

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

FINAL FINDINGS

New Delhi, the 16th September, 2004

Subject: Anti-dumping investigation. concerning imports of 6-Hexanelactam from Japan, European Union, Nigeria and Thailand in India. - Final Findings.

(1) **No. 14/15/2003-DGAD:-** Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Custom Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. Procedure

- i. The application for anti dumping duty of imports of 6-Hexanelactam (also known as Caprolactam) from Japan, European Union, Nigeria and Thailand appropriately updated was received on 12th September 2003 alleging dumping of 6-Hexanelactam originating in or exported from Japan, European Union, Nigeria and Thailand.
- ii. Preliminary scrutiny of the application filed by the applicant revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. On the basis of sufficient evidence submitted by the applicant the Authority decided to initiate the investigation against imports of subject goods from Japan, European Union, Nigeria and Thailand. The authority notified the Embassies of Japan, European Union, Nigeria and Thailand in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with the sub-Rule 5(5) of the Rules.
- iv. A public notice was issued dated 22nd September 2003 and published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom **Code 29337100** of Schedule I of the Customs Tariff Act, 1975 originating in or exported from Japan, European Union, Nigeria and Thailand.
- v. A copy of the public notice was issued to the known exporters (whose details were made available by applicant) and the Governments of the exporting country and were given an opportunity to make their views known in accordance with the Rule 6(2):

- vi. A copy of the application was forwarded to the known exporters and importers (whose details were made available by petitioner) of subject goods in India and were advised to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(3).
- vii. A questionnaire was sent to elicit relevant information to the 10 known exporters and 6 importers/user, in accordance with the Rule 6(4):
- viii. The Embassies of the subject countries in New Delhi were 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. Copies of the letter to exporters, application and questionnaire, sent to the known exporters were also sent to the Embassy of the subject countries in India in accordance with Rule 6(3).
- ix. Response/information to the questionnaire/notification was filed by the following exporter/producer only.

▪ **M/s DSM, Netherlands (European Union)**

There has been no cooperation from Thailand, Japan, Nigeria and other exporters from EU.

- x. M/s Mitsubishi Corporation is a trading company and it represented Toray Industry, however, no questionnaire response was submitted.

M/s BASF only informed of its interest in this case. No questionnaire response was submitted by M/s BASF, since they claimed that their annual shipment of the product under consideration has been negligible.

There were six importers/users.

- M/s Nirlon Ltd.,
- M/s JCT Ltd.,
- M/s NRC Ltd.,
- M/s Modipon Ltd.,
- M/s Century Enka Ltd.
- M/s SRF Ltd.,

The six importers/users also informed of their interest in this case. The six importer/users and the cooperating exporter M/s DSM, Netherlands were represented by a single authorized representative. Only M/s Modipon Ltd., and M/s JCT Ltd., submitted questionnaire response. M/s Century Enka Ltd., submitted details of domestic purchases only. M/s Nirlon Ltd., M/s NRC Ltd., and M/s SRF Ltd., did not submit any questionnaire response. Name of M/s SRF Ltd., was inadvertently omitted in the disclosure statement.

- xi. Information regarding injury was sought from the applicant, which was also furnished by the applicant.
- xii. Non-confidential version of the evidence presented by various interested parties was kept available 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).
- xiii. 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 applicant. M/s GSFC Vadodra was verified by the team on 27th/28th November, 2003 and M/s FACT, Kochi was verified on 17/18th May, 2004.
- xiv. The last date of submission was **1st November, 2003**. On request of interested parties, extension of time was granted upto 17th November, 2003.
- xv. Investigation was carried out for the period starting from 1st April, 2002 to 30th June, 2003 i.e. the period of investigation (POI).
- xvi. Abbreviations/terms/values used:

a) Authority	Designated Authority
b) Subject Countries	Japan, European Union (EU), Nigeria and Thailand. (Vide Section 9A of Customs Tariff Act any country or territory as a whole is considered for assessment, identification and collection of anti-dumping duties).
c) Subject Goods/ Product under consideration	6-Hexanelactam (Caprolactam)
d) US\$	1 USD = Rs 48.4
e) Euro	1 Euro = US\$ 1.039
f) Domestic Industry/petitioner/ applicant	M/s GSFC and FACT Gujarat State Fertilizer and Chemicals Ltd., Vadodra; Fertilizers and Chemicals Travancore Ltd., Kochi
g) POI	Period of Investigation
h) Exporter (cooperating)	M/s DSM, Netherlands

- xvii. No compelling reasons, adequately substantiated, were brought before the Authority to recommend provisional measures. Authority found this case to be an appropriate case not to issue a preliminary finding.
- xviii. Public hearing was held on 29th April, 2004. It was attended by representatives of European Union importers and M/s DSM Netherlands (Exporter) and Domestic Industry.

The following points were raised by domestic industry during various submissions made and during public hearing:-

- a. Normal value of M/s DSM the responding exporter should be on the basis of domestic sale and not third country exports.
- b. No non-confidential version of M/s DSM was received.
- c. Provisional measures must be imposed.

- d. It rebutted the contention of exporters on faulty initiation of the case and on self inflicted injury to the domestic industry.

The exporters raised following issues during various submissions made and during public hearing:-

1. Full text of the non-confidential submission was not provided in time by domestic industry.
 2. Initiation of the anti-dumping investigation was violative of Rule 5 of the Anti-dumping Rules.
 3. Injury to domestic industry is due to internal reasons and policies of Government and not due to dumping.
 4. Ammonium Sulphate is an important co-product and its cost should be analyzed before arriving at a realistic NIP.
- xix. Written submissions followed by the public hearing was received by 14th May, 2004 which was exchanged on the same day.
- xx. Rejoinder to the written submissions was submitted on 20th May, 2004 by the interested parties.
- xxi. In accordance with Rule 16 of the Anti Dumping Rules essential facts under consideration of the Designated Authority which have formed the basis for the final findings were issued on 25th August, 2004 as a disclosure statement. Views expressed by all the interested parties were taken in to account while proposals on product under consideration, like article, domestic industry, dumping margin, injury margin and causality were issued for response. Notwithstanding, the facts given in the disclosure, Authority considered all submissions made by the interested parties, on merit, in order to arrive at a final determination.
- xxii. Interested parties were required to submit responses to the disclosure statement by 1st September, 2004. However, on request for extension from European Union, M/s BASF, M/s Modipon Ltd., and Association of Synthetic Fibre Industries, extension for submission of responses was granted by Authority till 8th September, 2004. Only responses from the domestic industry, M/s DSM, Netherlands (cooperating exporter from EU) consolidated response of the six importers/users (listed in (x) above) and M/s BASF were received.
- xxiii) Hearing was granted to both the representatives of domestic industry as well as exporters, importers and industrial users.

2. Initiation of anti dumping investigation

- a. Rule 5 relating to initiation of anti-dumping investigation of Anti-Dumping Rules are as follows:

“(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of -

- dumping
 - injury, where applicable, and
 - where applicable, a causal link between such dumped imports and alleged injury.
3. The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -
- a. it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :

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

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

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

(i) Issues raised by exporter, importers/users on initiation

- a. Interested parties were not provided with full and proper non-confidential version of the application by the Designated Authority.
- b. Differences in the levels of trade and sales quantities and their possible affects on “price comparability” has not been taken into account prior to initiation.
- c. A single identical normal value for diverse economies like Nigeria, EU, Japan Thailand could not pass the test of sufficiency or adequacy and accuracy.
- d. No information with respect to any exporter or producer from Nigeria was provided by domestic industry.
- e. Copies of journal “Polyamides and Intermediate (Tecnon)” relied upon was not provided along with the non-confidential version. Confidentiality cannot be claimed on published documents.
- f. No information on market share of the domestic industry has been provided.

(ii) Issues raised by Domestic Industry

- a. Each point raised by exporter was rebutted by domestic industry by quoting the relevant provisions of the Agreement as well as the obligations of Authority enshrined under Anti Dumping rules and various case laws of the WTO Panels(s) and appellate body(ies). Domestic Industry mentioned that their application was completed for the period upto March 2003 as the proposed POI however, Authority extended the POI upto June, 2003.

(iii) Views of Authority

- a. All the interested parties were provided with the non-confidential version of the application along with the public notice of initiation, exporter/importer questionnaire and a letter describing the methodology to be followed for the investigation by the Authority vide Rule 6(2) and Rule 6(3) of Anti Dumping Rules. Further all additional information on injury was made available to all the interested parties through a public file vide Rule 6(7) of the Anti Dumping rules. Information available in the public domain was open for access to the interested parties.
- b. Price comparability was done between the market value of the subject goods in the subject countries with the export prices of the subject goods in the subject countries. Adjustments were made to match the levels of trade before arriving at the dumping margin.
- c. Different normal values for different subject countries were considered based on the reasonable information made available.
- d. Market share of the domestic industry has been provided.
- e. Contention of exporter/importer is misplaced while expecting that the non-confidential versions of information provided by interested parties is verified by Authority before it is made available to the others interested

parties. Needless to say that if a discrepancy of facts between the confidential version and non-confidential version is brought to the notice of Authority or is observed by Authority the respective version is sought to be corrected by the concerned interested party and subsequently made available to other interested parties.

- f. Period of investigation has been from April, 2002 to June, 2003. The POI was chosen in a manner to bring the investigation as close to the date of initiation as possible and also to cover a representative period for better analysis of dumping as well as injury. Vide Rule 5(5) of Anti Dumping Rules the authority notified the Embassies of Japan, European Union, Nigeria and Thailand in India after an application was received from the applicant in the prescribed format under Rule 5(2) of Anti Dumping Rules. Once Authority was satisfied of the evidence provided by the domestic industry regarding dumping, injury and a causal link between the dumped imports and injury caused to domestic industry vide Rule 5(3) of Anti Dumping Rules, anti dumping investigations were initiated against imports of subject goods from the subject countries.

B. PRODUCT UNDER CONSIDERATION

3. Product under consideration is 6-Hexanelactam, originating in or exported from Japan, European Union, Nigeria and Thailand. 6-Hexanelactam is a monomer and is a base material for production of Nylon-6. 6-Hexanelactam is produced and sold in both liquid and solid forms. Liquid form of the material can be used only by those customers who are very close to the source of the material. Producers in India use only solid form of the material. Solid form of the material is in white crystal or flakes form. There is no difference in the liquid or solid form, except for the difference in the physical forms. Further, the two solid forms also differ with each other only in terms of physical forms. It is commercially also known as Caprolactam.

6-Hexanelactam is primarily used in production of Nylon-6, which in turn is used for production of Nylon Yarn. Nylon Yarn is used for production of Nylon Fabric for use in (a) apparels; and (b) tyre cord fabric.

6-Hexanelactam is classified under Chapter 29 of the Customs Tariff Act. Complete description of the product as per Customs Tariff Act is 29337100 6-Hexanelactam (epsilon-Caprolactam).

No issues were raised on product under consideration by any interested party.

C. LIKE ARTICLE

4. 6-Hexanelactam (Caprolactam) produced by the applicant and imported from Japan, European Union, Nigeria and Thailand is comparable in terms of characteristics such as physical and chemical properties, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Even though there are different manufacturing process/technologies involved for production of 6-Hexanelactam, the end product has comparable specifications and is used interchangeably. The imported and the domestically sold products are technically and commercially substitutable. The consumers are using the two interchangeably. 6-Hexanelactam produced by the petitioner company is a like article to the goods imported from Japan, European Union, Nigeria and Thailand in accordance with the Anti-Dumping Rule 2(d) which provides as under:

“Like article” means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the article under investigation;

Caprolactam is produced first in the molten form. Caprolactam monomer is preferred in molten form for production of Nylon 6 polymer however the melt has shelf life of maximum two weeks at a temperature of 85 degree centigrade and the melt has to be kept away from humidity. This can thus be used at Nylon production sites in the vicinity of the caprolactam production sites or have to be transported in heated vessels, specially equipped tankers to prevent uncontrolled solidification and degeneration. For users of caprolactam at distant locations the melt is flaked which provides some stability and thus increases the shelf life of flakes by upto one year. All other physical and chemical properties of the two forms are same and end use also remains the same. Users of flake have to reconvert flakes to the molten form to use it for production of Nylon 6. Relative stability of caprolactam flakes and the reversion process involved plays an important role in pricing decision of the product (flakes). As evident from technical journals, in entire Asia flakes are used whereas in Europe (comprising 40% of the global production capacity) flakes are produced for exports only whereas the domestic user industry predominantly uses molten caprolactam for its Nylon 6 production. Prices of melt are guided more by the factor of consistent quality of melt and consistent supply of the melt to the users who get priority over flakes users. Domestic Industry in India sells flakes to its domestic buyers.

Issues related to the differences in form and in pricing structure of the melt and the flakes were raised by the applicant and the exporter. The same was subsequently verified by the team of Designated Authority. For price comparability comparison of the cost and prices of identical form would be appropriate. For reasons explained

above, Authority considers both flakes and molten caprolactam as like articles of different forms vide Rule 2(d) of Anti-Dumping Rules. However, calculation made for differences in the physical form/characteristics in EU market resulting in difference in market values of the two forms are being dealt with in para (7).

D. DOMESTIC INDUSTRY

5. The application was filed by M/s. Gujarat State Fertilizers & Chemicals Ltd., Vadodara (GSFC). It was supported by Fertilizers and Chemicals Travancore Ltd., (FACT). GSFC and FACT are the only producers of the product in the Country and, therefore, account for total Indian Production. The petitioner satisfies the standing within the meaning of the Anti Dumping Rule 2 (b).

No issues have been raised by any interested party

E. Dumping Margin

6. Normal value

“Normal value in relation to an article implies

- a. Comparable price, in ordinary course of trade, for the like article when meant for consumption in the exporting country or territory.
- b. When there are no sale of the like articles in the ordinary course of trade in the domestic market of the exporting country or territory, or 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.
 - i. Comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country, or
 - ii. The cost of production of the subject goods in the country of origin along with reasonable addition for the 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 imports 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.”

Annexure – I (Anti Dumping Rules)

4. “The amounts for administrative selling and general costs and for profits as referred to in subsection (I) of Section 9A of the Act, shall be based on
 - i. the actual amounts incurred and realized by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of articles;
 - ii. any [other] reasonable method, provided that the amount from profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.”

6. (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 the ex-factory level, and in respect of sales made at as nearly as possibly the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability; including difference in conditions and in terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other difference which are demonstrated to affect price comparability.”

The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with section 9A(1)(c) of the Custom Tariff Act.

7. As explained in para (4) above Caprolactam has been sold entirely in molten form in the domestic market by M/s DSM, Netherlands. Majority of the domestic sale has been to its affiliated party. All exports made by M/s DSM to India as well as third countries other than India were in the form of flakes. Prices of melt always have been higher than that of flakes. Normal value was arrived at by making adjustments corresponding to a reasonable estimate of the market value of the two different forms on the basis of the cost of production of the flakes including selling, general and administrative expenses plus reasonable profits by the exporter on the finished product meant for exports. Normal value for the purpose has been constructed vide para 9(A)(I)(c).

Normal value was thus determined on the basis of verified cost of production after adding reasonable profits for cooperative exporter from EU when prices of molten caprolactam in exporters domestic market could not be compared with prices of

caprolactam flakes exported to India due to different forms of products and particular marketing/pricing arrangements in which the two forms of the product are placed.

Normal value for non-cooperative exporters from EU was based on cost of production of the cooperative exporter plus maximum profit earned by cooperative exporter in the POI. This is as per the obligations enshrined in the Anti Dumping Rules.

Normal value for non-cooperative exporters from Thailand was based on the average prices shown by Technon Orbichem for Asian market during POI.

Normal value for non-cooperative exporters from Nigeria was based on constructed cost plus reasonable profits on the basis of facts available from domestic industry and international prices.

Normal value for non-cooperative exporters from Japan was based on average prices shown by Technon Orbichem for Asian market during POI.

Normal value for the purpose of calculation of dumping margin is tabulated in para (9) below.

8. EXPORT PRICES:

Export price claimed by exporter was verified with importer data and transaction-wise imports data of Directorate General of Commercial Intelligence & Statistics (DGCIS) for the POI. During exporters verification the invoices of exports to India during POI were examined and after analyzing the adjustments made before FOB and after FOB stage (Ocean freight: marine insurance; Port expenses in Netherlands; Inland freight in Netherlands; Interests; Commission) ex-factory export price was taken as \$ *****/MT for cooperating producer/ exporter of EU and \$ *****/MT for non-cooperative exporters/producers of EU. Minimum export price of the cooperating exporter has been taken as the export price of the non-cooperating exporters to disadvantage non-cooperation.

Export price from Thailand, Nigeria and Japan was constructed on the basis of facts available based on the CIF prices in India as shown by DGCI&S with adjustments made for ocean freight insurance, handling charges, commission etc.

9. DUMPING MARGIN:

Considering the normal value and export price, as detailed above, dumping margin have been determined as shown below:

Country	Normal Value (\$/MT)	Export Price (\$/MT)	Dumping Margin		
			\$/MT	Rs/MT	%
EU (M/s DSM, Netherlands)	****	****	****		(1.77)
EU (others)	****	****	****		10.11
Thailand	1136	930.08	205.92		22.14
Nigeria	1135	813.54	321.46		39.51
Japan	1136	996.37	139.63		14.01

10. Injury Analysis & Causal Link

The injury analysis and causality established is given below. The following table is being used for the same.

Injury table

S N	Particulars	1999-2000		2000-2001		2001-2002		April'02- June'03 (POI)		POI Annualized	
		Volum e	Value	Volum e	Value	Volum e	Value	Volum e	Value	Volum e	Value
		MT	Rs./La cs	MT	Rs./La cs	MT	Rs./La cs	MT	Rs./La cs	MT	Rs./La cs
1	Natural and Potential Decline in Sales										
	Domestic Sales										
	Domestic Industry	MT	73534 50924	72290 51305	66985 35468	91641 57472	73313 45978				
	Trend	Indexed	100.00 100.00	98.31 100.75	91.09 69.65	99.70 90.29	99.70 90.29				
2	Profits & Sale										
	Cost of Production										
	Domestic industry- Weighted Avr.										
	Trend	Indexed	100.00	120.28	103.18	123.72	123.72				
	Net Sales Realisation										
	Trend	Indexed	100.00	102.62	76.13	90.35	90.35				
	Profit/Loss - Domestic										-950
	Trend	Indexed	100.00	51.96	-1.44	-5.35	-5.35				-5.35
3	Employment (Trend)		100	100.5	94.1	88.8	88.8				
	Productivity (Trend)		100	101.5	99.8	93.5	93.5				
	Production of DI	MT	115370	117592	108411	119690	95752				

	Trend	Indexed	100.00		101.93		93.97		83.00		83.00	
4	Market share											
	In Imports as per DGCI&S											
	EU	MT	788	302	0	0.00	2078	1112	1651	681	1321	545
	Japan	MT	0	0	445	366	316	158	1070	559	856	447
	Nigeria	MT	0	0	0	0	264	110	852	369	682	295
	Thailand	MT	0	0	308	204	0	0	612	297	490	238
	Subject Countries	MT	788	302	753	570	2657	1381	4185	1906	3349	1525
	Trend	Indexed	100	100	96	189	337	457	431	531	431	531
	Other Countries	MT	6	7	9	12	2250	1224	510	320	408	256
	Total Imports	MT	794	309	762	582	4907	2605	4695	2226	3757	1781
	Market share											
	EU	%	99.26		0.00		42.34		35.17		35.17	
	Japan	%	0.00		58.45		6.43		22.79		22.79	
	Nigeria	%	0.00		0.00		5.38		18.15		18.15	
	Thailand	%	0.00		40.42		0.00		13.04		13.04	
	Subject Countries	%	99.26		98.87		54.15		89.14		89.14	
	Trend	Indexed	100.00		99.61		54.55		89.80		89.80	
	Other Countries	%	0.74		1.13		45.85		10.86		10.88	
5	In Demand											
	Demand											
	Trend	Indexed	100		107		101		109		109	
	Market share in Demand											
	Subject Countries	%	0.96		0.85		3.18		4.02		4.02	
	Trend	Indexed	100		89.33		332.74		419.82		419.82	
	Other Countries	%	0.01		0.01		2.70		0.45		0.45	
	Indian Industry	%	99.04		99.14		94.12		95.53		95.53	
	Trend	Indexed	100.00		100.10		95.04		96.46		96.46	
6.	Production											
	Domestic industry	MT	115370		117592		108411		119690		95752	
	Capacity	MT	120000		120000		120000		150000		120000	
	Capacity Utilisation	%	96.14		97.99		90.34		79.79		79.79	

	Trend		100.00		101.93		93.97		83		83	
7.	Return on capital employed	Indexed	100		84.7		58.2		50.1		50.1	
8	Cash Profit of domestic industry	Indexed	100		59.3		16.1		-61.1		-48.9	
	Trend	Indexed	100.00		59.28		16.13		-48.88		-48.88	
9	Inventories											
	Domestic industry											
	Trend	Indexed	100.00		22.94		49.57		24.46		24.46	
10	Wages											
	Domestic industry	Indexed	100		106.8		138.1		143.3		114.7	
11	Growth											
	Growth in Turnover	Indexed	-		0.88		-30.65		12.60		-9.92	
	Growth in Sales Volume	Indexed	-		-1.69		-8.91		-0.30		-0.30	
	Growth in demand indexed	Indexed			7.03		1.35		9.08		9.08	

11. Injury Analysis & Casual Link

The examination of the impact of the dumped imports on the domestic industry and an evaluation of all relevant economic factors and indices having a bearing on the state of the industry including parameters tabulated above for the period from 1999-2000 to June 2003 with trend analysis is given below for each parameter. Imports from Japan, EU, Thailand and Nigeria are being simultaneously subjected to anti-dumping investigations and it is proposed to cumulatively assess the effect of such imports since margin of dumping is more than two percent expressed as percent of export price (excluding exports by M/s DSM) and the volume of the imports from each country is more than three percent of the import of like article and in light of the conditions of competition between the imported article and the like domestic article.

Only dumped volumes have been considered for the sake of injury analysis.

Importers/users have indicated that caprolactam produced by Domestic Industry is used along with the imported product.

i. Sales:

Domestic sales of the domestic industry remained at almost similar levels however value of sales declined. Sales volumes of domestic industry have not declined, given significant increase in demand as a result of increased demand in automobiles and hence tyre production. Almost entire demand increase has gone to foreign producers as there is no increase in sales of the domestic industry. Sales of the domestic industry remained constant in fact marginally declined by 0.30 %, even when the Indian Producers had unutilized capacities and their production had fallen. Further, given the level of price undercutting and repeated requests by the consumers to reduce the prices in the face of cheaper imports, the potential decline in sales is also equally important. Applicants had received several letters from consumers requesting for price reduction citing lower price of imports.

The interested parties have argued that the sales of the domestic industry have increased. Sales volumes have almost remained stagnant. Further, whereas the demand grew by 9 %, sales of the domestic industry declined marginally, as argued in the previous para.

ii. **Profits and sale:**

Cost of production of domestic industry increased by 23 points (in a hundred point index) but sales realization decreased by 10 points thereby converting the profits made by domestic industry in 1999-2000 to losses in June'03.

Profits of the domestic industry have significantly declined. Domestic Industry landed in a situation of financial losses in 2003-03 from a situation of profit at the beginning of the injury period.

iii. **Output:**

Productivity per employee of the company decreased from 1999 to June 2003. Although the domestic industry has the capacity to cater to the entire domestic user industry.

Production of Caprolactam for the domestic industry has declined significantly. Even though the petitioners are in the business of this product for a long and even when the demand of the product witnessed positive growth, it has suffered loss of production for this vital product, as the growth has largely gone to imports from the subject countries.

iv. **Market Share:**

Volume of imports of the subject countries increased 4 times during the injury analysis period but the share of imports from subject countries to total imports declined by 10 points due to other countries increasing their volume of exports to India. Share of imports to total demand in the country has increased substantially.

- Imports from Japan, European Union, Nigeria and Thailand have increased in absolute terms. Slight decline in the imports in the current year vis-à-vis preceding year can be seen against the steep increase in the imports as compared to 1999-00 and 2000-01;
- Imports have increased in relation to production of the domestic industry;
- Imports have increased in relation to demand of the subject goods in India.

v. **Capacity utilisation:**

Capacity utilisation of the company has decreased by 17 points in the injury period. Since there is no change in the capacities created, utilization of capacity follows the same trend as that of production. The capacity utilization of the domestic industry declined.

vi. **Return on capital employed:**

Return on capital employed has reduced by 50 points in the injury period. Return on investments follow the same trend as that of profits. While the return on investment was earlier positive, the same has become negative in 2002-03 due to dumped imports forcing the domestic industry to reduce the prices.

vii. **Inventory:**

Inventory was reduced in 2000-2001 and the level was maintained either by export sales or lowering production of caprolactam. The domestic industry was earlier holding very high level of inventories. Continuous efforts of the domestic industry brought down the inventory levels. Reduction in inventory levels was made possible also because of the price reduction made by the domestic industry.

viii. **Wages and Employment:**

Wages and employment have not been considered as the factor effecting the domestic industry because of dumped imports. In case of productivity per employee, both the Companies are multi product Companies and it is not feasible to segregate number of

persons employed for Caprolactam alone. In fact, both the Companies have common employees between Caprolactam plant and Other Plants.

ix. Growth:

Growth with respect to turnover or sales volume has been negative whereas demand has grown by 9 points. Thus, the growth of the domestic industry was sub optimal due to imports from the subject countries.

As it may be seen from the above para, the growth of the domestic industry has been less than the market growth. Such sub-optimal growth of the domestic industry when the demand grew more than growth of the domestic industry and when the domestic industry had available capacity to produce and supply goods clearly show injury caused to the domestic industry due to dumped imports, as reflected in growth of the domestic industry.

x. Dumping Margin:

Dumping margin has ranged between 10.11% to 39.51% from the subject countries. Dumping margins in respect of imports from Japan, European Union, Nigeria and Thailand are not only above de-minimis but also significant.

xi. Ability to raise capital investments:

The domestic industry has shown poor returns on capital employed with a downward trend and cash losses which have resulted in eroding the domestic industries capacity to raise capital investments specifically for this product.

The reducing profitability of the domestic industry has adversely impacted the cash flow of the domestic industry, although in case of multi product companies like the two applicant companies, it is not feasible to have cash flow separately for the product under consideration.

xii. Effects of only dumped imports were assessed. No difference in technology of the domestic producer and the foreign producers were highlighted. The technology was mostly acquired from foreign producers like M/s DSM and M/s BASF. Export performance of the domestic industry has been segregated while assessing the injury parameters. No information on proceedings against the domestic industry on trade restrictive practices have been brought to the notice of the Authority.

- a. Volume and value of imports not sold at dumping prices: - It would be seen that (i) volume of imports from other countries are de-minimus; (ii) import price from other countries are significantly higher than the import price from the subject countries. Thus, imports from other countries have not contributed to the injury to the domestic industry.
- b. Contraction in demand:- From the injury statement it would be seen that the demand of the product under consideration has registered a positive growth. Thus, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- c. Changes in the patterns of consumption:- The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.
- d. Developments in technology:- Technology for production of the product has not undergone any change. Developments in technology is, therefore, not a factor of injury.
- e. Export performance:- Export volumes of the domestic industry have declined. Even when the demand has increased, the sales volumes of the domestic industry in the domestic market have declined. Negative growth faced by the domestic industry, when the product is showing growing demand, is clearly due to dumping. Exports made by the domestic industry were commensurate to the difference of the growth in demand and decline in sale of the domestic industry. Another option with the domestic industry was to curtail production, which would have resulted in significant increase in the cost of production. Thus, exports of the product have helped the domestic industry in lowering the cost of production. The domestic industry information for the domestic and export market have been segregated. Therefore, the injury claimed by the domestic industry from sales of Caprolactam in the domestic market is in no way adversely influenced because of exports made by the petitioners.
- f. Productivity:- Profitability has been worked out considering the best achieved production by domestic industry in the injury period. The cost of production of the domestic industry at this enhanced level also shows that the selling price was below this normated cost of production.

Productivity has not been the cause of the injury as it has remained fairly constant while prices and volumes have dipped during POI.

12. Price undercutting

Price undercutting determined by comparing the weighted average net sales realization of the domestic industry with the landed price of imports shows that the

landed price of imports is below the selling price of the domestic industry, thus resulting in price undercutting, between 10 - 20%.

Landed price of imports is significantly below the selling price of the domestic industry, resulting in price undercutting. The number of consumers of Caprolactam is quite limited in the Country. The consumers are well aware of global prices. Letters written by the consumers, asking petitioners to reduce the price, citing the prices at which material is available from a number of countries, were presented to Authority, which clearly show that the applicants have been injured because of the price undercutting.

Existence of price undercutting in this case was the sole reason for the domestic industry to reduce the prices. The domestic industry is forced to offer lower prices in view of dumped prices offered by the Foreign Producers. In spite of offering lower prices, the domestic industry has been forced to face price undercutting. Existence of price undercutting is in spite of price reductions made by the domestic industry.

13. The net sales realization was determined exclusive of rebates/discounts, commission, taxes and duties. Net sales realisation ranged between Rs. 45000/MT to Rs. 65000/MT.

14. Price underselling

Price underselling is derived by comparing weighted average non-injurious price of the domestic industry with the landed price of imports of subject goods into India. Price underselling of dumped goods deprived domestic industry of prices it ought to get from sale of the subject goods in the domestic market. Price underselling was to the extent of 10-40%.

15. Price suppression

There has been a decrease in the sales realization despite increase in cost of production of the subject goods landed value of the dumped imports at the level of cost of production of the domestic industry.

Landed value of the dumped imports is below the cost of production and non-injurious price of the domestic industry. Further, while cost of production of the subject goods has increased, the selling price has declined as a result of decline in the export price. Thus, imports are preventing the domestic industry from effecting legitimate price increases.

a. Losses being suffered in Ammonium Sulphate: - Production of product under consideration results in production of Ammonium Sulphate also. In fact, both

the companies have treated Ammonium Sulphate as joint product and have apportioned costs between product under consideration and Ammonium Sulphate. Losses being suffered in production and sale of Ammonium Sulphate have not been unduly charged to the product under consideration.

- b. Losses being suffered in fertilizers: - The exporter/importer have argued that the petitioners are primarily engaged in production of fertilizers. However, share of chemicals & petrochemicals in case of GSFC was around 36%, while the same in case of FACT was about 33% in 2002-03.

Further, in chemicals and petrochemicals, 6-Hexanelactam constituted a significant proportion. In case of GSFC, 6-Hexanelactam constituted 44%, while the same was 98% in case of FACT in 2002-03., In terms of investment, the investment in caprolactam has been very significant. In case of GSFC, 53% of net block was in Caprolactam in the year 2002-03.

Thus product under consideration is insignificant to the companies concerned.

16.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 Custom Tariff Act, 1975.

The landed value of imports has been determined as the CIF import price (sources from DGCIS) plus 1% landing charges and applicable basic customs duties for the POI.

17. The price effect of the dumped imports is evident from the price undercutting of between 10-20% and price underselling between 10-40%. The net sales realization has dipped and has remained at the level of the cost of production. Profits have been down with reduction in return on capital employed whereas the demand has increased. Employment, wages are not being considered for the injury analysis.
18. The volume effect is pronounced in terms of increase in imports from subject countries while domestic sale remained constant thus reducing the share of domestic industry in the overall demand of all subject goods.

Since increase in demand did not result in increase in production, capacity utilization and productivity declined to the extent of forcing a shut down of one of the plants. Levels of inventory was maintained after 2000-2001 with the help of export sales or lowering production of caprolactam. Higher inventory for a long period could

not be maintained since the product has limited shelf life and is hygroscopic by nature.

19. Non-Injurious Price (NIP)

The Authority determined a Non-injurious price for the subject goods after a detailed analysis and scrutiny and verification of information provided by the applicant companies.

The cost information on all relevant factors concerning the production and the production process were called for in the prescribed proforma for the period of investigation and for the preceding years. The actual cost of production of the subject goods for the domestic industry has been used to determine normated cost of production on the basis of Generally Accepted Accounting Principles (GAAP). In the determination of Non-injurious price for the domestic industry, the Authority has examined and analyzed in detail all the relevant factors including cost of raw material used in the production of subject goods, the consumption thereof, the cost of utilities such as power, water etc., cost of labour, depreciation cost, selling and administrative expenses and interest cost. The factors such as investments made in the plants and the capacity utilization have also been examined in the cost analysis. All these factors have been determined with reference to the basic books of accounts and production and financial statements. The Non-injurious price for the domestic industry has been determined by addition to the cost of production of a reasonable profit margin on the capital employed by the applicants.

Exporter stated that ammonium sulphate is an important coproduct and its cost should be analysed before arriving at a realistic NIP.

Authority worked out the NIP of Caprolactam after verifying the costs apportioned between the two products and hence no costs pertaining to ammonium sulphate could have been loaded to the cost of Caprolactam.

20. Indian Industry's interest & other issues

It is understood that Caprolactam always jointly produces ammonium sulphate. Depending on commercial requirement of ammonium sulphate as a nitrogenous fertilizer the ratio of ammonium sulphate produced can be varied from 1.5 to 4.5 times of production of Caprolactam. Old Caprolactam plants globally sold ammonium sulphate as a potent nitrogenous fertilizer till its applications was restricted only to specific areas by the use of Urea which has high nitrogen content. Thus new Caprolactam plants produce less of ammonium sulphate in

comparison to old plants. Parallely, technology has also been developed to produce Nylon chips without Caprolactam as raw material which is in commercial use.

It is understood there are around 43 plants around the globe with overall capacity of approximately 4.5 million MT. Demand of Caprolactam for Nylon 6 plant globally is around 3.8 million MT. Subject countries comprise approximately 40% of the global capacities. Europe has 30% of the global capacity to produce caprolactam whereas its requirement for Nylon 6 is 22%. Capacity to produce Caprolactam in Asia (excluding Japan) is 19% of the global capacity but its requirement or Nylon 6 application is 41% of the global requirement. This leaves a gap for imports to flow in this region. Of the 43 plants around the globe 19 plants have capacities between 50000-100000 MT each per annum and 7 plants have capacity less than 50000 MT each per annum. Majority of the plants (22) have BASF/DSM technology.

Total capacity of India is 120000 MT of Caprolactam production. The same is adequate to meet the requirement of Nylon 6 producers which require Caprolactam approximately in the ratio 1:1. It is understood that approximately 60% of the Nylon 6 requirement is in textiles and allied sector whereas only 40% of the requirement is in industrial application and resin. Nylon tyre cord fabric comprises less than 10% by weight of the tyres which is bulk of the use of non textiles sector.

Demand of the Nylon 6 user is also increasing despite presence of other grades of Nylon in the market which is produced from raw material other than caprolactam. Technology used to produce Caprolactam in India and the scales of operation are at par with global standards.

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.

The Authority recognizes 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 fair competition in the Indian market will not be adversely affected 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 the availability of a wider choice of the subject goods to the consumers. 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.

22. Conclusion

It is seen, after considering the foregoing, that:

- a. The subject goods in all forms originating in or exported from the subject country have been exported to India below its normal value.
- b. The domestic industry has also suffered material injury by way of financial losses due to suppressed Net Sales Realisation (NSR) on account of price undercutting / underselling caused by low landed prices of the dumped subject goods.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject countries.
- d. The Authority recommends anti-dumping duty on imports of subject goods falling under Chapter 29 originating in or exported from the subject countries.
- e. The Authority considered to recommend the amount of anti-dumping duty equal to the margin of dumping or lower so as to remove the injury to the domestic industry accrued on account of dumping. Accordingly, final anti dumping duties equal to the difference between the amount of Column 9 of the Table below and landed value of subject goods in \$/MT be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from subject country.

Sl.No	Sub-heading	Description of goods	Specification	Country/Territory of origin	Country / Territory of export	Producer	Exporter	Reference Price (USD/MT)
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	European Union	European Union	M/s DSM Netherland	M/s DSM Netherland	No duty
2.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	European Union	European Union	M/s DSM Netherland	Any exporter other than M/s DSM	1394.05
3.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	European Union	European Union	Any producer other than M/sDSM Netherland	Any exporter other than M/s DSM Netherland	1394.05
4.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	European Union	European Union	Any producer other than M/s DSM Netherland	M/s DSM	1394.05
5.	29337100	6-Hexanelactam	6-Hexanelactam	European Union	Any country other	M/s DSM Netherland	Any exporter other than	1394.05

			m (epsilon - Caprolactam)		than European Union		M/s DSM Netherland	
6..	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	European Union	Any country other than European Union	Any producer other than M/s DSM Netherland	Any exporter other than M/s DSM Netherland	1394.05
7..	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Thailand	Thailand	Any producer	Any exporter	1421.09
8.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Thailand	Any country other than Thailand	Any producer	Any exporter	1421.09
9.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Nigeria	Nigeria	Any producer	Any exporter	1400.25
10.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Nigeria	Any country other than Nigeria	Any producer	Any exporter	1400.25
11.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Japan	Japan	Any producer	Any exporter	1441.86
12.	29337100	6-Hexanelactam	6-Hexanelactam (epsilon - Caprolactam)	Japan	Any country other than Japan	Any producer	Any exporter	1441.86

23. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act 1975.

24. An application for review under Section 9(A) (5) of the Customs Tariff Act, 1975 may be filed six months before expiry of the definitive duties.

Abhijit Sengupta,
Designated Authority

Rejoinder Points

Market share

Market share in Demand changed as follows:

	1999-00	2000-01	2001-02	POI
Subject	0.96	0.85	3.18	4.02

Country				
Domestic	99.04	99.14	94.12	95.53
Industry				

It is seen from the above that market share of imports from subject countries increased, while that of domestic industry declined. It is therefore, factually incorrect that market share of domestic industry increased over the injury period.

Price Undercutting

With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product 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. Authority determined net sales realization of the domestic industry considering selling price of the domestic industry, excluding of taxes & duties, rebates, discounts & commissions and freight & transportation. Entire sales volumes of the domestic industry have been included in the calculations. landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison was done between net sales realization and landed price of imports. It was seen that Imports from each of the subject countries have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting.

Even though the level of price undercutting are significant and per se sufficient to justify imposition of anti dumping duty, petitioner further examined whether the effect of such imports was to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose, Authority considered unit cost of production, net sales realization and unit profit/loss of the domestic industry. It was seen that the imports were depressing the prices of the domestic industry in the market.

It is evident from the above that the effect of dumped imports on the domestic industry has been adverse.

As regards views of petitioner companies in the Annual Report, Authority considers that the above conclusion is based on verified information, information provided by domestic industry, importers, consumers in India, co-operating producer in Europe and other information received by the Authority. Further, what one of petitioner companies has stated in its annual report implies that the domestic industry was selling at prices higher than international prices. The reference is, however, clearly to

the price at which the material has been imported into India. In fact, this further substantiates that the landed price of imports was lower than the selling price of the domestic industry, resulting in price undercutting.

Domestic Sales

The demand of the product in India increased by 7481 M, whereas sales of the domestic industry declined by 221 MT. It is therefore, factually incorrect that sale of the domestic industry increased that too in the same proportion or higher than demand.

Profitability and Return of Investment

Authority has determined profitability and. return on investment based on data pertaining product under consideration only. Other factors which could have also resulted in overall decline in profitability and return on investment domestic industry are not relevant nor included in the data used by the Authority

Selling Price

Selling price of the domestic industry increased between 1999-00 and 2000-01, declined in 2001-02 and thereafter increased in POI. On overall basis the selling prices declined. At the same time cost of production increased between 1999-00 and 2000-01, declined in 2001-02 and thereafter increased in POI. Profits of the domestic industry from sales in the domestic market, however, has shown one pattern only, i.e., continuous decline between 1999-00 and poi. The domestic industry was making significant profits in 1999-00 and was forced to significant losses in POI. As may be seen from the table given below:

			1999-00	2000-01	2001-02	POI
Profit/Loss	on	domestic	100	51.96	-1.44	-62.88
sales of domestic industry						
(indexed)						

Output and Capacity Utilization

The Authority may note that decline in production per se is relevant for examination of injury. Reasons for the same may be relevant for the purpose of causal link but not existence of injury. In any event, it is noted that production of other domestic producer, GSFC also declined significantly in the POI. Even if production of FACT for the closer period is taken on pro-rata basis, it is found that production of domestic industry declined, as may be seen from the table below:

Productivity

Productivity of the domestic industry has declined due to decline in production. Decline in production being due to decline in sales as a result of dumped imports in the country, it would be inappropriate to say that decline in productivity is not due to dumping.

Factors affecting prices

The disclosure statement has dealt with the issue of price underselling as also price suppression. It would therefore, be incorrect to say that the disclosure statement did not deal with factors affecting domestic prices.

As regards increase in the domestic selling price, in the .POI as compared to previous year, Authority considers that it is inappropriate to limit any comparison between POI and immediate preceding year. The Authority has examined injury to the domestic industry over a much longer period, i.e. between 1999-00 to June'2003. It is also found that the associated costs in production of Caprolactam varies significantly due to changes in principal raw material. It would therefore not be appropriate to consider the prices in isolation, without considering associated cost of production.

The methodology for determination of non-injurious price is as follows:

The cost information on all relevant factors concerning the production and the production process were called for in the prescribed Proforma for the period of

investigation and for the preceding years. The actual cost of production of the subject goods for the domestic industry has been used to determine optimum cost of production on the basis of Generally Accepted Accounting Principles (GAAP). In the determination of Non-injurious price for the domestic industry, the Authority has examined and analyzed in detail all the relevant factors including cost of raw material used in the production of subject goods, the consumption thereof the cost of utilities such as power, water etc., cost of labour, depreciation cost, selling and administrative expenses and interest cost. The factors such as investments made in the plants and the capacity utilization have also been examined in the cost analysis. All these factors have been determined with reference to the basic books of accounts and production and financial statements. The Non-injurious price for the domestic industry has been determined by addition to the cost of production of a reasonable profit margin (22%, including profit and interest) on the capital employed by the applicants.

As regards Ammonium sulphate, the data provided by the domestic industry did not include any data with regard to Ammonium sulphate. It is also found that both the companies maintained separate data with regards to Ammonium sulphate and Caprolactam. It is also to be noted that the product under consideration in this case is Caprolactam. There is no suppression therefore, on this account by the domestic industry.

Magnitude of Dumping Margin

The Designated Authority has not computed dumping margin on the basis of identical normal value.

Cash Flow

The Authority notes that Cash Flow of a multi-product company would not be an appropriate parameter to determine injury to the domestic/industry.