

MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
Directorate General of Anti Dumping & Allied Duties

Notification

New Delhi, the 16th January, 2004

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of Potassium Carbonate from the European Union (EU),China PR, Korea RP and Taiwan - Final Findings

No. 14/42/2002-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

1. The procedure described below has been followed:-
 - i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s on behalf of the domestic industry, alleging dumping of Potassium Carbonate (hereinafter referred to as subject goods) originating in and exported from European Union(EU),China PR,Korea RP and Taiwan (hereinafter referred to as subject countries);
 - ii. The Authority notified the Embassies/Representative of the subject countries in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 *supra*;
 - iii. The Authority issued a Public Notice dated 19.12.2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Potassium Carbonate originating in or exported from the subject countries falling under Customs Sub-heading 28 36 40 under Chapter 28 of the Customs Tariff Act, 1975.
 - iv. The Authority forwarded copy of the said public notice to the known exporters, importers, users, industry associations and to the complainants and gave them an opportunity to make their views known in writing.

- v. According to sub-rule (3) of Rule 6 *supra*, the Authority provided a copy of the petition to all the known exporters and Embassies/representatives of subject countries in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the known exporters from the subject countries:
 - The response was, however, filed by
 - M/s. UNID Co. Ltd, Korea (UNID)
 - M/s. DEGUSSA AG, Germany (Degussa)
 - M/s. MERCK KgaA, Germany
 - M/s. Taiwan Pulp & Paper Corp., Taiwan
 - M/s. Jiande Dayang Chemical Manufacture Ltd (Jiande)
 - M/s. Shanghai Wenton Co. Ltd. (SWC)
 - M/s. Chengdu Chemical Co. Ltd. (CCL)
 - M/s. Zhengzhou Fang Tai Chemical Co. Ltd. (ZFT)
- vii. The Embassies/representative of subject countries in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the known users/importers of subject goods in India calling for necessary information in accordance with Rule 6(4):

The response was filed by:

- i. M/s. Videocon Narmada Glass, Bharuch
- ii. M/s. Alpha Drug India Ltd., Distt. Patiala
- ix. 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;
- x. *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xi. The investigation covered the period from 1st April, 2001 to 30th September, 2002 (18 months).
- xii. Additional details regarding injury were sought from the petitioner, which were also furnished.
- xiii. The Authority conducted on-the-spot verification of the domestic industry as well as cooperative exporters to the extent considered necessary.
- xiv. The cost of production of the domestic industry was also analysed 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) based on the information furnished by petitioner so as to ascertain if anti dumping duty lower than dumping margin would be sufficient to remove injury to domestic industry.

- xv. In accordance with Rule 16 of the Rule supra, the essential facts /basis considered for these findings are being disclosed to known interested parties and comments received on the same would be duly considered in the final findings.
- xvi. The submission made by the importers, 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.
- xvii. The cases of new exporters or those stated to be willing to give price undertaking shall be considered, on request, by the Authority in accordance with the Rules supra.
- xviii. The Central Government vide OM No.354/43/2003-TRU dated 19.12.2003 granted extension for a period of one month from 19.12.2003 for completing the investigation.

B. VIEWS OF PETITIONER, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES :

2.0 PETITIONER'S VIEWS

The petitioner have made the following major points in their submissions:

2.1 They are major producers of the subject goods in India;

1. Exporters from EU, China, Taiwan & South Korea are dumping Potassium Carbonate in the Indian market.
2. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported articles and like domestic articles.
3. Indian industry has suffered material injury from exports of subject goods from subject countries. This may be immediately checked by imposition of interim duties first and followed by definitive duties.
4. Petitioners have stated that M/s. Taiwan Pulp & Paper, Taiwan, M/s. UNID, Korea, M/s. Jiande, China and M/s. Degussa, Germany are producers and exporters of subject goods have furnished information and the dumping margin have been determined based on the information furnished.
5. Petitioners have submitted that the responses filed by the exporters need to be rejected as the information seem to be incomplete. If the Authority proposes to

adopt the responses filed by the exporters for the final findings, petitioner submits that the information filed is required to be verified and then adopted.

3.1 M/s. UNID Co.Ltd. Korea

The exporters have stated that the normal value has been based on domestic selling price in Korea. The Authority has observed that more than 20% sales in the domestic market are below the cost of production and therefore, volumes of transaction which are in ordinary course of trade has been relied upon for determination of normal value.

They have submitted that all domestic sales of M/s. UNID in Korea are above cost of production and in ordinary course of trade.

The Authority has discarded the export price to India reported by UNID and is determined the export price on the basis of import data compiled by DGC&IS, Government of India. This has to be relooked by the Authority.

The material injury and causal link analysis needs to be reevaluated.

3.2 M/s. Degussa AG, Germany.

The exporters have stated that they support the preliminary findings of the Authority with regard to dumping margin.

The material injury and causal link analysis needs to be reevaluated

3.3 M/s. Jiande Dayan Chemical Manufactures Ltd., China & M/s. China Petroleum and Chemical Industry Association, China:

The exporters have submitted that necessary preconditions not satisfied by the domestic industry. The exporter has claimed that he has not dumped the goods, no injury is caused to the domestic industry and in absence of dumping and consequential injury there is no causal link.

With regard to market economy conditions, exporters have submitted that in the present case, the criteria provided under Rule 8(3) of the anti dumping rule are wholly satisfied. M/s. Jiande is the private company established under province of Company Law of China PR. It is independently managed company without any state control or interference in its management, pricing, and procurement of raw materials or in respect of its labour.

(i) Submissions by Jiande on working within Market Economy Conditions.

- a. Jian De DaYang Chemical Factory was founded in 1976, which was then a village and township enterprise. In 1988, it was restructured into a joint-stock enterprise with a total of 12.205385 million registered capital and 148 shareholders. Without any government's investment, each shareholder is an independent entity. Its main products are potassium carbonate, potassium bicarbonate, ammonium chloride, containing fluoride or chloride aromatic medicine and inter-agricultural chemical. It has now become one of the biggest potassium carbonate producers, with an annual productive capacity of 30 thousand tons. In April 2000, it got the authentication of document of ISO9001 quality system. In March 2003, it was assessed as a hi-tech enterprise of Zhejiang Province.
- b. The supreme power organ of the enterprise is the shareholders' congress, which is responsible for the formulation and amendment of regulation and the decision of important policies. The board of directors and board of inspectors are set up in order to run the enterprise well. The board of the supervisors, which is responsible for the shareholders, performs its obligation of supervising the procedure, means, content of the policy-making. The production and management of the enterprise are under the control of the general manager, under whom several vice general managers are appointed.
- c. The production plan and development strategies are formulated according to the information of the market.
- d. The purchasing of the raw material is performed under the guidelines of ISO9001 system. The raw materials are bought mainly from Russia, Canada, Jordan and other supplementary materials maybe purchased from other enterprises under the position of market economy.
- e. The strategy of the selling of the products is made according to the needs of the market. There are two channels of selling products, that is, direct selling and indirect selling. Direct selling is to communicate with customs directly in order to make a deal, while indirect selling is to communicate with customers through the help of middlemen and then a deal is made. Actually, various ways are applied in selling.
- f. Human Resources are the top priority of the any well-managed enterprise in environments of fierce competition.
- g. The money that ensures the development of the enterprises consists of two parts: self-raised money and loans from the banks. The self-raised money is collected from shareholders. When an enterprise loans money from a bank, it should pay principal and interest timely according to the contract.
- h. Jiande is subject to pay selling taxes to the state, that is, 17% of the VAT.
- i. The accounting principle is applied to the finance and accounting system of the enterprises, that is to say the means of taking accounts, the preparation of bad

accounts, the sharing of depreciation charges are all carried out according to the accountant principle.

- j. Jiande attaches much important to the protection of the ecological environment in its production. 13 million RMB has been invested to establish a well-functioned pollution water treatment system, which can dispose 2,000 tons of polluted water per day. In 2000, it has reached the standard of the environment quality assessment.

(ii) Cost structure determined by the market forces:

Wages are negotiated by and between the employer and the employees on supply and demand basis. The laws require a certain minimum wage beyond which the negotiation is done to arrive at the final wages. Similarly, raw material is directly procured from the open market. For example in the year 2002, steel prices suffered a substantial increase on account of the forces of demand and supply. The costing statement provided by Jiande evidences a large variation band in relation to input costs. This is on account of open market transactions between Jiande and the vendors.

(iii) Applicability of bankruptcy and property laws of PRC

Like any other companies in China, Jiande is subject to the Bankruptcy Law Attention has been drawn to Art.3,7,23-26,28 of the Bankruptcy Law of the China PR. Under the Bankruptcy Law, an enterprise shall declare bankruptcy in case it is unable to pay its debts when due, and the court organizes the formation of a liquidation committee responsible for liquidation. After the completion of liquidation, the liquidation committees drafts a liquidation report and submits the report to the owner for confirmation and to the Commercial Registration Authority in order to obtain cancellation of the registration of the enterprise and publicly announce its winding-up.

The property law applying to Jiande is mainly laid by the Constitution of the People's Republic of China. In Article 16 of the Constitution, it provides that "lawful individual and private enterprises are important part of the economy of the country. The state protects the lawful rights and interests of the individual and private economy. " Similarly Jiande is subject to the Company Law of PR China.

(iv) Exchange Rate Conversions.

Foreign exchange system in China has undergone significant change since 1979. China is a member of the IMF. Significant moves have been taken to reform, rationalize and liberalize the foreign exchange market. The practice of multiple exchange rates in swap centers has been abolished. China has already unified its

foreign exchange market and removed many of the restrictions on the use of foreign exchange.

China's foreign exchange reform carried out since 1979 has reduced administrative intervention and increased the role of market forces. From 1979, a foreign exchange retention system was applied in China, although foreign exchange swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nationwide unified inter-bank foreign exchange market was established, with conditional convertibility of the RMB on current accounts. On 1 December, 1996, China has formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then RMB has been fully convertible on current accounts. It is confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China has no existing foreign exchange restrictions for current account transactions.

The State Administration of Foreign Exchange (SAFE) is under the auspices of the People's Bank of China (PBC), China's central bank. SAFE is the administrative organ empowered to regulate foreign exchange. Its main functions are to monitor and advise on balance-of-payment and foreign exchange matters. SAFE is also required to draft appropriate regulations and monitor compliance.

Under the Regulations on PRC Foreign Exchange System and Provisions on Settlements, Sales and Payments of Foreign Exchanges, companies in China can purchase foreign exchange at market exchange rates from banks or debit their foreign exchange accounts directly to make payments of foreign exchanges. Foreign exchanges for personal use by individuals can be purchased directly from the banks upon presentation of valid documents justifying the use of the foreign exchange.

Regarding the exchange rate regime, China since the unification of exchange rates on 1 January, 1994 has adopted a single and managed floating exchange rate regime based on supply and demand. PBC publishes the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted average prices of foreign exchange transactions at the inter-bank foreign exchange market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank foreign exchange market can fluctuate within 0.3% of the reference rate. For the HK dollar and Japanese yen the permitted range is 1%. Banks can deal with their clients at an agreed rate. The exchange rates for other foreign currencies are based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market.

M/s Jiande has been engaging in its business based on commercial considerations. It submits that in the current anti-dumping investigation its prices and cost shall be the base for determination of the normal value. It respectfully requests the Designated Authority to consider its market economy status claim.

3.4 M/s. China Petroleum and Chemical Industry Association, China:

The Association has submitted that due to a typographical and translation error, the total production of Potassium Carbonate in PRC year 2001-2002 was 20,000 tons and domestic consumption is 1,80,000 tons as opposed to 20,000 and 18,000 respectively as submitted in their response dated 12th Feb, 2003.

3.5 COMMENTS OF EMBASSY OF KOREA, NEW DELHI:

Vide Letter No KND /COM/03/227 Dated 27th November,2003 have forward comments on proceedings of antidumping investigation in to the imports of Potassium Carbonate from Republic of Korea, as under:

- i. It would like to state its official position based on the Agreement on implementation of Article VI of GATT 1994, the facts and arguments presented in the preliminary findings released by the Authority on 30.4.2003 and the public hearing held on 14.7.2003;
- ii. The Government of Korea respectfully requests the Government of India to undertake an accurate and objective examination and analysis of the export price and injury to the domestic industry, in conformity with the provisions of the ADA;

3.6 M/s. ALPHA DRUG INDIA LTD., PATIALA

The users have stated that they are no more using Potassium Carbonate in their production activity and they may not be treated as interested party in the present anti dumping investigation.

C. COMMENTS MADE BY VARIOUS PARTIES ON DISCLOSURE STATEMENT :

4.1 M/s Degussa, Germany

- i. They have stated that the dumping margin of 4.17% shown is correct and have no comments to that .
- ii. They have stated that Potassium Carbonate exports to India during the POI are to customers who are in chemical industry and not in the electronic sector.

Accordingly, landed value may be compared with the NIP of the domestic industry.

- iii. Injury and Causal link analysis is totally inadequate in the disclosure statement to comment.

4.2 M/s UNID, Korea

- i. On General Disclosure they have no comments
- ii. Authority has relied on volumes of transactions, which are in the ordinary course of trade for determination of normal value. In this regard they have been submitting that all their domestic trade transactions are above the cost of production and therefore the question of 20% sales being below cost did not arise.
- iii. They agree with the Authority's proposal to determine separate dumping margins (a) UNID exports through M/s OCI (b) UNID exports through OCI and ITOCHU, Japan
- iv. The Authority has proposed to treat the trader M/s Daewoo Corporation as non-cooperative. It may be noted that they are unrelated company and it is requested that a separate dumping margin may be determined for the sales channel UNID – Daewoo Corporation also.
- v. Further, UNID may be exporting the products to India directly without routing sales through OCI or Itochu, Japan. Therefore, dumping margin determined for UNID- OCI may be made applicable to direct exports by UNID also;
- vi. The Authority has disclosed normal value, export price and the dumping margin, in the disclosure statement. Non disclosure of detailed calculations of normal value and export price has affected the right of defense in the investigation;

Examination of the Authority

For clarification, the authorised representative had detailed discussion on the issues raised therein above, by the two exporters M/s Degussa and M/s UNID.

As regards to arguments forwarded by the exporter M/s Degussa that their exports are only to non electronic sector, it was pointed that there are arguments by other interested parties that there is no difference in the production process for electronic and non electronic sector and the same subject goods are sold to both the sectors and imports to India are under same common Customs sub heading. This aspect has not been refuted by the exporter. Further, there is no categorical assertion/ denial that the exporter would not export the subject goods to electronic sector in the future. In the circumstances, Authority has not differentiated sales between Electronic and Non electronic Sectors.

As regards to request by UNID, for extending dumping margin determined for UNID-OCI sales channel, may be made applicable to direct exports by UNID also, it is noted that the exporter had used three channels, one of which is through M/s. Daewoo, who is non cooperative. Accordingly, the Designated Authority has determined only two dumping margin as verified. In absence of separate dumping margin for exports by UNID (for direct exports), M/s UNID would come under residual category. Keeping this in view, authority has considered the submission and extended dumping margin determined for UNID-OCI and made applicable to direct exports by UNID also.

The methodology and calculation of determining normal value, export price and the adjustment claimed and as allowed was discussed. The cost of production determined by the authority was K won *** per MT against the claim of K won *** per MT. Based on the cost of production estimated by the authority, the domestic sales transaction has been compared and found that more than 20% of the sales are below cost of production and authority has relied only on sales in ordinary course of trade as per anti dumping rule.

As regards to request for determination of separate dumping margin for the sales channel UNID – Daewoo Corporation also, it was clarified that the trader has not cooperated with the authority in the investigation.

All submissions/comments made on disclosure statement has been considered by the authority and submissions made after the due date i.e. 10.12.2003 has been rejected.

4.3 M/s Jiande Dayang Chemical Manufacturing Ltd, China(Jiande)

- i. They have stated that the export price indicated in the confidential disclosure are different from the submission made by the exporter in Annexure C earlier and apparently the CIF prices to India is well above the normal value indicated.
- ii. The authorised representative in India has forwarded the fax sent by The China Petroleum and Chemical Industry Association . They have stated that latest statistic figures provided by the Department of Statistics, Customs and General Administration, PRC the export of potassium carbonate during the period April 1,2001 to Sept1, 2002, is 269 ton according to Chinese statistic as against 404 ton according to Indian statistics. This issue may be considered by the authority in the final finding.

Examination of the Authority

The issues raised by the exporter were discussed telephonically with the authorised representative, in New Delhi. It was clarified that the normal value and export price is

generally compared at same levels of trade. Accordingly the normal value and export price have been compared at ex-factory levels for determination of dumping margin;

As regards to difference in export statistics as reported in China PR and the import statistics in India, it was clarified that the period of investigation considered for the investigation is 1st April,2001 to 30th September,2002 and the imports of 404 tons relate to POI and 269 tons indicate the annualised figure (ref table under para 9.3). It appears that the export statistic reported by China PR relates to period 1st April 2001 to 1st September,2002 and not for the complete POI. Further, Authority has considered actual exports of the cooperative exporter for determining the dumping margin and the imports to India are above de-minimus limits. It is also possible that some material might have been transshipped from other countries, wherein goods have originated from China. Export statistics given by China Petroleum may not include all these exports.

4.4 M/s Videocon International Ltd/ Videocon Narmada Glass

The importers and users of Potassium Carbonate have stated that:

1. The manufacturer of Glass for colour picture tube is very sophisticated and elaborate process with numerous tests to control the quality of final product.
2. The Potassium Carbonate manufacture of GACL is not suitable for colour TV glass manufacture and as such not a like product.
3. GACL has repeatedly failing in supply of potassium carbonate in particular grain/particle sizes.
4. Increase price of Potassium Carbonate (raw material) will push up the cost price of glass shells.
5. They have stated that in absence of normal value and export price the importer is not in a position to give his comments.
6. The Authority has recently chosen 1999-2000 as the base year for the analysing import trends. They have submitted that the year 1999-2000 was abnormal year and there was special procurement boom relating to 2000 millennium and anticipated Y2K problem.
7. With regard to injury, they have stated that DA should have chosen year 1998-99 to get proper over view instead of year 1999-2000.
8. When domestic industry has not suffered any injury, the question of causal link does not arise.
9. If GACL is undergoing a loss due to its manufacturing activity, it may be on account of non-professional and poor management.

With regard to comments made by M/s. Videocon, The Designated Authority clarifies that

- i. The Designated Authority conducted on-the-spot investigations at the premises of domestic industry and verified the facilities required for production.
- ii. It is not correct that no evidence has been provided by domestic industry. The domestic industry has provided evidence of supplies in substantial quantities made to Videocon. This is not refuted by Videocon.
- iii. It is not relevant whether the supplies were in POI or prior to period of investigation (POI). In fact, substantial supplies in the past and no sales in Period of Investigation establish that the consumer has switched over to the imported product. This establishes like article and causal link between dumped imports and injury to domestic industry.
- iv. The argument on unsuitable domestic product for a number of reasons is a mere statement unsupported with evidence.
- v. With regard to supply of particular size, the Designated Authority notes that the size required by M/s. Videocon is produced by domestic industry. It is only the question of sieving /filtering the product of various sizes to desired size, for which domestic industry has requisite facilities.

D. PRODUCT UNDER CONSIDERATION

5.0 Product under consideration in the present investigations is Potassium Carbonate, a white, deliquescent inorganic compound, available in powder and granules form, soluble in water and insoluble in alcohol, having chemical formula K_2CO_3 , and chemical properties as given below, used primarily in manufacturing of TV Picture Tubes, GLS Lamp & Ophthalmic Glasses, Fertilizer Industry, Rubber Industry, Pesticide industry, Drug & Pharmaceuticals, Dyes and Potassium based chemical industries.

Various chemical properties used to describe the product are assay as K_2CO_3 (on dry basis), Chlorides (as Cl), Chlorides (as KCl), Heavy Metals as Pb, Iron (as Fe^{+++}), Bi Carbonate as $KHCO_3$, Free ALK as KOH and Moisture.

Potassium Carbonate is produced by reacting caustic potash lye solution with carbon dioxide. Most the producers of Potassium Carbonate produce their own caustic potash lye, which in turn is produced from using potassium chloride, a natural resource. Petitioner claims that potassium chloride is produced in a limited number of countries. Petitioner has further claimed that the source of potassium chloride in respect of Indian Producers and producers in the subject countries is the same. The product is first produced in granular form and thereafter converted into powder form.

Potassium Carbonate is classified under Chapter 28 of the Customs Tariff Act and is described as under: -

Subheading No.	Description
Chapter 28	Organic and Inorganic Chemicals
Four digit 28.36	Carbonates: Peroxocarbonates (Percarbonates)
Six digit 2836.40	Potassium Carbonate

The classification is, however, indicative only and is in no way binding on the scope of the present investigation. The normal customs duty on the product was 35% (2001-02) and 30% (2002-03). The product is, however, attracting concessional customs duty was 5% when imported by the Electronic Sector. The product falls under Open General License Policy of the Govt. of India.

Authority notes that granular and powder forms are with in the scope of investigation and propose duty on both. Both granular and powder form are being imported and are being produced by domestic industry in significant volumes and the two are technically and commercially substitutable.

In view of the arguments forwarded by an exporter that the cost of conversion from granular to powder form is very marginal and the claims of domestic industry that both granular and powder form are being produced, the Authority holds that, both forms of potassium carbonate are treated as one and no adjustments have been made for granular form to powder form.

E. LIKE ARTICLE

6.0 Rule 2(d) of the Anti Dumping Rules specifies that "Like Articles" means an Article which is identical or alike in all respects to the product under investigation or in the absence of such an Article, another article, having characteristics closely resembling those of the articles under examination.

Potassium Carbonate produced by the domestic industry is like article to the Potassium Carbonate imported from the subject countries. In order to establish that the two products are like article, the Designated Authority considered such product characteristics as physical and chemical properties, product specification, production technology & manufacturing process, plant & equipment, functions & uses, pricing and tariff classification. Authority held that the goods produced by the domestic industry and imported from the subject countries are technically and commercially substitutable.

It has been argued that imported Potassium Carbonate is in granular form whereas the domestic Potassium Carbonate is in powder form. However, at the time of verification, it was shown to the Authority that the Potassium Carbonate in 'powder form' is produced from granular Potassium Carbonate and additional milling process

is required to produce powder form of Potassium Carbonate. Not only that the petitioner has such milling facilities, but also that the petitioner has produced and sold such powder form Potassium Carbonate. Petitioner has for the purpose provided copy of the invoices in respect of sales to electronic sector, which claims to be using powder form of Potassium Carbonate.

M/s. Videocon, one of the importers/users of subject goods has argued that the goods produced by domestic industry are not comparable to the goods imported from subject countries. However, petitioner has submitted that M/s. Videocon itself has consumed very substantial volume purchased from the petitioners. The petitioners have reiterated that it is only price of imported product which has lead Videocon to resort to imports.

Authority notes that granular and powder forms are with in the scope of investigation and considers necessary to impose duty on both. Both granular and powder form are being imported and are being produced by domestic industry in significant volumes and the two are technically and commercially substitutable.

In view of the arguments forwarded by an exporter that the cost of conversion from granular to powder form is very marginal and the claims of domestic industry that both granular and powder form are being produced, and both forms of potassium carbonate are treated as one and no adjustments has been made for granular form to powder form.

In view of the above, the Authority holds that the goods produced by the domestic industry are like article to the goods imported from the subject countries, with regard to electronic sector and non electronic sector, within the meaning of the Rules.

F. DOMESTIC INDUSTRY

Petition was filed by M/s. Gujarat Alkalies & Chemicals Ltd. The petitioner commands more than 70% of Indian Production. Furthermore, M/s. Standard Alkalies is the only other producer of the subject goods and has supported the petition. The company has filed information relevant to injury determination as also costing information relevant for the investigation. Thus, petitioner along with supporter commands total Indian Production.

In view of the above, the Authority proposes to hold that the petitioner satisfies the requirements of standing and constitute domestic industry within the meaning of the Rules.

G. EXAMINATION BY THE AUTHORITY

7.1 As regards to issues raised by Embassy of Korea, New Delhi, it is reiterated that the Authority's position has been consistent in all anti dumping investigations in accordance with the WTO , Agreement on anti dumping practices. The issues raised, has been dealt with in para 8.12 & para 9.20 of the findings.

7.2 As regard to some exporters submission that they have exported mainly to particular sector of users viz. Electronic or Non Electronic sector, it is clarified that , as the subject goods are being imported under common customs sub-heading , Authority has not distinguished and treated separately . Further, it is undisputed fact that the there is no difference in process or technology of subject goods as the same goes in to use of both Sectors viz. Electronic as well as Non Electronic Sector.

7.3 As regards two levels of custom duty under the same subheading, the Authority has worked out an average rate of custom duty for the period of investigation, while working out the landed value .

7.4 As regards to alleged false statement supposed to have been made by the domestic industry , it is clarified that the authority generally goes by the verified information & relevant information on record and relies on the same.

H. NORMAL VALUE, EXPORT PRICE & DUMPING MARGINS

8.0 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);

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

The exporters(one each)from European Union(EU),China PR,Korea RP and Taiwan have cooperated with the Authority in the present investigation. In the case of other exporters from subject countries who have not cooperated with the authority, has been made applicable, as envisaged under Rule 6(8) supra.

8.1 M/s Degussa ,Germany.

The exporter has cooperated with the investigation and the exporters' information was verified for determination of normal value and export price

The exporter has furnished information in the exporter questionnaire and has furnished sample documents with respect to Domestic Sales in EU, Export Sales to India as called for. Relevant documents have been translated in English and submitted.

Normal Value

The exporter has furnished transaction wise details for sale in the domestic market during the period of investigation along with Sales Price structure in App 5, cost of production in App 9. It is found that more than 20% sales in the domestic market are below cost of production. Therefore, volumes of transactions, which are in ordinary course of trade, have been relied upon for determination of normal value. Adjustment claimed on account of inland freight, which as verified has been allowed. The domestic sales transactions are in euros, and the exporter has converted into US\$ based on average exchange rate applicable to each month.

Export Price

The exporter has furnished transaction wise details for export sales to India during the period of investigation along with Sales price structure in App 4. Adjustments have been claimed on account of discounts/commission, inland freight, overseas freight and insurance, which as verified have been allowed. As regard to packing expenses the exporter have clarified that there is no difference in packing used for domestic as well as export market. Hence, the adjustment towards packing has not been claimed under domestic sale prices as well as export sale price.

8.2 M/s Unid, Korea

The exporter has cooperated with the investigation and the exporters' information was verified for determination of normal value and export price

The exporter has furnished information in the exporters questionnaire and has furnished sample documents with respect to Domestic Sales in Korea RP and Export Sales to India.

It is found that the Producer / exporter had three channels of sales, which are discussed below: -

- a. Sales through M/s OCI – the exporter have sold some material through OCI, which is an affiliated company. The Authority has considered selling price of OCI to independent customer for determination of export price. The dumping margin has been determined for Unid and OCI.
- b. Sales through M/s Itochu, Japan – the company has sold material to India through Itochu, Japan. The material in this case also has been supplied to Itochu, Japan through affiliated company, OCI. The Authority has considered selling price of M/s Itochu to independent customer for determination of export price
- c. Sales M/s Daewoo Corpn - the company has sold material to India through M/s Daewoo Corpn. The material in this case also has been supplied to Daewoo Corpn, through affiliated company, OCI. Since Daewoo has not cooperated in the present investigation, the Authority has treated the trader as non cooperative

Normal Value

The exporter has furnished transaction wise details for sale in the domestic market during the period of investigation along with Sales Price structure in App 5, cost of production in App 9. The information on cost of production as claimed by exporter in Appendix 8 is not matching with Appendix 7. For the purpose of determination of COP information provided in Appendix 7 has been relied upon and the COP reworked and per unit cost has been determined. It is found that more than 20% sales in the domestic market are below cost of production, therefore, volumes of transactions which in ordinary course of trade has been relied upon for determination of normal value. Adjustments claimed for expenses before and after FOB as verified have been allowed for the purpose of final finding.

Export Price

The exporter has furnished transaction wise details for export sales to India during the period of investigation along with Sales price structure in App 4.

It has been stated that exports to India has been made through:

- a. M/s UNID - M/s Daewoo Corporation, an unrelated company in Korea and M/s Unid does not have the resale invoices by M/s Daewoo to Indian buyers.
- b. M/s UNID - M/s OCI Corporation, a related company in Korea, the information with regard to resale invoice to Indian customer has been made available.
- c. M/s UNID – M/s OCI -M/s ITOCHU Corporation, Japan

M/s Unid has furnished all relevant documents concerning exports to India with respect to exports through M/s OCI and with respect to M/s Itochu Japan. With respect to sales through Itochu, Japan, the packing charges as claimed has been allowed. However, adjustment towards credit cost, bank charges has not been claimed and substantiated while verification. Hence, the adjustment towards credit cost, bank charges has been effected based on Unid – OCI channel. Accordingly, dumping margin for exports to India through two routes has been determined. As all relevant documents with respect to exports through M/s Daewoo Corporation have not been submitted, the trader is treated as non-cooperative.

Based on the verified information all adjustments claimed by the exporter for expenses before and after FOB have been allowed.

8.3 M/s.Jiande , China

The exporter has cooperated with the investigation and the exporters' information was verified for determination of normal value and export price

Examination by the Authority :

The authority has examined the submissions made by the interested parties with regard to the treatment of the co-operating exporter as Non Market/ Market economy entities in China PR. Relevant Rules governing such treatment are as under:

"15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- a. *In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
 - i. *If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
 - ii. *The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
- b. *In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*
- c. *The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*
- d. *Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.*

Position Under Indian Law at time of initiating matter:

8. The term "non market economy country" subject to the Note to this paragraph means every country listed in that note and includes any country which the Designated Authority determines and which does not operate 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. While making such determination, the designated authority shall consider as to whether, -

- i. the decisions 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 that in view of the changing economic conditions in Russia and in the Peoples' Republic of China, where it is shown on the basis of sufficient evidence in writing on the factors specified in this paragraph that market conditions prevail for one or more such firms are 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.

Note :- For the purposes of this paragraph, the list of non market economy countries is Albania, Armenia, Azerbaijan, Belarus, Peoples' Republic of China, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Any country among them seeking to establish that it is a market economy country as per criteria enunciated in this paragraph, may provide all necessary information which shall be taken due account by the designated authority.]

Position Under Indian Law Post 4th January 2001:

Rule 8. (1) 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)

(2) 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 purposes 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 the 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 the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether :

- a. the decisions 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 paragraph 7 and in this paragraph".

Vide Notification No.1/2002NT Customs dated 4.1.2002. Para 8(1)(2) & (3) was amended.

Vide Notification 101/2003 dated 10th Nov.,2003, the para (4) was inserted after Sub-paragraph 3(d) in Para 8 of Annexure 1 to Custom Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Duty on Dumped Articles and for Determination of Injury)Rules 1995.

"(4) Notwithstanding anything stated in sub-paragraph (2) above, the designated authority may treat a country as market economy country, if, based on a detailed evaluation of the relevant criteria as contained in a public document, the said country has been determined to be or has been treated as a market economy country recently by a WTO Member for the purpose of anti-dumping investigation. Criteria which may be relevant in this respect include those specified in sub-paragraph (3) above."

The Authority notes that the WTO gives the option of treatment of China for the purposes of application of Anti Dumping or subsidy measures to the Member state.

1. A perusal of the entire clause above show that there is nothing to preclude a WTO Member from granting full market economy treatment to China or partial market economy treatment to companies or exporters from China. In fact, a Member is also empowered to grant market economy status to China as a whole.
2. The Indian law clearly provides that the companies operating in China can be treated as Market Economy if they satisfy the conditions laid down under the Rules.
3. With the onus shifted on the party claiming the market economy status, the Indian law, clearly prescribes the criteria prior to any company/entity getting market economy status from a Non-Market economy.
4. On each of the four criteria as per para 8 of Annexure I of Anti dumping Rules, the exporters provided detailed submissions, which were verified by the Authority.
5. In light of the above, giving market economy treatment and accepting the cost of production supplied by the cooperating exporter from China, who has fulfilled the criteria for market economy treatment in accordance with the laws of India is fully within the powers of the Designated Authority and compatible with India's commitment to the WTO.

The Authority has examined the status of M/s Jiande a cooperative exporter from China PR in light of the above.

- i. M/s Jian De DaYang Chemical Factory was founded in 1976. In 1988, it was restructured into a joint-stock enterprise with registered capital and 148 shareholders. Without any government's investment, each shareholder is an independent entity. It has claimed it got the authentication of document of ISO 9001 quality system and in March 2003, it is reportedly assessed as a hi-tech enterprise of Zhejiang Province.
- ii. The board of directors and board of inspectors are set up in order to run the enterprise well. The board of the supervisors, which is responsible for the shareholders, performs its obligation of supervising the procedure, means,

- content of the policy-making. The production and management of the enterprise are under the control of the general manager.
- iii. The company claims of the production plan, development strategies etc. are formulated according to the information of the market was explained to the verifying team through a presentation.
 - iv. The raw materials are bought mainly from Russia, Canada, Jordan and other raw materials are purchased from other enterprises operating under market economy conditions. Sample purchase invoices have been furnished as documentary evidence.
 - v. It has been claimed that the strategy of the selling of the products is made according to the needs of the market. There are two channels of selling products, that is, direct selling and indirect selling. Direct selling is to communicate with customs directly in order to make a deal, while indirect selling is to communicate with customers through the help of middlemen/ agent and then a deal is made. This was explained through a presentation.
 - vi. The company has raised its funds by internal generation fund and loans from the banks. The self-raised money is collected from shareholders.
 - vii. Jiande is subject to pay selling taxes to the state, that is, 17% of the VAT has been evidenced by sample documents.
 - viii. The accounting principle is applied to the finance and accounting system of the enterprises, that is to say the means of taking debts, the preparation of bad accounts, the sharing of depreciation charges are all carried out according to the Generally Accepted Accounting Principle. The Authority has verified the Accounts maintained.

During the course of verification it was observed that there is wide variation in the pay structure between different categories of employees. The laws require a certain minimum wage beyond which the negotiation is done to arrive at the final wages. Similarly, raw material is directly procured from the open market.

Like any other companies in China, Jiande is subject to the Bankruptcy Law Attention has been drawn to Art.3,7,23-26,28 of the Bankruptcy Law of the China PR. Under the Bankruptcy Law, an enterprise shall declare bankruptcy in case it is unable to pay its debts when due, and the court organizes the formation of a liquidation committee responsible for liquidation.

The property law applying to Jiande is mainly laid by the Constitution of the People's Republic of China. In Article 16 of the Constitution, it provides that "lawful individual and private enterprises are important part of the economy of the country. The state protects the lawful rights and interests of the individual and private economy. " Similarly Jiande is subject to the Company Law of PR China.

During the course of on the spot verification it was found that the export transactions have been converted on the existing RMB rate and which has been further accounted in the books of accounts/ These exchange rates is found to be adopted for the period of investigation which is guided by the PRC Exchange Systems.

In view of the examination, under relevant rules the Authority concludes that M/s Jiande has been engaging in its business, based on market economy conditions.

Normal Value

The exporter has furnished transaction wise sale of subject goods in the home market. The company has also furnished detailed information claiming market economy status. The Authority has verified the information furnished by the exporter. The transaction wise domestic price has been compared with the cost of production of subject goods as verified. It is found that more than 20% sales are below cost of production. In view of this, only transaction in ordinary course of trade is adopted for determination of normal value.

Export Price

The exporter has furnished transaction wise details for export sales to India during the period of investigation along with Sales price structure in App 4. All adjustment claimed by the exporter is considered for purpose of determination of export price.

8.4 M/S. TAIWAN PULP & PAPER CORPORATION, TAIWAN

The exporter has cooperated with the investigation and the exporters' information was verified for determination of normal value and export price

Normal Value.

The domestic price structure has been furnished wherein adjustments for discounts and inland freight has been claimed. It is noted that all domestic sales transaction are in ordinary course of trade. The Authority determined based on the verified information with respect to domestic price and cost of production, for the purpose of final finding.

Export Price

The Sales price structure for exports sales to India has been furnished wherein adjustments for discounts/commission, inland freight, Overseas freight, insurance,

shipping charges, duty, clearance and handling has been claimed. The Authority after verification, has accepted the claims, for the purpose of final findings.

The exporter, vide their letter No.TPPC-2003-11-13 dated 13.11.2003, has indicated their interest in having a Price Undertaking is feasible.

8.5 M/s SWC, China, M/s CCL, China & M/s ZFT, China

As per the information furnished the above exporters have not exported the subject goods to India during the period of investigation. Authority notes that these exporters who have not exported during the period of investigation fall under New Shipper - Rule 22 supra

8.6 M/s Merck, Germany

The Authority notes that the response filed by the exporter is grossly deficient & inadequate to determine normal value. Under the circumstances, the Authority could not rely upon the response filed by the exporter for the purpose of this findings.

The exporter company's request vide fax dated 22.1.03, for extension of time was considered by the authority and allowed time to furnish the information latest by 12.2.03 communicated vide DGAD's fax dated 27.1.03. Authority vide fax dated 21.2.03 informed the exporter, that the documents supposedly sent has not reached the DGAD. Vide authority's letter no 14/42/2002 DGAD dated 7.3.2003, deficiencies were informed and the information was to be furnished latest by 17.3.2003.

The exporter furnished supplementary information vide letter dated 4th July, 2003 after the preliminary findings. The exporter has stated that sales to Indian markets are very insignificant and attached Annexure 4, 6, 7,8,9 &10.

The exporter has stated that following are produced by the company

1. Art 104928 Potassium Carbonate GR for AN
2. Art. 104926 Potassium Carbonate-1,5-Hydra
3. Art. 106683 Potassium Carbonate/Sodium CA

and they have indicated that

'Article 104924 Potassium Carbonate extra pur ' is not produced by the company but resold into the market. They have also stated that Merck Ltd. India is the sole authorised importer for India.

Authority notes that information in Annexure 1,2,3 & 5 has not been furnished. It is also noted that there are some statements which are not in the form and manner prescribed and which have no heading or annexure numbers. Authority noted that the information with regard to normal value , export price is grossly deficient, inadequate and decided not to verify the exporters' information. Accordingly no specific dumping margin has been determined. Dumping Margin applicable to other exporters from EU would be applicable.

8.7 OTHER NON-COOPERATIVE EXPORTERS FROM SUBJECT COUNTRIES

Normal value is determined based on information furnished by cooperative exporters from a country, as detailed in respective paras hereinabove, adopting the highest normal value/ best available information with the authority. As regards to export price, it has been determined on the basis of best information available/ furnished by cooperative exporters in subject countries.

OTHER IMPORTERS /USERS

8.8 Tanfac Industries Ltd., Cudalore:

1. The importers have stated that they are importing Potassium Carbonate for production Potassium Fluoride. This product is sold to Baba Atomic Research Centre and other overseas exporters.
2. The indigenous manufactures of Potassium Carbonate are not able to supply Potassium Carbonate of 0.08% Sodium Content.
3. The users of Potassium Carbonate will become uncompetitive after paying anti dumping duty and may have to stop production of potassium fluoride

8.9 M/s. Taipei Economic & Cultural Centre, New Delhi:

Referring to the preliminary findings, they have stated that one of the companies M/s. Green Mountain co. Taiwan has not exported Potassium Carbonate to India for the past 5 years. They have enclosed a copy of letter issued by the company.

8.10 The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules.

8.11 Arguments raised by Embassy of Korea RP, on dumping:

As regards to claims that the export price of UNID to OCI/ Itochu should be considered as a independent buyer, requesting the authority to consider under Article 2.3 of ADA. Authority notes that in the instant case M/s UNID is a cooperative exporter has furnished relevant information on export price of subject goods to India and the export price is available for determination. Therefore, authority considered appropriate to determine export price after considering price of UNID –OCI, UNID-OCI-ITOCHU to India for determining separate dumping margin in the final finding.

In accordance to Article 2.4 of ADA which refers to ‘A fair comparison shall be made between export price and the normal value’ the Authority in the instant case has verified the information on export price and normal value as furnished by the cooperative exporter M/s UNID and has appropriately compared at the same level of trade (ex-factory) and accordingly determined the dumping margin in accordance with Annexure 1 to Indian Rules.

8.12 DUMPING MARGIN.:

The Rules relating to comparison provides comparison of normal value and export price provides as follows:

"While arriving at margin of dumping Designated Authority shall make a fair comparison between the export price and the normal value. A comparison shall be made at the same level of trade, normally at ex-works level and in respect of sales made and as nearly possible the same time. Due allowance shall be made in each case on its merits, for differences which occur price comparability including differences in conditions and terms and sales, taxation, levels of trade quantities, physical characteristics and any other differences which are demonstrated to affect price comparability."

8.13 For the purpose of fair comparison between normal value and export price at ex-factory levels, the Authority took into account the information furnished by the petitioner, exporters, interested parties and other published information available with the Authority.

Name of the Country/Territory	Name of the Producer/ Exporter	Normal Value US \$/MT	Export Price US \$/MT	Dumping Margin US \$/MT	Dumping Margin %
European Union (EU)	M/sDegussa, Germany	***	***	***	4.17%
	Other exporters	***	***	***	63.98%
KOREA RP	M/s UNID – M/s OCI	***	***	***	2.47%
	M/s UNID ? M/s OCI ? M/s Itochu, Japan	***	***	***	2.89%
	Other exporters, Korea	***	***	***	35.78%

TAIWAN	M/s Taiwan Pulp & Paper Corporation, Taiwan	***	***	***	17.37%
	Other exporters, Taiwan	***	***	***	34.28%
CHINA PR	M/s Jiande, China	***	***	***	13.10%
	Other exporters, China	***	***	***	56.21%

I. INJURY

9.0 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 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.

9.1 For the examination of the impact on the domestic industry in India, indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realization, the magnitude and margin of dumping, etc., have been considered in accordance with Annexure II(iv) of the rules supra.

9.2 CUMULATIVE ASSESSMENT OF INJURY

Annexure II (iii) under Rule 11 supra further provides that " in case where imports of a product from more than one country are being simultaneously subjected to Anti Dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that 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 country is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article and cumulative assessment of the imports is appropriate in light of the conditions of competition between the imported article and the like domestic article".

The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the effect of the imports from European Union(EU),China PR,Korea RP and Taiwan are appropriate since the exports from these countries were directly competing with the

goods offered by the Domestic Industry in the Indian market and displacing domestic producers here.

9.3 Information provided by various interested parties shows that the imports from various countries were competing with the sales of domestic industry as also amongst themselves. Authority notes that the volume of exports to India as furnished by cooperative exporter from Korea RP was 8697MT against 7267 MT reported by DGCI&S, Kolkata and from Taiwan was 1110MT against 990MT reported by DGCI&S. While determining the volume effect, export volumes furnished by cooperative exporters from these two countries have been relied upon for POI, eventhough possibilities of exports by other exporters from these countries is not ruled out. There was no significant difference in the product types produced and sold by various parties. The Authority, for the purpose, inter-alia, considered the degree and extent to which goods supplied by the domestic industry and by various exporters in the subject countries could be interchangeably used, presence of sales or offers to sell in the same market and channels of distribution.

Country/ Year Qty inMT	1999-00	2000-01	POI 4/2001 to 9/2002 (18 mts)	POI Annualized
EU	705	493	1267	845
China PR	17	0	404	269
Korea RP	1625	2735	8697	5798
Taiwan	0	20	1110	740
Subject countries	2347	3248	11478	7652
Other Countries	107	171	253	169
Total Imports	2454	3419	11731	7821
Domestic Sales	15965	13533	20327	13551
Demand	18419	16952	32058	21372
Share in Total Imports				
EU	28.73	14.42	10.80	10.80
China PR	0.69	0	3.44	3.44
Korea RP	66.22	80.00	74.14	74.14
Taiwan	0	0.58	9.46	9.46
Subject Countries	95.64	95.00	97.84	97.84
Others	4.36	5.00	2.16	2.16
Share in Total Demand				
Subject Countries	12.74	19.16	35.80	35.80
Domestic Industry	86.68	79.83	63.41	63.41
Other countries	0.58	1.01	0.79	0.79

9.4 Substantial increase in volume of dumped imports:

Imports of Potassium Carbonate have increased substantially from the subject countries in absolute terms and in relation to consumption in India. Imports from

subject countries, which were 2347MT in 1999-00, increased to 7652 MT(Annualised) in POI.

9.5 The Authority notes that a number of parties have advanced arguments on dumping and injury. A number of arguments are based on parameters for periods different than what has been considered by the Authority.

9.6 The Authority has brought out data/information with regard to performance of the domestic industry in the preliminary finding. The same is also relied upon while examining the injury to the domestic industry in these findings.

Factors / Trends of domestic industry		1999-00	2000-01	POI	POI Annualized
		Qty	Qty	Qty	Qty
Capacity	MT	18,700	18,700	28,050	18,700
	Indexed	100	100	100	100
Production	MT	20,467	16,634	21,987	14,658
	Indexed	100	81	72	72
Capacity Utilization	%	109	89	78	78
	Indexed	100	81	72	72
Captive Consumption	MT				
	Indexed	100	89	70	70
Sales domestic	MT	15,965	13,533	20,327	13,551
	Indexed	100	85	85	85
Sales Exports	MT				
	Indexed	100	167	29	29
Opening Stock	MT				
	Indexed	100	767	64	64
Closing Stock	MT				
	Indexed	100	8	35	35
Average Stock	MT				
	Indexed	100	96	38	38
Cost of Production	Rs. MT				
	Indexed	100	109	116	116
Net Sales Realization	Rs. MT				
	Indexed	100	95	104	104
Profit/Loss	Rs. MT				
	Indexed	(100)	(286)	(273)	(273)
Employees	Nos				
	Indexed	100	101	101	101
Production per day	MT				
	Indexed	100	81	72	72

Profit/Loss from Product	Rs. Lacs				
	Indexed	(100)	(278)	(209)	(209)
Capital Employed	Rs. Lacs				
	Indexed	100	98	96	96
Return on Capital Employed	%				
	Indexed	(100)	(282)	(216)	(216)
Productivity per Employee	MT				
	Indexed	100	80	71	71
Wages	Rs. Lacs				
	Indexed	100	109	168	112
Growth	%		(17)	(3)	(3)
Cash Profit					
Trend of domestic industry	Indexed	(100)	(364)	(259)	(259)

9.7 Economic Parameters Affecting the Domestic Industry

Production of the domestic industry has declined over the years, Capacity remaining the same, decline in production has resulted in decline in capacity utilisation. The indexed production which was 100 in 1999-00 declined to 72 during POI.

9.8 Actual and Potential decline in sales:

Sales volumes of domestic industry have declined after showing significant improvement. The market share of the domestic industry in demand in India has also declined. The share of domestic industry in total demand, which was 86.68% in 1999-00, declined to 63.41% during POI

9.9 Inventories:

Due to decline in sales, Stocks declined. However, the decline in inventories is a result of the dedicated effort of the domestic industry to sell its produce and curtail inventories by reducing production.

9.10 Cost of Production, Selling Price and Unit Profit/Loss:

While cost of production has increased (indexed 100 in 1999-00 increased to 116 during POI), the selling price did not increase proportionately, as imported product prevented the domestic industry from effecting legitimate price increases (indexed 100 in 1999-00 to 104 during POI).

With regard to the argument that the petitioner has now posted profits, the Authority notes that the petitioner is a multi production company. Further, profitability of the domestic industry after POI is of no direct relevance, that too when the petitioner is a multi product company.

9.11 Profits:

Profitability of the domestic industry deteriorated significantly over the years. The negative index at 100 during 1999-00 has increased to 273 during POI.

9.12 Market Share:

- a. Share of the subject countries in imports of the subject goods increased. Moreover, around 98% of imports during POI are primarily from these countries only(Ref table under para 9.3).
- b. The market share of the imports from subject countries in demand has also increased.
- c. The imports have increased in relation to the production of the domestic industry.

9.13 Cash Profit:

Cash flow situation of the domestic industry is deterioration due to deteriorating cash profits from the production and sales of the subject goods. The loss in cash profit, which indexed at 100 during 1999-00, has increased to 259.45 during POI.

9.14 Employment:

Even though the petitioner is a public sector company with little control to reduce the employment, the petitioner is forced to take all possible steps to keep employment at the lowest level. At the same time, the petitioner is under the obligation to pay minimum wage increase, which the petitioner is obliged under the legal provisions.

9.15 Productivity:

Productivity per employee of the domestic industry has significantly declined due to decline in production. The productivity, which was indexed at 100 during 1999-00, has declined to 71 during the POI. Decline in production is directly related to decline in capacity utilisation due to loss of market share by the domestic industry to dumped imports.

9.16 Return on Capital employed:

The return on capital employed is negative. Further, the same deteriorated during the period. The negative return which was indexed at 100 during 1999-00 increased to 216 during POI.

9.17 The magnitude of the margin of dumping:

The dumping margin from subject countries are not only more than de-minimus but also very significant. The impact of dumping on the domestic industry is significant.

9.18 Growth:

The imports are retarding the growth of the domestic industry. In fact, growth has been negative and it was (-) 3% during POI.

9.19 Ability to raise capital investments:

The petitioner is making all attempts to reduce its loan liability in an effort to reduce its interest burden. However, the adverse performance of the petitioner on this product (coupled with other products such as Caustic Soda) is preventing the petitioner from seeking loans at lower rates of interest.

9.20 Price Undercutting and Price Underselling :

	@ Av duty'	@ 5% duty
Price Undercutting		
<i>Cooperative Exporters</i>		
M/s Taiwan Pulp	***	***
M/s Unid	***	***
M/s Jiande	***	***
M/s Degussa	***	***
<i>Other Exporters</i>		
Taiwan	***	***
Korea	***	***
China	***	***
EU	***	***

It is noted that , no difference in the product exported from subject countries by different producer/exporter to different sectors have been brought to the knowledge of Authority. In fact it is found that the product sold to electronic sector can be used by other sectors and vice versa. Further imports to India is under common custom sub head 283640. Therefore, the Authority considers appropriate to examine as to whether the exports made to non electronic sector would cause undercutting when imported by electronic sector. This becomes more important in those situations where imports

made by non electronic sector may not be under cutting the domestic prices, eventhough these imports has the effect of price under selling by the domestic industry. While both the cost of production and selling price increased, the increases in the selling price was less than the increase in the cost of production. Thus, the imports from the subject countries prevented the domestic industry from effecting legitimate price increases.

9.21 Points raised by Embassy of Korea RP, on injury:

With regard to the points raised on injury, the Designated Authority notes that;-

- a. Production of the domestic industry declined over the period. While it is true that the export volumes and captive consumption of the domestic industry also declined over the period, the decline in production is far more than the decline in the export volumes and captive consumption. Indeed, the sales volumes of the domestic industry in the domestic market declined, which is clearly due to increase in the imports from the subject countries. Further, market share of the domestic industry declined whereas the market share of imports increased. In fact, it was found that bulk of dumped exports were from Korea (Korean exports accounting for about 75% of subject dumped imports). It is also noted that sales volumes of the domestic industry increased in a situation where the demand registered significant increase. It is also noted that the increase in the imports from the subject countries was higher than the increase in consumption. Clearly, the imports from the subject countries displaced the sales volumes of the domestic industry.
- b. With regard to the argument that some of the parameters showed improvements as compared to immediate preceding year, the Designated Authority notes that the performance of the domestic industry over the injury period is required to be examined in totality. Even if it is accepted that the performance of the domestic industry improved in the investigation period as compared to the immediate preceding year, it is noted that the performance was still far adverse as compared to the base year (1999-2000). The improvement in performance in the investigation period is not significant. Performance of the domestic industry in the investigation period was significantly adverse.
- c. With regard to employment and wages, the Designated Authority notes that decline in employment level is not a condition precedent to a positive injury finding. Indeed, layoffs shows significant injury. However, considering the labour laws in the Country and need to keep the production and productivity, it can not be expected that the Company would resort to such extreme steps as layoffs and reduction in wages.

Conclusion on Injury:

9.22 All the parameters, collectively and cumulatively, establish that the domestic industry has suffered material injury from the dumped imports. Authority concludes that the domestic industry has suffered material injury from imports of Potassium Carbonate originating from subject countries.

J. CAUSAL LINK

10.0. In determining whether material injury to the domestic industry was caused by the dumped imports, the Authority examined all other factors not causing injury to domestic industry:-

10.1 Imports from other countries are either de-minimus or the export prices are significantly higher. Imports from other countries are not causing any injury to the domestic industry.

10.2 There is a continuous increase in demand of Potassium Carbonate, contraction in demand is, therefore, not a possible reason for injury to the domestic industry.

10.3 There is no change in the technology. Material injury has been caused to domestic industry from imports from subject country. There are no other factors for this injury but for the dumping from the subject countries, which is required to be immediately checked by imposition of definitive duties. Factors such as trade restrictive practices or competition between the foreign and domestic producers, development in technology, export performance, etc. have not caused material injury to the domestic industry.

10.4 The Authority notes that the import prices were significantly undercutting the prices of the domestic industry. This prevented the domestic industry from increasing the prices proportionate to the increase in the cost of production. This has directly resulted in significant increase in the losses being suffered by the domestic industry.

10.5 Increase in the imports from the subject countries directly resulted in increase in the market share of the imports from the subject countries. As a direct consequence, the market share of the domestic industry declined. This further resulted in decline in the sales volumes and adjustments in production. The Authority also notes that the sales of the domestic industry would have been more but for the dumped imports.

10.6 Availability of imports at lower prices directly affected the prices of the domestic industry. As a direct consequence, the return on capital employed deteriorated.

K. PRICE UNDERTAKING

11.1 Rule 15 relating to Suspension or termination of investigation on price undertaking provides that the designated authority may suspend or terminate an investigation if the exporter of the article in question furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated.

11.2 One of the exporters, M/s Taiwan Pulp & Paper Corporation Taiwan had extended its willingness to offer price undertaking. The offer was examined in detail and the Designated Authority found that the undertaking offered by the exporter can be accepted since it eliminates the injurious effect of dumping. The exporter has agreed to provide all reasonable information, which the Designated Authority considers relevant and necessary. The Designated Authority has accepted Price Undertaking from the exporter and accordingly no duties would apply in the case of exports of Potassium Carbonate, from this company. However, in the case of any violation in the execution of this undertaking by the exporter, the duties, as set out in the preliminary findings, would provisionally apply, pending specific recommendations by the Designated Authority in this regard. It is also clarified that this undertaking would apply only in case of exports made by this company directly to India. In case the goods are exported by some other company/trader, the residual duty, as mentioned below, would apply, even if the same is the produce of this company.

11.3 The company has extended price undertaking for all types of Potassium Carbonate exported by them. The undertaking amount is at CIF US \$ 471.0 per MT of Potassium Carbonate. The undertaking price is the minimum CIF value of imports.

L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:

12.1 The purpose of anti dumping duties is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

12.2 The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using 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 the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, and would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of

subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from Subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

M. CONCLUSIONS

13.0 It is seen, after considering the foregoing, that:

- a. Potassium Carbonate originating in or exported from European Union(EU),China PR,Korea RP and Taiwan have been exported to India below Normal Value, resulting in dumping;
- b. The Indian industry has suffered material injury from exports of subject goods from European Union(EU),China PR,Korea RP and Taiwan;
- c. The injury has been caused cumulatively by the dumped imports from European Union(EU),China PR,Korea RP and Taiwan.

14.0 It is considered necessary to impose definitive anti-dumping duty, on all imports of Potassium Carbonate originating in or exported from European Union(EU), ChinaPR, Korea RP and Taiwan, except for M/s Taiwan Pulp & Paper Corporation, Taiwan, in respect of whom a price undertaking has been accepted.

15.0 Authority considered whether a duty lower than the dumping margin would be sufficient to remove the injury. The average landed value of the imports, for the purpose, was compared with the non-injurious price for the petitioner company, determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. The Authority has applied average customs duty for the electronic and non-electronic sector applicable to the product during the investigation period.

16.0 Accordingly, it was decided to recommend that definitive Anti Dumping Duty as indicated be imposed on Potassium Carbonate classified under Custom sub-heading no.2836.40 falling under Chapter 28 of the Customs Tariff, originating in or exported from European Union(EU), China PR, Korea RP and Taiwan.The anti-dumping duty shall be the amount mentioned in column(9) table below be imposed on all imports of subject goods.

18.0 Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A,8B and 9, 9A of the Customs Tariff Act, 1975.

19.0 Subject to above, the Authority confirms the preliminary findings dated 30th April, 2003.

20.0 An appeal against this order shall lie to the Customs, Excise and Gold(Control) Appellate Tribunal in accordance with the Act supra.

ABHIJIT SENGUPTA,
DESIGNATED AUTHORITY