dumping in respect of issue of Non Market Economy under anti dumping Rules Supra.
- vi. As communicated to the known exporters and to the Embassy of Russia, the Authority proposes to examine the claim of the petitioner in the light of Para 7 & 8 of Annexure 1 of anti dumping Rules as amended. The Authority notes that the exporter has not submitted complete information as mentioned above, the test of domestic sales in the ordinary course of trade is not possible in the given circumstances and to determine the normal value as per provisions contained in Section 9 A 1 (C). The Authority also notes that the exporter has not furnished necessary information/sufficient evidence as mentioned in sub Para 3 of the Paragraph 8 of Annexure 1 of anti dumping Rules to enable the Designated Authority to consider the following criteria as to whether,
 - a. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:
 - b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
 - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
 - d. the exchange rate conversions are carried out at the market rate;

provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

- vii. The Authority was constrained to accept the claim of market economy treatment in absence of sufficient information/documentary evidence provided by the exporter as desired in sub Para 3 of the paragraph 8 of Annexure 1 of anti dumping Rules. The exporter has not adduced sufficient information and evidence to establish that it operates under market condition.
- viii. Therefore the Authority in view of insufficient information filed by the exporter on the issue of non-market economy and in view of the inadequate response filed by the exporter the Authority has decided not to take into account information furnished by the exporter and relied on the facts available as per Rule 6 (8) Supra. Therefore the information available on the estimated cost of production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out normal value of the subject goods in Russia.
- ix. The normal value is therefore referenced as ****\$/MT for M/s. JSC Nevinnomysskiy Azot, Russia for the purpose of preliminary determination pending final determination.

Export Price

- i. The Authority has consider the information regarding the export price furnished by the exporter. The exporter has shown adjustment on account of ocean freight, port expenses, storage, inland freight, which have been allowed. However the exporter has not shown adjustment on account of marine insurance which has been adjusted as made available by the petitioner and commission has been taken and adjusted from the other exporters from Russia. The Authority has accepted these adjustment for the purpose of preliminary determination for calculating the net export price at ex-factory level of M/s. JSC Nevinnomysskiy Azot, Russia to India subject to further examination and verification. The export price is referenced as US\$ ****/MT for the purpose of preliminary determination pending final determination.

Other Exporters/Producers from Russia

Normal Value

- i. The Authority notes that none of the exporters from Russia except M/s. JSC AZOT Berzniki, Russia and M/s. JSC Nevinnomysskiy Azot, Russia has responded by way of questionnaire response to the initiation notification. The Authority in view of non cooperation, has constructed the normal value for all other producers/exporters on the basis of best available information in accordance with Rule 6 (8) of anti dumping Rules.
- ii. The normal value is therefore referenced as ****\$/MT for Russia for the purpose of preliminary determination pending final determination.

Export Price

- i. The export price given by the petitioner has been correlated with the data supplied by the cooperative exporter. It is a bulk item of supply , as such not much variation were found in the export price, therefore, the Authority notes and decides to reference the lowest export price of the cooperative exporter for the purpose of determination of dumping margin.
- ii. The ex-factory export price is referenced as ****\$/MT for the purpose of preliminary determination pending final determination.

4. DUMPING Comparison of Normal Value & Export Price

The rules relating to comparison provides as follows:

- i. "While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."
- ii. The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporter/producers of the subject country.

The dumping margin for exporter/producers comes as under:

Exporter/ Producer	Normal value(NV) \$/MT	Export Price(EP) \$/MT	Dumping margin as % of EP
(1) Russia			
(a) M/s JSC AZOT Berzniki,	****	****	90%
(b) M/s. JSC Nevinnomyssikiy Azot	****	****	89%

All other exporters/producers	****	****	150%
(2)Iran			
M/s. IPCC, Tehran	****	****	87%
All other Exporters/Producers	****	****	89%

5. INJURY AND CAUSAL LINK

- i. Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article 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.
- ii. For the examination of the impact of the dumped imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

Cumulative Assessment

- i. The exporters from Russia and Iran are dumping Ammonium Nitrate in the Indian market. Annexure II (iii) to the Anti Dumping Rules requires 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:-
- ii. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- iii. 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.
- iv. The margins of dumping from each of the subject countries are more than the limits prescribed.

- v. It is seen that the quantum of imports from each of the subject countries are more than the de-minimus limits. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market.
- vi. The Authority found that there is a cumulative effect of injury by imports of subject goods on the domestic industry.

Volume and market share of dumped imports

- i. Regarding the quantum of imports the Authority has considered the statistics of imports of subject goods published by the Director General of Commercial Intelligence and statistics (DGCI&S), Kolkata and secondary sources. The Authority has also considered the information furnished by the exporter and importer and found that information furnished by the exporter and importer correspond to the imports details of DGCI&S. Therefore the Authority has relied upon the DGCI&S data for analysing the import trend from the subject country and injury caused to the domestic industry on this account.
- ii. As per the statistics published by the DGCI&S the quantum of imports of ammonium nitrate from subject country which has been examined by the Authority and considered the views of petitioners, importers and exporters.
- iii. It is evident that during the POI (April 2001 – June 2002) 51697 MT of ammonium nitrate were exported by Iran and Russia. The imports of ammonium nitrate have increased significantly in absolute terms may be seen from the above table. The Authority notes that there is a significant increase in imports of Ammonium Nitrate from the subject countries. During the period 2001-2002 imports have increased by 191% over the imports of 2000-2001. The imports during the POI (annualized) have increased by 371% compared with the preceding year. There is a very significant imports during the first quarter of 2002-2003 i.e., 31911 MT

Domestic industry	2000-2001		POI Annualised		2001-2002		Q1 2002-03	
Particulars	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Subject Countries								
Russia	12046		31757.6		19786		19911	
Iran	0		9600				12000	
Total	12046		41357.6		19786		31911	
		1998-99	1999-00	2000-01	POI Annualized	2001-02	Q 1 2002-03	
Share in Demand (%)								
Merchant production		8.05	14.69	17.49	26.01		25.92	20.13
Imports from subject countries		0	0	2.17	8		3.74	20.84
Other Indian producers		22.49	21.16	27.42	19.09		18.64	16.12

Demand including captive consumption	584517	546492	542596	516934	529417	153089
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- iv. From the above table it is observed that the share of volume of imports in total demand has increased from 2.17% in 2000-2001 to 8% during the POI (annualized) whereas the market share in demand has also increased from 17.49% during 2000-2001 to 26.01% during the POI (annualized). The domestic industry has the capacity to cater the demands of the market which is otherwise displaced by the dumped imports.

Demand excluding captive consumption	1998-99	1999-00	2000-01	POI Annualized	2001-2002	Q 1 2002-2003
Merchant Demand (MT)	178557	195913	245824	274485	255756	87391
Domestic industry (%)	26.36	40.97	39.45	48.98	53.66	35.25
Other producer (%)	73.64	59.03	60.52	35.95	38.58	28.23
Imports from subject countries			4.67	15.07	7.74	36.52

- v. It is seen from the above table that the share of import in Merchant Demand has increased from 4.67% in 2000-01 to 15.07% during the POI (annualized), whereas share of domestic industry has also increased from 37.62% in 2000-2001 to 48.39% during the POI (annualized). The increase in the share of domestic industry in Merchant Demand is due to the closure of two of the manufacturing units of Ammonium Nitrate i.e., SAIL, Rourkela and FCI Sindhri.

vi. **Price Undercutting and Price Depression:**

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price undercutting by the dumped imports. The landed value of imports has been found to be significantly lower than the domestic industry's net sales realization. The Authority has examined the claim of the petitioner that the domestic industry is suffering on account of the losses from the sale of Ammonium Nitrate. The Authority notes that the price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the non injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis show a significant level of incidence of price underselling causing injury to the domestic industry. The imports were having significantly suppressing/depressing effect on the prices in

the domestic market, as the domestic industry has not been able to raise its selling price in view of the dumped imports. Thus examination of the available evidence shows that the domestic industry as a whole has suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price undercutting during the POI and holds that domestic industry has suffered significant price undercutting and price underselling during the POI due to dumped imports from subject countries.

vii. Profitability

Domestic industry	1998-99	1999-00	2000-01	POI Annualized	2001-02	Q 1 2002-03
Unit cost of production	****	****	****	****	****	****
Trend	100	123.48	132	124.92		
Unit selling price	****	****	****	****	****	****
Trend	100	109.17	123.78	118.15		
Unit profit/loss	****	****	****	****	****	****
Trend	-100	-289.50	-227.36	-202.28		

The cost of production of the domestic industry has declined in the POI whereas selling price has also declined . The domestic industry is incurring the loss due to the fact that the domestic industry is forced to reduce the selling price below its cost of production to hold on market due to dumped imports from subject countries. The industry has suffered material injury on account of depressed selling price resulting in non recovery of cost of production and thereby suffering financial losses.

viii. Inventory/Stock

Domestic industry	1998-99	1999-00	2000-01	POI Annualized	2001-02	Q 1 2002-03
Opening stock (MT)	293.2	293.2	108.07	358.61	358.61	498.44
Trend (%)						
Closing stock (MT)	296.43	107.97	358.61	463.78	498.44	323.65
Trend (%)						
Average stock	294.865	202.1	233.19	411.19	428.075	411.045
Trend						

The Authority notes that the inventory has increased from 107.97 MT in 1999-2000 to 358.61 MT in 2000-2001 and it has significantly increased to 463.78 MT in the POI (annualized). The average stock is showing a increasing trend from 202.1 MT in 1999-2000 to 233.19 MT in 2000-2001 which has further increased to 411.19 MT during the POI. The petitioners submits that the AN solid being highly Hygroscopic in nature, has a limitation to its self life because of this reason they don't keep high inventories. In the case of AN melt since the material is stored in insulated storage tank at a temperature around 130 degree C, thus the plant operate at bare minimum inventories to save on the cost of steam. Therefore inventories are both AN solid and

AN melt are at minimum levels regulating production volumes and availability of sales contracts.

ix. **Production & Capacity Utilisation**

Domestic industry	1998-99	1999-00	2000-01	POI Annualized	2001-02	Q 1 2002-03
Capacity	563587	563587	563587	563587	563587	563587
Production	453034	430663	394007	406083	411053	96551
Capacity utilisation (%)	80.38	76.41	69.91	72.06	72.94	68.58
Domestic sales	47070	80272	96985	134444	137246	30809

- x. The production has decreased in 2000-2001 but showing a marginal increase of 3% during the POI (annualised). The capacity utilisation has also increased a little more than 1% in POI compared to preceding year 2000-2001. The domestic sale is showing an increasing trend due to the increase in demand but the industry had to sell their product at unremunerative prices to compete with the dumped imports and this is due to the transfer of sales/contracts of M/s. SAIL Rourkela and M/s. FCI Sindhri to the domestic industry, as they have closed for production of Ammonium Nitrate.
- xi. The selling price decreased in the investigation period as compared to the previous year, the decrease in the cost of production was much more than the decrease in the selling prices. In fact, it is found that the loss per unit has also decreased in the investigation period, still, the dumped imports have prevented the domestic industry from effecting a legitimate price increase to realize a reasonable price.
- xii. The sales of the domestic industry have increased because other Indian producers have suspended production.
- xiii. The Authority notes that though the investigation period runs into 15 months, imports have largely reached Indian ports only in the past 3 months of the investigation period. Due to a steep increase in imports in April 02-June 02 period, production, sales, and capacity utilization of the domestic industry has suffered in this period.
- xiv. The employment level of the domestic industry has not undergone any significant change during the POI.

Threat of Injury

As regards the threat of injury, the Authority notes that the Anti-Dumping Rules state as follows:

- i. "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 DA shall consider, inter-alia, such factors and;

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. inventories of the article being investigated.

In addition to the material injury already inflicted on the domestic industry the dumped imports are posing serious threat of material injury, as would be evident from the following:-

- i. The Authority has examined the contention of the Petitioners regarding threat of injury and noted that many countries have already imposed anti dumping duty on imports of Ammonium Nitrate from Russia. This has resulted in increased pressure on Russian Exporters to sell more in Indian market as they have a huge production base. It is evident from the import statistics of DGCI&S that during the last three months period of POI (April-June '02) 19911 MT of AN were exported by the Russian Exporters, compared to 19786 MT in 2001-2002. 37926.3 MT of Ammonium Nitrate were exported by Russian exporter during July – September 2002 (post POI) as per import statistics available from DGCI&S Kolkata.
- ii. The imports are very severely undercutting the prices in the domestic market.
- iii. The exporters in the subject countries are holding significant surplus capacity.
- iv. The trend of imports in the post investigation period is equally significant

Conclusions on Injury:-

From the foregoing, the following conclusions are made by the Authority regarding injury suffered by the domestic industry.

- a. Imports from the subject countries have increased significantly in absolute terms.

- b. Imports from the subject countries have increased in relation to the demand of Ammonium Nitrate in India.
- c. Imports are undercutting the selling prices of the domestic industry
- d. The profitability of the domestic industry has been eroded resulting into financial losses.
- e. The petitioner is suffering from price suppression/depression as landed price for the subject goods from the subject countries are less than the cost of production of domestic industry.
- f. The petitioner is suffering from price underselling as landed price of the subject goods are below the non injurious price or fair selling price of the domestic industry.
- g. The domestic industry has suffered material injury
- h. There is clear evidence of threat of injury.

Causal Link

1. As regards the impact of dumped imports on the domestic industry the principle (iv) of Annexure 2 of the anti dumping Rules states:

- i. "the examination of the impact of the dumped imports on the domestic industry concern, shall include and evolution 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 utilisation of capacity: factors affecting domestic prices, the magnitude of margin of dumping, actual or potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments".
- ii. The Authority holds that the increasing quantum of imports from subject countries and very significant one in the last quarter of the POI resulted in displacement of market share of the petitioner even after the demands have increased, thus resulting in material injury to the domestic industry. The effect of dumped imports of HDAN prills, the Authority has found that based on the close resemblance of their characteristics it is like article to the domestically produced ammonium nitrate. These are commercial substitutes. Import of HDAN prill had resulted in curtailment of sales contract of the domestic industry and also displaced the demand of domestically produced Ammonium Nitrate. The Authority holds that the significant increase in imports of Ammonium Nitrate since 2001-2002 has contributed to increase in imports in absolute terms. This in effect started under cutting the prices of the domestic product compelling the domestic industry to sale below its fair selling price. Resultantly, the domestic industry was not in a position to realise its fair selling price and therefore incurred losses. Therefore the material injury was caused by

the dumped imports from the subject countries to the domestic industry. The Authority also found evidence regarding import of HDAN prill/Ammonium Nitrate in bulk (Fertilizer Grade) in the period subsequent to the POI from Russia. The Authority holds that there is a threat of imminent imports of subject goods, which are like article from subject countries. The injury to the domestic industry is a consequence of dumped imports of like article from subject countries.

- iii. The domestic industry is facing injury due to dumping of Ammonium Nitrate by exporters from subject countries. The increase in imports from the subject countries have had a direct impact on the prices. Resultantly, while the import volumes increased on the one hand, the domestic industry has been forced to lower its prices on the other hand. There is no contraction in demand. The demand has rather increased. Further, there is no other factor such as trade restrictive practice or development in technology which could have caused material injury to the domestic industry.

6. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

- i. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.
- ii. The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers.
- iii. The Authority notes that the imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.
- iv. The Authority has not merely relied upon the submissions of the petitioners regarding fair selling price, rather the Authority deputed a team for on-the-spot investigation and verification of costing and manufacturing process of various forms of Ammonium Nitrate, and worked out in detail the fair selling price of different forms of Ammonium Nitrate in India for the Domestic Industry separately.

- v. Arguments have been raised by consumers that the imposition of anti dumping measures would result in less competition and higher prices for consumers of Ammonium Nitrate and may harm the explosive industry. The Authority notes that price advantages based on unfair practices are unjustifiable and may in the longer term be harmful even to the interest of consumer.

7. LANDED VALUE

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

CONCLUSIONS:

It is seen, after considering the foregoing, that:

- i. HDAN prill/Ammonium Nitrate in bulk (Fertilizer Grade) are exported to India from subject countries below their normal value.
- ii. The domestic industry has suffered material injury.
- iii. The material injury has been caused cumulatively by the dumped imports from subject countries.
- iv. There is a threat of injury due to imminent imports of like article in large quantities.
- v. The domestic industry produces like article;
- vi. The significant capacity for export purposes available with the exporter since there is very low home consumption demand in Iran and huge surplus available in Russia due to imposition of anti dumping duty by USA, EC, Australia and Hungary and the recent dumped imports have caused price depression and is an imminent threat to the domestic producers of the subject goods in India. The significant demand of subject goods in India provides a market to the exporters from Russia and Iran.
- vii. Therefore, the Authority considers necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Ammonium Nitrate from subject countries in order to remove the injury to the domestic industry.
- viii. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty not exceeding the margin of dumping or the margin of injury whichever is less and, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is

compared with the non injurious selling price of the petitioner companies determined for the period of investigation.

- ix. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of issue of notification by the Central Government on all imports of Ammonium Nitrate falling under heading 3102.30 under Custom Tariff Classification Act 1975, originating in or exported from Russia and Iran. The anti dumping duty shall be the difference between amount mentioned in Column No. 3 of the following table and the landed value of imports US\$/MT to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of subject goods falling under Chapter 31 of Customs Tariff Act, originating in or exported from the countries mentioned below,

All exporters/Producers	Amount (US\$/MT)
Ammonium Nitrate Melt	148.58
HDAN prills	164.12
LDAN prills	183.08
Ammonium Nitrate Melt	148.58
HDAN prills	164.12
LDAN prills	183.08

E. FURTHER PROCEDURE

The following procedure would be followed subsequent to notifying the preliminary findings:

1. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
2. Exporters, Importers, Petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the despatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
3. The Authority would conduct verifications to the extent deemed necessary;
4. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
5. The Authority would disclose essential facts before announcing final findings.

(L V SAPTHARISHI)
Designated Authority

Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)

CORRIGENDUM

New Delhi, the 5th May 2003

Subject: Anti dumping investigations concerning imports of Ammonium Nitrate originating in or exported from Russia and Iran.

No. 14/36/2002-DGAD. The Designated Authority, having regard to the Customs Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, hereby makes the following clarification in the Preliminary Findings notified vide notification no. 14/36/2002-DGAD dated 7th April 2003.

Pare (ix) of the part D of the Preliminary Findings shall read as follows:

"(ix) It was decided to recommend the amount of anti dumping duty equal to the margin of dumping or less which if levied, would remove the injury to the domestic industry. Accordingly, it is proposed that provisional anti dumping duties be imposed, from the date of notification to be issued in this regard by the Central Government, on Ammonium Nitrate originating in or exported from Russia and Iran, falling under customs sub-headings no. 3102.30 of Chapter 31 of the Customs Tariff Act, 1975, pending final determination. The anti dumping duty shall be the difference between the amount mentioned in the Col. 9 and the landed value of imports from Russia and Iran as mentioned in the table,

(L.V. Saptharishi)
Designated Authority

TABLE

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	3102.30	Ammonium Nitrate	Melt	Russia	Any country	Any producers	Any exporter	148.48	Metric Tonne	US Dollar
2.	3102.30	Ammonium Nitrate	HDAN prills	Russia	Any country	Any producers	Any exporter	164.12	Metric Tonne	US Dollar
3.	3102.30	Ammonium Nitrate	LDAN prills	Russia	Any country	Any producers	Any exporter	183.08	Metric Tonne	US Dollar
4.	3102.30	Ammonium Nitrate	Melt	Any country	Russia	Any producers	Any exporter	148.48	Metric Tonne	US Dollar
5.	3102.30	Ammonium Nitrate	HDAN prills	Any country	Russia	Any producers	Any exporter	164.12	Metric Tonne	US Dollar
6.	3102.30	Ammonium Nitrate	LDAN prills	Any country	Russia	Any producers	Any exporter	183.08	Metric Tonne	US Dollar
7.	3102.30	Ammonium Nitrate	Melt	Iran	Any country	Any producers	Any exporter	148.48	Metric Tonne	US Dollar
8.	3102.30	Ammonium Nitrate	HDAN prills	Iran	Any country	Any producers	Any exporter	164.12	Metric Tonne	US Dollar
9.	3102.30	Ammonium Nitrate	LDAN prills	Iran	Any country	Any producers	Any exporter	183.08	Metric Tonne	US Dollar
10.	3102.30	Ammonium Nitrate	Melt	Any country	Iran	Any producers	Any exporter	148.48	Metric Tonne	US Dollar
11.	3102.30	Ammonium Nitrate	HDAN prills	Any country	Iran	Any producers	Any exporter	164.12	Metric Tonne	US Dollar
12.	3102.30	Ammonium Nitrate	LDAN prills	Any country	Iran	Any producers	Any exporter	183.08	Metric Tonne	US Dollar

(L.V. Saptharishi)
Designated Authority