

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

NOTIFICATION

NEW DELHI, The 27th September 2005

SUNSET REVIEW FINAL FINDINGS

Subject: Sunset Review of the definitive anti-dumping duty imposed on import of Sodium Cyanide originating in or exported from the US, the EU, the Czech Republic and Korea RP.

A. BACKGROUND & INITIATION

No. 15/9/2003-DGAD - WHEREAS, The Designated Authority (herein after also referred to as the Authority), having regard to the Customs Tariff Act, 1975 as amended in 1995 (herein after referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (herein after referred to as the Rules) investigated and recommended imposition of provisional Anti Dumping duty on imports of Sodium Cyanide (hereinafter referred to as subject goods) falling under Sub-heading 283711 of ITC HS classification and originating in or exported from US, EU, the Czech Republic and Korea RP. The interim findings of the Authority were published vide Notification dated 15th October 1999 and provisional antidumping duty was imposed on the subject goods vide Customs notification No. 134/99-Customs dated 27th December 1999. The Authority came out with its final findings on 7th March 2000 and definitive anti dumping duty was imposed by the Central Government vide Notification No. 83/2000 dated 6th June 2000, as amended by Notification No. 10/2001-Customs dated 31st January 2001

2. AND WHEREAS, The Designated Authority, under Section 9A (5) of the Act and Rules made there under, received an application from M/s Cyanides and Chemicals Company (CCC) on behalf of the domestic industry, for initiation of a sunset review investigation for continuation of the antidumping duty imposed on the subject goods under the above mentioned notifications for a further period of 5 years. The Authority, on the basis of a request made on behalf of the domestic industry, issued a public notice dated 29th March 2004, published in the Gazette of India, Extraordinary,

initiating Anti-Dumping sunset review investigation in respect of the duty in force against the above countries as above, to determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

3. **AND WHEREAS** antidumping duty as notified vide Notification No. 83/2000 dated 6th June 2000, as amended by Notification No. 10/2001-Customs dated 31st January 2001 was extended up to 26th December 2005 vide notification No.56/2005 dated 23rd June 2005 in terms of Section 9 (A) (5) of the Act.

B. PROCEDURE

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

- i. The Authority sent questionnaires, alongwith the initiation notification, to all known exporters/producers of the subject goods in the subject countries, in accordance with the Rule 6(4), to elicit relevant information. For the purpose of this investigation the countries under investigation were the US, the EU, Czech republic and Republic of Korea. However, due to expansion of the European Union and inclusion of Czech Republic in the extended EU, this investigation covers the extended EU, USA and Republic of Korea (herein after termed as subject countries/territories);
- ii. The Embassies/High Commissions/ Representatives of the subject countries including the Delegation of the European Union in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers from their respective countries to respond to the questionnaire within the prescribed time. Copies of the letters, petitions and questionnaires sent to the exporters were also sent to the Embassies/High Commissions of subject countries alongwith a list of known exporters/ producers;
- iii. Investigation was carried out for the period starting from 1st April 2003 to 31st December 2003 (POI). However, injury examination was conducted for a period from 1999-00 to 2002-03 and the POI.
- iv. Request was made to the Central Board of Excise and Customs (CBEC) and DGCI&S to arrange details of imports of subject goods for the past three years, and the period of investigations;
- v. In response to the initiation communications were received from the following exporters through their legal representatives:
 - a. M/s Tong Suh Petrochemicals Corporation, Korea RP (producer of the subject goods) exporting through M/s Hanwah Corporation, Korea RP.

- b. M/s DSM Acrylonitrile in its letter informed the Authority that they produce and sale NaCN in liquid form and their activities are restricted to Western Europe only.
- c. BASF AG informed that their products are exclusively used for captive use only and they did not sell NaCN out side Germany.

No other exporter from any of the countries named, have submitted any response, in any manner, to the initiation notification.

- vi. Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4). Following importers/ users of the subject goods filed their submissions in response to the initiation notification:
 - a. M/s Techno-Commercial Traders, New Delhi
 - b. M/s Daurala Organics, New Delhi
- vii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- viii. The Authority verified the information furnished by the domestic industry as well as the supporting party to the extent possible 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 applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- ix. The Authority held a public hearing on 09.08.2004 to hear the interested parties orally which was attended by representatives of the domestic industry, exporters, importers/ users of the subject goods and representative of the Delegation of European Union. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;
- x. The Authority issued disclosure statements to all interested parties to this investigation intimating the essential facts under consideration by the Authority and methodology of determination proposed to be adopted by the Authority, and calling for the comments of the interested parties to the said disclosure. Comments of the interested parties, to the extent they are relevant have been considered by the Authority in this finding.
- xi. The Authority has examined the confidentiality claims of various interested parties in respect of the data submitted by them. The information, which is by

nature confidential or which has been provided on a confidential basis by the interested parties' alongwith non-confidential summary thereof, has been treated confidential. ***** in this Notification represents information furnished by the petitioner on confidential basis and so considered by Authority under the Rules;

C. PRODUCT UNDER CONSIDERATION AND 'LIKE ARTICLE'

5. The product under consideration in the original investigation and the product attracting antidumping duty on the basis of the final findings of the Authority is Sodium Cyanide (NaCN), originating in or exported from the subject countries, classified under Customs subheading 283711 of Customs Tariff Act. This classification is only indicative and in no way binding on the scope of present investigation. Sodium Cyanide is a pure basic inorganic chemical. It is manufactured by reacting Hydro Cyanic Acid (HCN) with Caustic Soda. It is mainly used by industries such as dye intermediates, Electro-plating chemicals and for manufacture of heat treatment salts, gold extraction etc. This being a sunset review investigation, the scope of the investigation is limited to the product already identified in the original investigation.

D. INITIATION AND STANDING OF THE DOMESTIC INDUSTRY

6. The sunset review has been initiated on the basis of a duly substantiated request submitted by M/s Cyanides and Chemicals Corporation (CCC) and supported by M/s Gujarat Alkalis and Chemicals Ltd, on behalf of the domestic industry, in terms of Article 11.3 of the Antidumping Agreement read with Section 9 A (5) of the Acts, and the same has not been challenged by any of the interested parties. Therefore, the applicant M/s Cyanide and Chemicals, with majority production of the subject goods in India constitutes the domestic industry for the purpose of the current investigation.

E. OTHER ISSUES RAISED BY THE INTERESTED PARTIES

7. The submissions made by the parties to this review investigation and their arguments have been summaries as follows:

E.1 Views of the domestic Industry

8. The domestic industry in its various submissions has inter alia argued

- That M/s CCC and GACL are the two manufacturers of the subject goods in India. While CCC produces NaCN from grass route level, using the in-organic synthesis method from ammonia, Caustic soda and Natural Gas, GACL procures HCN from IPCL for manufacturing NaCN. It has been argued that HCN is a co-product of IPCL supplied to GACL through pipelines;
- That price of both, natural gas and ammonia have been rising, whereas the prices of NaCN have been falling. Prices of NaCN have been sliding from Rs*****/- PMT to RS *****/- PMT;
- That GACL is a PSU, known for its efficiency and should get a reasonable return. However, GACL is forced to match the prices offered by exporters from Korea which is at about Rs*****/-;
- That the market for NaCN has grown but the growth has been cornered by the exporter from Korea; Inventory built up of the Company is huge and stands at almost 4 month's production now. Therefore, the domestic industry is forced to export since the consumption norm of ammonia goes up if not used optimally.
- That in the original investigation and in all subsequent investigations M/s Hanwa has been given negative dumping margin though their balance sheet shows loss.
- That Caustic Soda and Chlorine are produced by Hanwa Chemicals, which is an associated Company of M/s Hanwa Corporation and the same is supplied to M/s Tongshu, who produces HCN. It is therefore, possible that there is some kind of buy back arrangement between Tong Shu and Hanwa for NaCN.
- That Tong shu has not invoiced the goods to India. It appears that M/s Hanwa has procured the goods from Tong Shu and exported to India. Therefore, it needs to be examined whether a trading company is entitled for a dumping margin.
- That the price of inter-unit transfer of HCN by Tong Shu for manufacture of NaCN should be assessed as a co-product and not as a by-product as claimed by the exporter.
- That the producer-exporter of has not correctly allocated all associated cost of production and SGA expenses to the product under consideration and therefore, the domestic sales of the producer are not in the ordinary course of trade.

E.2 Views of the responding Exporter from Korea RP (M/s Hanwha Corporation and TSPC)

9. M/s Hanwha Corp and M/s Tong Shuh Petrochemicals Corporation, in their combined response as exporter-producer of the subject goods in Korea RP have inter alia submitted that

- The petitioner company produces and sales three grades of sodium cyanide, i.e., NQ, SQ, and Mix quality material, in the local market without specifying the specification and purity level of the product. No manufacturer in the world is selling sodium cyanide in different grades. Normally, there is only one grade having purity level of Min, 98%.
- They never engaged in any kind of dumping activity. Though their capacity has increased, their selling price to India has also been increasing since 1999. The prices of exports to India are comparatively higher to the same for other countries and as well as the domestic sales during POI. The Petitioner have admitted that export price of Korea to India is higher than the average export price of USA to the world.
- The petitioner has presumed that USA producers/exporters are all along involved in dumping activities over a period and it is surprising that how any producer/exporter can survive being involved in the dumping activities for such a long time and for its all exports.
- In the initial investigation in 1999-2000 the Authority has determined the export prices of HWC-TSPC to India as non-dumped price and their prices from initial investigation to current review investigation has gone up. Since there is no material change in the prices of raw materials, etc., the current exports to India are also at non-dumped prices.
- There is no doubt about the increase in the world exports of Korean exporters as both the producers in Korea RP have increased the capacity and production. But, the Petitioner is presenting a misleading picture that prices over the years have declined due to increase in their export quantity. The prices over the year are more or less stabilized; however, in year 2003 onwards there is an increasing trend in the prices of sodium cyanide due to rise in the gold prices.
- Apparently no other country except India has imposed anti dumping duty on imports of Sodium Cyanide. Except India HWC-TSPC have not faced with any anti dumping investigations from any other countries in the world.
- While it is a fact that exports of TSPC has increased over the years, but, it is important to note that for TSPC, India has never been a target country and the same is evident from the export quantities. If TSPC has any intention to resort to predatory pricing to harm the petitioner, it could have easily done so as no anti dumping duty was imposed in the original investigation on imports from TSPC.
- The normal price trend of the subject goods, in the entire world, is in the range of USD 900-1000 per MT. The average sales realization of the domestic industry in any case is far high, if the prime grade of sodium cyanide is taken. Even after that if domestic industry is claiming that they are suffering losses because of higher cost of production, there may be other reasons for higher cost

production like uneconomical capacities/technology, inefficient handling, generation of sub-standard product, higher overheads, etc.

E.3 Views of other interested parties

10. The views of the importers and other interested parties have been summarized as follows:

E.3.1 Techno-Commercial Traders

11. M/s Techno-Commercial Traders has made its submissions as the importer of the subject goods from the subject country and has argued that

- The demand of Sodium Cyanide has grown beyond the capacities of the local producers and imports of the same are not causing any injury to them. Rather it is helping the user industry to meet their demands and remain competitive
- The sales of the Indian producers are increasing from year to year on regular basis, as well as the net realization is very attractive.
- The sale of M/s Cyanides and Chemicals is inclusive substantial quantities of Second Quality (SQ), which is Rs. *****/- per MT lower than normal quality (NQ), and Mixed Quality. The profit margins would have been much higher if no SQ material was sold.
- The production and sales of other domestic producer, i.e., M/s GACL has also increased in the year 2002 onwards and attained level of ***** M.T. from ***** MT in 2001-2002. The inventory of GACL is always on minimum level indicating total production sales. This plays a very important role on realization value of petitioner as GACL reduces their price when they are producing more and the petitioner company, i.e. M/s Cyanides and Chemicals (CCC) always follows GACL to retain their position.
- The domestic price of Sodium Cyanide always depends on the production quantity of the supporting company GACL. There has been history of GACL reducing the prices in the domestic market whenever their production increases. The basic reason for GACL to do so is that they always wanted to liquidate their stocks of sodium cyanide as soon as possible. Historically, this approach of GACL always put pressure on the CCC pricing policy and whenever the production of GACL was lower CCC always took opportunity to increase their market prices.
- The imports only fill the gap between the domestic demand and supply and in no way compete with domestic manufacturers. The demand of Sodium Cyanide is increasing due to export of Pharmaceuticals Agro-Chemicals & API's.

- The Petitioner also exports Sodium Cyanide though at much lower prices to contain domestic prices, otherwise their profitability would have been still higher.
- Therefore, injury (if any) so claimed by the petitioner is self-inflicted and imports are not having role whatsoever.
- In India HCN is sold by IPCL only, who is getting HCN as bye-product while producing Acrylonitrile and further Acrylic Fiber. They are supplying the same to GACL & GSFC through pipeline over the fence. It is a known fact that HCN can't be exported or sold otherwise, the same has been accepted and admitted in the Petitioner in their submissions also.
- The stock values (cost) of HCN as per closing stock shown in the petitioner's balance sheet for the corresponding periods are very well comparable to selling price of IPCL.

E.3.2 M/s Daurala Organics Limited

12. M/s Daurala Organics Limited has filed its submissions and comments as an importer and user of the subject goods and has inter alia argued that

- The petitioner company has granted large Interest Free Loans to its Group companies and the same was outstanding as on 31.03.2003 as per its balance sheet. Since the loans/advances have not been repaid by the borrowers it is probably one of the major reasons for lower Profit Before Tax (PBT) of the producer company. In spite of the above, PBT for the last three financial years have been steadily improving.
- The petitioner company has been offering Sodium Cyanide of different grades at different prices to the local market. The prices have been varying from Rs. *****/kg to Rs. *****/kg and in fact, they have been selling material as Off Grade. It therefore appears that they may be selling sodium cyanide of different grades, which has not been elaborated in their petition.
- There has been increase in price of Sodium Cyanide by over 20% since imposition of Anti Dumping Duty on account of exchange rate and basic price of the product.

E.3.3 Other exporters and interested parties

13. M/s CyPlus GmbH, Germany, in its brief submission has maintained that the prices charged by them are fair given their high quality of Sodium Cyanide sold to India and there is no compensatory arrangement with its Sodium Cyanide customers in India. BASF Germany also maintained that they produce NaCN only for their captive consumption. Therefore, they have not participated in this investigation and would approach the Authority for a new Shipper review if needed in future.

14. The Indian Drug Manufacturers Association has submitted that there has been periodic shortage of the product with unilateral price increase by the only two manufacturers of the product in India. The production of these two units is far less compared to the demand and price increase by the producers is not justified. Since bulk drugs are price controlled there is no possibility of drug manufacturers passing on the burden of cost increase to their customers, i.e. formulators.

F. EXAMINATION BY THE AUTHORITY

15. The Authority has taken note of the above arguments of the interested parties and the issues have been addressed in appropriate places in this finding.

16. Section 9 A (5) of the Act provides that the Authority, in a sunset review, is required to examine, whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. Therefore, the issues before the Authority are to determine:

- Whether Dumping is likely to continue or recur, if definitive duties are removed or expired;
- Whether Injury to the Domestic Industry is likely to continue or recur, if definitive duties are allowed to expire or removed.

17. On the basis of the above these issues have been examined in the succeeding paragraphs.

G. CONTINUATION OR RECURRENCE OF DUMPING:

G.1 Applicant's Views

18. Quoting the US practice in their Sunset Review investigations, the applicants have argued that the following circumstances would lead to affirmative determination in a sunset review:

- Dumping continued at any level above 0.5% after the issuance of definitive duty order; Or
- Imports ceased after issuance of the order; Or
- Dumping was eliminated after the issuance of the order and import volumes declined significantly.

19. The applicants have also argued that existence of actual imports in the POI is not a pre-requisite in a sunset review investigation, which is more of a likelihood test rather than an actual dumping and injury test. In this connection they have quoted the

decision of the EC in the matter of Polyester Staple Fibre from Belarus in which the said authority has continued the duty even when there was no imports from that country, holding that revocation of the duty would lead to recurrence of dumping. The applicants have also quoted Brazil; Import of Jute bags from India, sunset review case, where the duties have been continued even though there were no imports from India in the entire five-year period.

20. The applicants further argue that the WTO Appellate Body, in the matter of US sunset review of antidumping duties on Corrosion Resistant Carbon Steel Products from Japan, held that there is no obligation under the antidumping agreement for investigating Authorities to calculate or rely on dumping margins in determining the likelihood of continuation or recurrence of dumping.

21. In summary the arguments of the applicants are that inescapable conclusion in any of the following conditions would be likelihood of continued dumping or likelihood of recurrence of dumping:

- In case the product has been exported to India from the subject countries at prices below normal value in the relevant period;
- In case exports of the product have ceased after imposition of Antidumping Duty but the exporting country producers continue to export the products at dumped prices in other countries.

G.2 Views of exporters, importers and other interested parties

22. No substantive arguments have been made by the interested parties including the cooperating exporters from Korea RP on the above legal arguments raised by the domestic industry regarding the standards and scope of sunset review investigation based on international practices.

G.3 Examination by the Authority

23. The Authority has noted the arguments made by the applicants on the methodology and practices of various Authorities in their Sunset Reviews as well as relevant WTO jurisprudence on the subject. The issue of continuation and likelihood of recurrence of dumping has been examined as follows:

G.4 Continuance of Dumping: Determination of Normal Values, Export Prices and Dumping Margins

24. None of the exporters from the subject countries other than M/s Tong Shuh Petrochemicals Corporation (TSPC) and M/s Hanwah Corporation (HWC) has

provided any information and cooperated in the investigation in order to enable the Authority to determine the normal value and export price of the subject goods from these countries. Therefore, the Authority has determined the dumping margin for the non-cooperating exporters from the subject countries on the basis of facts available in terms of Rule 6(8) of Antidumping Rules read with Article 6.8 of the Agreement.

G.4.1 Korea RP

25. The Authority notes that there was significant export of the subject goods from Korea RP during the POI and the injury investigation period. Though Korea has more than one producer of the subject goods, only one producer-exporter combination has filed complete response and cooperated in the investigation. Therefore, current dumping from this country has been examined in the light of cooperation received from the exporter from that country.

G.4.1.1 M/s Tong Shuh Petrochemicals Corporation and M/s Hanwah Corporation, Korea RP

26. The producer-exporter combination of M/s Tong Suh Petrochemicals Corporation and M/s Hanwah Corporation, Korea RP have filed their combined response with full details of their domestic sales, exports to India and cost of production and have fully cooperated in the investigation. The Authority also notes that in the original investigation the above exporter-producer combination fully cooperated in the investigation and dumping margin in respect of them was found to be negative during the POI of the said investigation. Accordingly, no duty was imposed against this exporter in the original investigation.

27. On the basis of their current response, the data submitted by this exporter-producer combination was verified and the determination of normal value, export price and current dumping margin, in respect of this cooperating exporter is based on the response filed and verified by the Authority.

a) **Normal value**

28. The Authority notes that During the POI Hanwha and TSPC have exported to India only one grade of Sodium Cyanide i.e. Sodium Cyanide (98% minimum). The product sold in the home market by TSPC is identical to the product exported to India. Therefore, the entire home market sale of the exporter has been taken as 'like article' for the purpose of determination of normal value. However, the Authority notes that while the domestic sales of the subject goods are directly handled by the producer i.e. TSPC, the exports to India is entirely through M/s Hanwah Corporation.

For the purpose of determination of normal value the Authority has examined the home market sale of the producer and subjected them to ordinary course of trade.

29. The cost of production of TSPC was examined from their records. It was noticed that TSPC produces NaCN using HCN and NaOH as major raw materials. While NaOH is sourced from the domestic market, TSPC uses its own HCN produced from its Acrylonitrile Plant at Ulsan. The producer maintained that HCN is a by-product generated during the process of manufacture of their main product ACN. It has been claimed by the exporter / producer that HCN is extremely hazardous chemical and is not traded in the global market. The exporter has further submitted that since the product does not have any realizable value, no reasonable cost can be attributed to it. However for the purpose of assessing the cost of production of Sodium Cyanide, an opportunity cost equal to the cost of incineration has been attributed to the raw material. The company also argued that marginal cost involved in storing and using HCN generated has been reflected in the unit cost of HCN shown in their response. Since historically they have treated this product as a by-product of their main production line, no separate cost data has been maintained by them for this product.

30. On the other hand the domestic industry has argued that HCN cannot and should not be treated as a by-product and it should be treated as a co-product to assign proper cost to its production. In this regard they have produced several definitions of co-product and by-product as per accounting standards. They have also raised several arguments regarding the cost of NaOH and compensatory arrangements between TSPC, as the purchaser of NaOH to produce NaCN and Hanwah Corporation as the producer of NaOH and purchaser of NaCN from TSPC. In addition to the above the domestic industry has raised the issue of allocation of several elements costs associated with production of NaCN, like interest costs. The issues raised by the domestic industry have been examined by the Authority to determine the actual cost of production of the product under consideration.

31. The producer TSPC has argued that HCN is a by-product produced in the production process of ACN and the cost of HCN has been allocated accordingly. They have also argued that HCN is not traded anywhere in the world, except across-the-fence supply for local use. Therefore, actual international price of the product cannot be ascertained. The exporter also produced the price of HCN supplied by the Indian producer of this product i.e. M/s IPCL, to its consumers for a comparison of the prices, in case Authority wanted to decide that this product should be treated as a co-product.

32. In view of the contesting views of the producer-exporter and the domestic industry, the Authority requested the other Indian producer of NaCN, i.e. M/s Gujarat Alaklies and Chemicals Ltd. (GACL) and only Indian producer of ACN and HCN, i.e.

M/s Indian Petrochemicals Corporation (IPCL) to provide their cost data of their respective products. The premises of both the companies were also visited to understand their production process and cost allocation methods for HCN. However, neither GACL nor IPCL could provide any credible information to justify cost allocation for HCN produced during the process of manufacture of ACN as a co-product. The transaction price between IPCL, as the producer of HCN and GACL, as the consumer of HCN across the fence was also verified as a benchmark price. However, the domestic industry has also contested the transaction price between IPCL and GACL on the grounds that the transaction price between IPCL and GACL does not reflect true price of HCN. The domestic industry was asked to produce evidence of actual international transaction prices of this product in support of its claim, if the cost allocated by the producer-exporter or the transaction price between Indian producer and its consumers are to be disregarded as claimed by them.

33. The domestic industry, produced a copy of a report prepared by the U.S. Environmental Protection Agency in August 2000 and on the basis of the said report, the domestic industry claimed that HCN price in the US was US\$0.41 to US\$0.60 Per lb. Therefore, the average price of HCN should be taken as US\$0.50 per lb for the purpose of determination of cost of production of NaCN.

34. The Authority has carefully examined the said report. The report prepared in the year 2000 was meant for an economic impact analysis of the affected industries for listing of hazardous inorganic chemical industries. However, examination of the report submitted by the domestic industry does not give much credence to the claims of the domestic industry that the HCN cost of the producer in Korea should be based on the co-product pricing structure. The second claim of the domestic industry that the transaction price of HCN should be around US\$0.50 per Lb, also does not appear to be valid, as the average price quoted in the report is for the year 2000 and the prices are based on cost structure of a different process, admittedly less cost effective.

35. As far as the responding exporter/producer from Korea RP is concerned, the producer is clearly getting its HCN for NaCN production from its ACN plant as a by-product and has its own costing structure for the by-product. The Authority notes that the responding producer in Korea, M/s TSPC, has allocated the incineration cost and associated cost of storage and transmission to HCN, treating it as a by-product of ACN plant and accordingly this cost has been allocated as the raw material cost for NaCN. Even if the transaction price between the Indian producer of HCN and its customers is accepted as the price to be allocated for HCN in NaCN production of the Korean producer no major impact on the total cost could be found. Therefore, the Authority did not find any strength in the arguments of the domestic industry for adoption of any other cost structure for HCN in the manufacture of the subject goods by the cooperating producer in Korea RP.

36. The other issues raised by the domestic industry regarding the cost of production were also examined during the investigation. However, the cost of production of the subject goods, of the producer was found to be much below its selling price in their domestic market.

37. In its post disclosure submissions the domestic industry has reiterated its stand that HCN should be treated as a joint product of the ACN production and not as a by-product. They have argued that by the definition provided by the Cost Accounting Standard Board, HCN should be treated as a joint product. They have also argued that the marketability of such products is of no relevance. Therefore, relative importance of the products is important for the present purposes and in any event, HCN cannot be termed of “minor importance”, which is the definition of by-product. The domestic industry has further argued that there is a substantial cost involved from the stage of separation and consumption of HCN and same should be accounted for. In this connection, the DI has referred to its own cost paid to GACL towards storage and handling, as well as maintenance of incineration facility as a mandatory requirement. The domestic industry has also argued that US Environmental Protection Agency report submitted by them more than establishes that the price of HCN tends to be comparable to the cost of production of HCN from synthetic route and the cost difference between the two technologies is entirely irrelevant. The domestic industry has also argued that the annual report of Tong Shuh shows losses while ACN price was high in the international market, whereas for the sodium cyanide business they have shown huge profit. Therefore, DI has argued that the exporter has not adequately disclosed cost associated with production and sale of sodium cyanide and ACN.

38. The Authority has examined the definitions of by-product and joint product as brought to its notice, the nature of the product, various documents submitted by the contesting parties, including environment protection agency report and the accounting practices of the exporter. The Authority also notes that in the original investigation the product was treated as a by-product and the domestic industry did not appeal against that decision. Considering the factual matrix of the case the Authority is of the view that there is no reason to change the basis of the determination in the instant case.

39. As far as allocation of cost of HCN from point of separation to consumption and various other expenses towards manufacture of Sodium Cyanide is concerned the Authority has examined the arguments of the domestic industry and is of the view that the costs allocation made by the cooperating exporter is as per the accounting standards of the exporting country. It is also noted that allocation suggested by the domestic industry would not have any significant impact on the determination of normal value for the exporter. Therefore, the normal value for the cooperating exporter has been determined as follows:

40. As far as domestic selling price of the responding exporter is concerned, the exporter has reported ***** transactions of ***** MTs of the subject goods in the Korean market. However, most of these transactions are to major trading houses in Korea at ex-works prices. Weighted average ex-works price of the producer in the domestic market; as per the producer's records was US\$***** per MT. No other adjustments have been claimed and admissible on the ex-works prices of the producer. Therefore, the normal value of the product in Korea RP works out to US\$*****per MT

b) Export Price

41. The exporter-producer combination has reported ***** transactions (*****MT) of the product under consideration during the POI. It is noted that the entire export transactions to India has been manufactured by TSPC, and routed through Hanwha Corporation. These transactions were verified from their records. It was noticed that TSPC sells the products to HWC on FOB port of loading terms, and HWC in turn sells the materials to the Indian customers. Though the transfer of goods from TSPC to Hanwah is treated as sales, since the product is ultimately destined for exports no taxes (VAT) is payable on such transaction. HWC negotiates the price with Indian customers. As the term of sales between HWC and Indian customers are "CIF", all other direct selling expenses like ocean freight, handling etc. are borne by HWC. Credit period offered to Indian customer is the sole discretion of HWC and any opportunity cost arising out of this is borne by HWC, out of its margin.

42. Weighted average CIF price to India is US\$*****per MT. To arrive at ex-factory price of exports to India, prices of HWC to Indian customers has been adopted as the basic price. All the direct expenses made by HWC after FOB like ocean freight, handling charges, agent commission, credit others including insurance, HWC margin and inland freight borne by TSPC, (since TSPC offers the product to HWC on FOB terms), have been deducted to arrive at ex-factory price. As per the exporter's own data the export price at ex-works level works out to US\$*****per MT.

c) Adjustments

43. Article 2.4 of the Agreement provides that

"A fair comparison shall be made between the export price and the normal value. This 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 possible the same time. Due allowance shall be made in each case, on its merit, for differences which affect price comparability, including difference in conditions and terms of sales, taxation, levels of

trade, quantities, physical characteristics, and any other difference which are also demonstrated to affect price comparability”.

44. It may be noted that while the export transaction prices reported by HWC are at retail level to actual consumers in India, the domestic sales of TSPC are at the wholesale level to major trading companies. Therefore, the transactions are not at the same level of trade requiring level of trade adjustments to bring the same to net-ex-factory level for the purpose of fair comparison with the export price in terms of Article 2.4 of the Agreement.

45. It is also noticed that while the direct expenses borne by Hanwha after transfer of goods from TSPC at FOB level (at the port of export) till CIF Indian port has been accounted for, the indirect selling, general and administrative expenses incurred HWC and its profit margin towards export of this product has not been accounted for. The company maintained that these expenses are very insignificant as the volume is low and they do not have separate business set up to handle this product, for which SGA expenses can be accounted for. It was argued that these minor expenses are borne out of their margin, which is indicated against each export transaction. However, margin of Hanwha, after accounting for all direct expenses, is as low as below *****%. The exporter has argued that this product constitutes a very marginal volume of its total business and therefore, they operate at a very marginal profit on this product.

46. However, examination of the balance sheet of HWC indicates that indirect selling expenses incurred by the Company on its business activity accounted for *****% of its total turn over, whereas, net margin of the Company in its export transaction to India, after accounting for the direct expenses, is less than *****% of the sales value. Therefore, it is appropriate to adjust the indirect selling expenses at the same ratio of *****% of the sales value and also make allowance for a reasonable profit margin.

47. After adjusting for the indirect selling and general expenses the net margin of the trading company on the export transactions to India becomes negative. Therefore, it is appropriate to adjust an amount of reasonable profit margin to arrive at the net ex-works export price for comparison with its normal value in the country of export. As far as reasonable profit margin is concerned the balance sheet of HWC for the corresponding shows that net profit of the company for 2003 was *****% of the sales value. Therefore, an amount of *****% on the sale price to India has been adjusted towards reasonable profit margin of Hanwah to arrive at the net export price at ex-factory level in terms of Article 2.4 of ADA.

48. The domestic industry has argued that exporter, being a subsidiary of Japanese Company, seems to be paying commissions to its parent Company on account of huge investment made by them in this plant. Therefore, an appropriate price adjustment

should be made in respect of its export price to India. But no verifiable evidence has been produced by the domestic industry in support of this argument. However, it may be noted that if such an adjustment is necessary, it would be applicable to all transactions of sales by TSPC, including its domestic sales, and net effect of adjustment would be nullified. Therefore, no such adjustment is warranted.

49. In its post disclosure submission the domestic industry has argued that expenses of both the companies i.e Hanwha Corporation (HWC) and Hanwha Chemical Corporation (HCC) have to be considered based on their annual account, for adjustment towards handling the products. The domestic industry has argued that Hanwha Chemical Corporation (HCC), with its office in the New Delhi, is the selling agent of HWC for sodium cyanide in India. It has been argued that HCC being a separate company, its expenses should be accounted for. The Authority notes that the Annual Report of Hanwah Corp indicates that Hanwha Chemical Corporation is an affiliated Company of Hanwah Corp with 25% equity participation. However, export documents in respect of sales to India do not show any direct involvement of HCC in the transaction between TSPC-HWC and the buyers in the India. The buyers in India raise the order with Hanwha Corporation directly and export invoices were also raised by Hanwha Corporation against the buyer. Neither HCC, Korea, nor its liaison office of HCC in Delhi seem to have any significant role as an intermediary between HWC and buyer, requiring an adjustment as argued by the domestic industry. Therefore, the Authority is of the view that no separate adjustment towards this can be imposed in terms of Article 2.4 of the Agreement.

50. M/s TSPC-HWC in their post disclosure submission has argued that that the adjustments towards SGA and profit margins adopted by the Authority is arbitrary and without application of mind. They have argued that Hanwah Corporation is a major manufacturing Company and trading activity is a small proportion of its activities. Therefore, the margin and SGA expenses in respect of manufacturing activities cannot be adopted for the trading activity and the Authority has failed to understand the basic margins earned by any company in trading activities. They have argued that trading activities do not involve any warehousing, local transportation, advertisement; taxes, supplies, market development expenses etc. and all direct expenses incurred have been duly accounted for in their submissions. Regarding profit adjustments, the exporter has argued that the Authority has erred in taking into account non-operating incomes and expenses for computation of profit margin for the trading company. Since the trading company does not employ any capital in the trading activity the cost involved by Hanwah is almost nil and whatever direct expenses are incurred in such transactions have already been accounted for.

51. The issues have been examined by the Authority and it is noted that while the direct expenses have been accounted for in the exporter's submission, there is no

separate reporting towards its trading activities and expenses incurred and profits earned against the same in the Annual Reports of the Company. Therefore, only option available was to adopt the indirect SGA and profit margin on the basis of turnover for the company as a whole. In view of the above the arguments of the exporter cannot be sustained.

52. Accordingly, the adjusted net ex-works export price for this exporter-producer combination works out to US\$*****per MT.

d) Dumping Margin

53. The weighted average normal value at the ex-works level has been compared with the adjusted weighted average net export prices at the ex-works level and the dumping margin works out as follows:

US\$ per MT	Selling price to India	Adjustments	Net Ex-works Export Price	Net Ex-works Normal Value	DM	%
	*****	*****	*****	*****	*****	3.71%

G.4.1.2 Other Exporter from Korea RP

54. The Authority notes that there are other major producers of the subject goods in the Republic of Korea with significant capacity and production volume who have not participated in this investigation. For the non-cooperating exporters from Korea RP the Authority has determined the dumping margin during the POI on the basis of best facts available. For this purpose the highest transaction value of the cooperating exporter in its home market and the lowest transaction value of all exports to India, from the subject country, has been adopted and level of trade adjustments have been applied on these transaction values, on facts available basis, to arrive at the dumping margin as follows:

US\$/MT

Normal value	*****
Export Price	*****
CIF	*****
Adjustments	*****
Net Ex-work EP	*****
Dumping Margin	*****
DM %	38%

G.4.2 USA

55. As per the DGCIS data there was no export of the subject goods from USA during the POI. However, in a parallel investigation against Chinese Taipei, the cooperating exporter from that country has provided information that substantial quantity (***** MT) of the subject goods have been imported by them from USA and re-exported to India. In this connection reference is invited to Article 2.5 of the Agreement, which reads as follows:

“In the case where products are not imported directly from the country of origin but are exported to the importing member from an intermediate country, the price at which the products are sold from the country of export to the importing member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export”.

56. The responding exporter in the parallel investigation has informed that the subject goods were imported from USA and Korea RP during the POI and exported to India. However, US market price is not available due to complete non-cooperation from that country. Therefore, for the purpose of determination of Normal value in USA the normal value has been constructed on facts available basis. Accordingly, the constructed normal value in USA works out to US\$***** per MT.

57. The weighted average CIF export price of Sodium Cyanide originating in the USA, but exported through Taipei to India, as per Taiwanese exporters data is US\$*****/MT. Since the goods have been imported to Taipei first then exported to India, adjustments towards inland freight and insurance, ocean freight and insurance, commission and other handling charges at both stages of transactions have been made to this price to arrive at the estimated weighted average ex-works net export price from USA. Accordingly the ex-works export price and dumping margin for the US exporters works out as follows:

US\$/MT

CIF	*****
Adjustments	*****
Commission	*****
Net Ex-work EP	*****
Normal value	*****
Dumping Margin	*****
DM %	79%

G.4.3 The European Union

58. The domestic industry in its post disclosure submission has pointed out that certain transactions of Potassium Cyanide imported from the EU have been captured in the DGCI&S transaction-wise data and thereby the CIF value and landed value of imports from EU has been inflated. Examination of the transaction level data of DGCIS shows that few transactions of Potassium Cyanide with higher per unit realization has been captured in the data. The data has been rectified accordingly and the details work out as under:

	Total Qty MT	Total CIF Value Rs	CIF Price Rs/MT	Landed Value Rs/MT
EU	105.40	6501868	61687	77880

59. Accordingly, the Dumping Margin Calculation has been revised for the EU exporters on the basis of DGCIS data and adjustments on the basis of facts available as follows:

US\$/ MT	
CIF	1332.325
Adjustments	154.52
Commission	39.97
Net Ex-work EP	1137.83
Normal Value	1124
Dumping Margin	-13.83
DM %	-1%

The dumping margin in respect of EU exporters has been determined to be negative.

G.5 Dumping Margin Table

	TSPC&HWC	Others from Korea RP	USA	EU
Normal Value	*****	*****	*****	*****
Export Price	*****	*****	*****	*****
Dumping Margin	*****	*****	*****	NIL
%	3.71%	38%	79%	

G.6 Likelihood of Continuation or Recurrence of Dumping

60. The domestic industry has argued that current state of dumping is not the only criteria for determination of the need for continued imposition of duty in a sunset review investigation. The requirement under the Agreement is to examine the likelihood of dumping to continue or recur in the event of withdrawal of duty. Having examined the current scenario of dumping of the subject goods from the subject

countries during the POI, the Authority has also examined the likelihood of continuation or recurrence of dumping, if the duty against the subject countries is removed.

61. The examination of current dumping indicates that dumping continues from Korea RP. The capacity of TSPC is about ***** MT per year whereas the production is about ***** MT. Therefore, it has a significant spare capacity and trade volume of this exporter to India has increased significantly during the injury investigation period. Therefore, there is likelihood that dumping would continue from this country.

62. As far as European Union is concerned, the Authority notes that there is vary small export volumes from that territory during the POI. One of the exporters from the EU, in its brief submission, has argued that their exports are of higher purity and do not directly compete with the domestic industry's products in the Indian market. It is also noted that price at which the goods have been exported from the EU was much above the reference price fixed. Therefore, looking at the volume and price of the export from the EU it appears that there is no imminent likelihood of dumping to recur from the EU if the duty is removed

63. As far as USA is concerned, the Authority notes that there is no direct export of the subject goods from USA during the POI except for a very small quantity exported in 2001-02. However, the Authority also notes that substantial quantity of the subject goods originating in the USA has entered the Indian market through Chinese Taipei during the POI at dumped prices. Therefore, the Authority holds that there is a likelihood of dumping recurring directly from the USA in the event of revocation of the duty against the said country.

64. In summary, the above examination indicates that while dumping continues from Korea RP and the USA, and likelihood of continuation of such dumping exists, there is no current dumping from the European Union and imminent likelihood of recurrence of dumping from that country does not exist.

H. INJURY DETERMINATION

65. The Authority has examined the injury, if any, suffered by the domestic industry and the causal link between the dumped imports and injury suffered. The Authority has also examined the likelihood of recurrence of dumping and injury. For the purpose of the injury examination the petitioner accounts for a major proportion of total domestic production, therefore, constitutes the domestic industry within the meaning of the Rule 2B.

H.1 Continuation of Injury: Examination of Injury Parameters and Causal Links

H.1.1 Views of interested parties

66. The domestic industry has pleaded that the injury to the domestic industry continues in spite of the protection of antidumping duty available to them due to continuation of dumped imports from many sources.

Importers, exporters and other interested parties have argued that the domestic industry has improved its performance and suffers no injury at the moment and injury if any is due to their own inefficiencies and therefore, cannot be attributed to the imports from these sources.

H.1.2 Examination by the Authority

67. The Authority has taken note of various arguments raised by various parties in their submissions and issue of likelihood of recurrence of dumping and injury to the domestic industry has been examined in the light of these arguments made before the Authority.

68. The Authority notes that this is a sunset review of the measure already in force and examined the issue of cumulative assessment of injury to the domestic industry on account of simultaneous dumping from the subject countries, in terms of Annexure II (iii) of the Antidumping Rules and holds that the conditions specified in the said Rules are satisfied in this case for cumulative assessment. The Authority also notes that a simultaneous investigation is in progress against import of the subject goods from Chinese Taipei. However, for the purpose of this investigation the imports from all other sources have been examined for causal link analysis.

69. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

70. For the purpose of injury analysis the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its

effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

71. Since positive dumping margin has been established for the exports from the Korea RP and USA, entire exports from those countries has been treated as dumped imports for the purpose of injury analysis and causal links examination. Imports from the European Union are at un-dumped prices and therefore, have not been included in the dumped imports category.

H.1.3 VOLUME EFFECT:

Volume Effect of dumped imports and Impact on domestic Industry

72. The effects of the volume of dumped imports from the subject country as well as imports from other countries have been examined as follows:

i) Import Volumes and share of subject countries:

For the purpose of volume analysis the Authority examined the DGCIS import data for the relevant periods. However, it is noticed that the volume of exports indicated by the cooperating exporters in their responses in parallel investigations are higher than the volume of imports reported by DGCIS. Therefore, the volume of import has been adjusted taking in to account the export data available with the Authority.

Accordingly, the volume of dumped imports of the product under consideration has been estimated as follows:

Qty in MT

	2000-01	2001-02	2002-03	POI April-Dec 03	2003-04
Korea RP	1113.435	1437.149	1445.635	1700	2267
Trend	100	129.07	129.84	152.68	203.57
EU	385.888	157.9	221.486	105.4	135.3
USA	0	0	17.8	0	0
Total Subject Countries	1499.323	1595.049	1684.921	1805.4	2401.97
Trend	100	106.38	112.38	120.41	160.20
Chinese Taipei**	27	18	107	372.25	539.6
Total Imports Others (including Taipei)	45.15	40.325	330.384	441.91	603.01
Trend	100	89.31	731.75	978.76	1335.57
Total Dumped imports	1499.32	1595.05	1684.92	1805.40	2401.97
Trend	100	106.38	112.38	120.41	160.20
Total import	1544.473	1635.374	2015.305	2247.31	3004.98
Trend	100	105.89	130.48	145.51	194.56

** Chinese Taipei exports of the POI include export of ***** MT of Sodium Cyanide of US origin and *****MT of Sodium Cyanide of Korean Origin.

The above data indicates that import from Korea has increased by 53% in the POI and over 100% on annualized basis compared to the base year, whereas import from the subject countries has increased by about 22% and 60% during the same period. Import from the EU and USA has declined substantially though total import has increased by about 46% and 94% during the same period.

ii) Demand, Output and Market shares

a) **Production of the Domestic Industry**

Quantity in MT

	2000-01	2001-02	2002-03	POI	POI Annualized
Capacity	*****	*****	*****	*****	*****
Output	*****	*****	*****	*****	*****
Indexed	100.00	79.32	96.77	83.58	83.58
Capacity Utilization	*****	*****	*****	*****	*****
Indexed	100	79	96	83	83

The above data indicates that the production and capacity utilization of the domestic industry has declined significantly after showing an improvement in the year 2002-03. The decline in production and capacity utilization, in spite of antidumping duty protection against the subject countries, is significant and material.

The Authority also examined the production with reference to the demand in the domestic market and the ability of the domestic industry to sell in the domestic market, which is shown below.

b) **Sales of Domestic Industry**

Quantity in MT

	2000-01	2001-02	2002-03	POI	POI Annualized
Sales (Domestic)	*****	*****	*****	*****	*****
<i>Trend</i>	100.00	109.47	107.24	110.05	110.04
Sales – (Exports)	*****	*****	*****	*****	*****
<i>Trend</i>	100.00	175.15	224.85	277.17	277.17
Sales - Total	*****	*****	*****	*****	*****
<i>Trend</i>	100.00	116.95	120.63	129.06	129.06

The data above shows that though the production declined by 26%, the domestic sales has increased by 10% whereas major increase in the sales is in the export segment, which increased by 177%. The domestic industry has argued that un-remunerative price in the domestic market, due to dumped imports, has forced them to increase the exports.

c) Demand and Market Share

Quantity in MT

	2000-01	2001-02	2002-03	POI April-Dec 03	2003-04
Total import	1544.473	1635.374	2015.305	2247.31	3004.98
Trend	100	105.89	130.48	145.51	194.56
Domestic Industry sales	*****	*****	*****	*****	*****
Trend	100	109.47	107.24	82.54	110.04
Sales by other domestic producers	*****	*****	*****	*****	*****
Trend	100	68.84	107.62	92.53	123.39
Total Domestic Demand	7407.47	7237.37	8310.30	7287.31	9724.97
Trend	100	97.70	112.19	98.38	131.29
Shares in Demand					
Domestic Industry	*****	*****	*****	*****	*****
Trend	100	112.04	95.59	83.90	83.82
Other Domestic Producers	*****	*****	*****	*****	*****
Trend	100	70.46	95.92	94.06	93.99
Korea RP	15.03%	19.86%	17.40%	23.33%	23.31%
Trend	100	132.11	115.73	155.20	155.06
EU	5.21%	2.18%	2.67%	1.45%	1.39%
Trend	100	41.88	51.16	27.76	26.71
USA	0.00%	0.00%	0.21%	0.00%	0.00%
Subject countries	20.24%	22.04%	20.28%	24.77%	24.70%
Trend	100	108.88	100.17	122.40	122.03
Others	0.61%	0.56%	3.98%	6.06%	6.20%
Trend	100	91.41	652.25	994.90	1017.30

It is noted that domestic demand of the product under consideration has increased by about 31% compared to the base year on a year-to-year analysis. However, the share of domestic industry in the total domestic demand has shown declining trend, whereas the share of subject countries has remained significantly high and increased by 4% during the corresponding period, even after imposition of duty. The share of dumped imports from Korea RP has significantly increased even after imposition of duty against that country and share of other two countries against duty is in force has, either significantly declined, or completely reduced to zero. The share of the other domestic producer has also reduced marginally compared to the base year.

H.1.4 Price Effect of the Dumped imports on the Domestic Industry

73. The impact on the prices of the domestic industry on account of the dumped imports from subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression.

74. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry (worked out after normating the costing information of the Domestic Industry) have been compared with the landed cost of imports from the subject countries.

(i) **Price undercutting and underselling effects**

Values in Rs/MT

Rs./KG	2000-01	2001-02	2002-03	POI
Cost to make and sale	*****	*****	*****	*****
Trend	100	102.51	87.94	100.17
Selling Price	*****	*****	*****	*****
Trend	100	94.72	91.91	86.85
Landed Value (without antidumping duty)				
Korea RP	67317	63225	66429	55642
EU	102941	167493	80120	77880
USA	0	0	60166	49744
Price Undercutting				
Korea RP				0 to 10%
EU				NIL
USA				10 to 20%
NIP				*****
Price Underselling				
Korea RP				5 to 15%
EU				Negative
USA				10 to 20%

The selling price (net sales realization) of the domestic industry shows significant decline, whereas cost of production of the domestic industry has increased in the POI after a significant decline in the year 2002-03. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject countries over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic

customs duty to the value reported in the DGCI&S transaction wise data of import prices from the subject countries.

The price undercutting (without considering the antidumping duty in force) is positive. It is also noted that as far as Korea RP is concerned major portion of the exports are from M/s Tong Shuh and M/s Hanwah, which did not attract antidumping duty. Therefore, the dumped import from this country is found to have significant price undercutting effect on the domestic prices. As far as the European Union is concerned, the landed value of the subject goods imported from that country is much above the prices of the domestic industry indicating no price undercutting or underselling effects.

As far as USA is concerned, though there is no direct import of the subject goods from that country, considering the fact that the goods are being exported through Chinese Taipei, the landed value of the goods from that country has been compared for the purpose of price under cutting and under selling determination. These exports are found to have significant price underselling effect.

(ii) Price suppression and depression effects of the dumped imports:

The price suppression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject countries.

The above table shows that the landed values of goods from Korea and USA have significantly declined compared to the base year. The cost of production of the subject goods shows substantial increase compared to the base year. But the selling price shows decline during the corresponding period.

H.1.5 Examination of other Injury Parameters

75. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern, with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analysed as follows:

i) Productivity

Rs./KG	2000-01	2001-02	2002-03	POI – Annualized
Productivity per day	*****	*****	*****	*****

Trend	100	79.32	96.77	83.57
Productivity per Employee	*****	*****	*****	*****
Trend	100	80.50	101.74	89.70

Productivity of the domestic industry, measured in terms of its labour productivity of the output, has declined due to decline in total production during the POI.

ii) Profits and actual and potential effects on the cash flow

The Authority examined the cost of production of the domestic industry on the basis of their cost records for the product involved and the major raw material i.e. HCN produced from the synthetic processing route. The sales realization was also examined from their sales records. The Authority notes that the interested parties have argued that the domestic industry has significant quantities of sales of second quality material and therefore, there actual sales realization would be much higher compared to their claim. This aspect was also examined from the sales records of the company and it was noticed that about *****MT (****%) of second quality material was sold by the Company during the POI to some specific customers. The applicant clarified that the sales are as per specific requirements of certain customers. However, the SQ material sold is alike in all essential characteristics to the product under consideration.

Therefore, the cost of production, as well as net sales realization, has been worked out on average basis.

Rs/MT	2000-01	2001-02	2002-03	POI Annualized
Cost of Production	*****	*****	*****	*****
Trend	100	104.75	89.13	102.34
Selling Price	*****	*****	*****	*****
Trend	100	95.92	92.79	88.01
Profit/Loss	*****	*****	*****	*****
Trend	100	95.92	92.79	88.01

It is noted that the cost of production of the domestic industry has shown an upward trend after a significant decline in the year 2002-03. However, the sales realization of the domestic industry has been steadily declining, resulting in decline in the profit margin of the domestic industry though the industry continued to earn profit on its domestic operation during the POI. The profit margin has declined by over 65% compared to the base year.

iii) Employment and wages

The employment level of the domestic industry has declined. But the expenses on account of salary and wages have increased by about 14%. However, increase in the

expenses towards salary and wage is in tandem with prevailing rules and regulations in the country during the comparable periods.

Rs./KG	2000-01	2001-02	2002-03	POI – Annualized
Employment	*****	*****	*****	*****
Trend	100.00	98.54	95.12	93.17
Wages	*****	*****	*****	*****
Trend	100.00	93.58	107.20	114.35

iv) **Return on investment and ability to raise capital**

The return on capital employed by the domestic industry shows deterioration compared to the base year and previous years.

Rs./MT	2000-01	2001-02	2002-03	POI Annualized
PBIT	*****	*****	*****	*****
Capital Employed on domestic sales	*****	*****	*****	*****
Return on Capital Employed	36.68%	19.60%	29.97%	9.93%
Trend	100	53.45	81.7	27.07

It is evident from the above that return on capital employed of the domestic industry significantly deteriorated.

v) **Investment**

There has been no capacity addition or any fresh investment by the applicants during the investigation period.

vi) **Magnitude of Dumping**

Magnitude of dumping as an indicator of the extent to which the dumped imports can injure the domestic industry shows that the dumping margin determined against Korea RP and USA, is substantial for the POI, even when the antidumping duty is in force.

vii) **Factors affecting prices**

Change in cost structure, competition in the domestic market and prices of other sources have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. There is no viable substitute to this product. M/s Cyanide & Chemicals is the largest producer of the subject good in India. M/s Gujarat Alkalies and Chemicals Ltd. is the other producer of the subject goods in India. The interested parties have argued that the prices of the petitioner is affected by the price of GACL, whose cost of production is much less compared to the

cost of the petitioner, in view of the fact that GACL uses HCN produced and supplied by IPCL from its ACN plant as a by-product. The Authority notes that GACL has also supported the petition and has submitted that they have not been able to realize a fair price due to dumped imports of the subject goods. However, the capacity of GACL is limited and the petitioner has argued that there is a fair competition between them in the domestic market.

viii) Inventories

Rs./KG	2000-01	2001-02	2002-03	POI Annualized
Inventories	*****	*****	*****	*****
Inventories as % of Sales	46.86	25.12	27.37	11.93

The data shows that the domestic industry has been able to liquidate inventories after imposition of Anti Dumping Duty.

H.2 Other Known factors and Causal Link

76. The following facts have been placed before the Authority for non-attribution analysis.

i) Volume and prices of imports from other sources

During the POI, other than subject countries, significant imports have taken place from Chinese Taipei. However, imports from Chinese Taipei are under investigation by the Authority. The Authority also notes that the imports from this country actually originate in the countries being investigated in this review investigation. Imports from countries other than Taiwan and subject countries are either small in quantity or prices are higher. The Authority notes that dumped imports from subject countries constitute about 80% of total imports and imports from all other sources account for remaining 20%. Of the 20% Chinese Taipei constitutes about 90% of the imports. Since the exports from Chinese Taipei actually originates in the subject countries, the subject countries actually accounted for 98% of total imports.

ii) Contraction in demand and / or change in pattern of consumption

Total domestic demand of the product under consideration, has increased significantly by about 29% on annualized basis compared to the base year. However, the share of domestic industry in the demand, after increasing in 2001-02 (after imposition of the duty), has shown sharp declining trend, whereas the share of subject countries has remained significant even after imposition of duty. There is no significant change in

consumption pattern of the product in the domestic market, which can be attributed to the injury to the domestic industry.

iii) Trade restrictive practices of and competition between the foreign and domestic producers

The subject goods are freely importable and there are no trade restrictive practices in the domestic market. As mentioned earlier, only other producer of the subject goods in India appears to offer a healthy competition to the petitioner in the Indian market. Major portion of the imports of the subject goods takes place from subject countries. Other exporting countries do not have substantial market share in Indian market to effectively compete.

iv) Development of technology and export performance

The Authority notes that the production process of Sodium Cyanide is similar in all producing countries. However, the process of production of the basic raw material i.e. HCN is different. While the ACN production facilities produce HCN as a by product of the ACN plant, HCN is also widely produced through basic inorganic synthetic route as a viable production process. However, the cost structures of production from these two routes differ significantly. Though the technology is different for obtaining the basic raw material they are viable production processes and are widely used world over.

The export performance of the domestic industry in volume terms was found to be better than its domestic performance during the injury investigation period. However, profit/loss of the domestic industry on account of their export performance has been segregated and the performance of the domestic industry, in terms of its domestic operation only, has been analysed. Therefore, injury if any, on account of the export performance of the domestic industry, has not been attributed to the dumped imports.

The above analysis of injury parameters and examination of non-attribution factors indicate that no other factor, other than dumped imports has caused any injury to the domestic industry.

H.3 Conclusion on Injury and Causal Link

77. The foregoing examination of the injury parameters and the volume and price effects of dumped imports indicate that though the sales of the domestic industry has increased by about 10% compared to the base year, there is a significant drop in production and capacity utilization. In fact the sales have been augmented by liquidation of huge stock of the product in the base year, after imposition of duty in

the original investigation, rather than through improvement in production volume. The examination indicates that the domestic industry suffers injury in terms of significant fall in production, capacity utilization, productivity, profitability and return on investments. The domestic prices have been affected by the volume and price effects of the dumped imports from the subject countries, excluding the European Union, and import prices from these countries have significant price undercutting, underselling and price depression effect on the domestic prices.

H.4 LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

78. The following facts have been brought before the Authority for examination of likelihood of continuation or recurrence of injury to the domestic industry. The domestic industry has pleaded that in a sunset review the Authority is required to examine the likelihood of continuation or recurrence of dumping and injury to arrive at a decision to continue or vary or remove the duty so as to offset dumping. The domestic industry in its submission has quoted the law and practices and standards of reviews in several countries to highlight the fact that determination of likelihood of 'continuation or recurrence of dumping and injury' is vital in an expiry review investigation.

79. The domestic industry has *inter alia* submitted:

1. That the producers from subject countries are dumping the material in the Indian market.
2. That Domestic industry is suffering continued injury due to dumped import from subject countries and should the Anti Dumping Duty be revoked, the injury to the domestic industry would recur or intensify.
3. That export price and landed price of imports from subject countries has declined after imposition of Anti Dumping Duty;
4. That Volume of imports from Korea RP has increased in spite of the antidumping duty against exports from that country, except one exporter.
5. That there is increase in the cost of production. However, the exporters have reduced their export price to India;
6. There is decline in selling price of the domestic industry. The price at which domestic industry is selling material is not a remunerative price.
7. That the producers are holding significant surplus capacities and their domestic demand is significantly below the capacities created by them.

80. As far as Korea is concerned, the Authority notes that there are two major producers of the subject goods in that country out of which one was not found to be dumping in the original investigation period and therefore, did not attract any duty.

The same exporter has also fully cooperated in the current investigation and the dumping margin in the current investigation period has been found to be positive and above the de minimis level. The other exporter seems to have routed its material through Chinese Taipei as per the information available with the Authority. The Korean producers also have significantly high-unutilized capacities and limited domestic demand. The Korean exports to India have been found to significantly undercut the domestic selling price in India. There is no indication or valid argument that the price structure of imports from the subject country will change once the duty is revoked. Therefore, considering the extent of dumping margin and the volume of current imports, it appears that dumping will continue from Korea RP, if the duties are withdrawn and the domestic industry will continue to suffer material injury on account of such dumped imports.

81. As far as the European Union is concerned, the Authority notes that the volume of imports from the EU has remained low during the injury period and the average landed value of imports during the said period is much above the domestic selling prices of the domestic industry, as well as the reference price fixed by the Authority in the original investigation. Therefore, the exports from the EU did not have any adverse effect on the domestic industry and considering the volume and prices of the exports from that country it appears that there is no likelihood of dumping recurring from the EU and injury being caused to the domestic industry on account of such imports.

82. The Authority notes that though there was no direct export of the subject goods from the USA, a significant quantity of goods manufactured in the USA has been exported through Chinese Taipei at dumped prices. The, landed value of the goods exported from USA to India through the third country has been found to have significant price undercutting and underselling effect on the domestic prices. The data on US production capacity and volume of trade of the product indicates that there is a significant capacity available in that country to enable the exporters to dump the goods in India once the duty is revoked. Therefore, the Authority is of the view that dumping would recur from the USA if the duty is revoked and the domestic industry would suffer material injury on account of such imports.

H.5 Determination of Non-injurious Price and injury margin

83. Non-injurious Price for the subject goods has been worked out by the costing division after a detailed analysis and scrutiny of information provided by the domestic industry. Weighted average Non-injurious price for the domestic industry has been determined by the Authority as Rs*****/-per MT

84. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject countries and the injury margins have been found to be significant against USA and Korea RP and negative in case of the European Union.

I. CONCLUSIONS

85. Considering the submissions of the interested parties and other facts available with the Authority the Authority concludes that

- i. The subject goods continue to be dumped from the Korea RP and USA, and dumping margins of the subject goods imported from these countries are significant and above de minimis;
- ii. There is no likelihood of dumping to continue and/or recur from the European Union, if the duties are revoked. However, dumping is likely to continue from the Korea RP and USA if the duties are revoked.
- iii. The domestic industry continues to suffer material injury on account of the dumped imports from Korea RP and USA.
- iv. Injury to domestic industry is likely to continue or recur if the duties are revoked in respect of imports from Korea RP and USA. However, injury to the domestic industry is not likely to recur if the duties are revoked in respect of imports from the European Union;

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

86. The Authority notes 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. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

K. RECOMMENDATIONS

87. Having concluded that there is no likelihood of continuation of dumping and injury on account of imports from the European Union, the Authority finds no justification for continuation of the duty against these countries/territories and therefore, recommends revocation of duty in force against the European Union.

88. However, in view of positive determination of likelihood of dumping and injury on account of imports from Korea RP and the USA, the Authority is of the opinion that continuation of the measure is required against imports from these countries. Considering the current level of dumping from that country and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from Korea RP and USA in the form and manner described hereunder.

89. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury whichever is lesser, so as to remove the injury to the domestic industry. Considering that the price of raw materials and the finished products have significantly changed the Authority considers it necessary to impose duty on fixed duty basis and recommends continuation of definitive antidumping duty on all imports of subject goods originating in or exported from Korea RP and USA, as indicated in Col 9 of the table below

Duty Table

Sl. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
1	283711	Sodium Cyanide	Any	Korea RP	Any	M/s Tong Shuh Petrochemicals Corporation	M/s Hanwah Corporation	29.62	MT	US\$
2	283711	Sodium Cyanide	Any	Korea RP	Any Except USA	Any other than above	Any other than above	250.88	MT	US\$
3	283711	Sodium Cyanide	Any	Any Except USA	Korea RP	Any	Any	250.88	MT	US\$
4	283711	Sodium Cyanide	Any	USA	Any	Any	Any	268.27	MT	US\$
5	283711	Sodium Cyanide	Any	Any	USA	Any	Any	268.27	MT	US\$

L. Further Procedures

90. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

91. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party, as per the time schedule stipulated for this purpose.

Christy L. Fernandez
Designated Authority