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**GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
(DEPARTMENT OF COMMERCE)  
DIRECTORATE GENERAL OF ANTI DUMPING &  
ALLIED DUTIES**

**NOTIFICATION**

**FINAL FINDINGS**

New Delhi the 2nd June, 2006

**Subject:** Anti-dumping (Mid-Term Review) investigation concerning import of Caustic Soda originating in or exported from Chinese Taipei, Indonesia and EU(excluding France) - Final Findings.

**No. 15/5/2005-DGAD – WHEREAS,** the Designated Authority, having regard to the Customs Tariff Act, 1975 as amended in 1995 (herein after also 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 also referred to as Rules), recommended imposition of provisional anti dumping duty on imports of Caustic Soda (hereinafter referred to as subject goods) originating in or exported from Chinese Taipei, Indonesia and European Union (excluding France) (hereinafter referred to as subject countries). The preliminary findings were published vide Notification no. 14/39/2002-DGAD dated 8th January 2003 and provisional duties were imposed on the subject goods vide Customs Notification dated 27.03.2003. The Designated Authority notified the final findings on 01.10.2003 and definitive antidumping duty were imposed vide Customs Notification dated 14.11.2003.

2. AND WHEREAS, the Designated Authority, received an application from M/s. Hindustan Lever Limited, requested for a changed circumstances review since conditions of dumping and injury have changed. The Authority, on the basis of a request made on behalf of importer, issued a public notice dated 03.06.2005, published in the Gazette of India, Extraordinary, initiating anti-dumping mid term review investigation in respect of the duty in force against the above countries as above, to determine whether the continued imposition of duty notified vide Custom

Notification dated 27.03.2003 would be necessary to offset dumping, whether the injury would be likely to continue or recur if the duty is removed or varied or both.

## **A. BACK GROUND OF THE CASE**

3. On the basis of an application filed by the M/s Indian Producer through Alkali Manufacturers Association of India, the Designated Authority conducted an investigation into existence of Dumping, Injury and Causal link of imports of Caustic Soda from Chinese Taipei, Indonesia and European Union (excluding France) and on the basis of positive determination of Dumping, Injury and Causal link, notified its final findings vide Notification No: 14/39/2002-DGAD dated 1st October 2003. Acting Upon the findings of the Authority, the Central Government imposed antidumping duty on imports of the subject goods from the subject countries vide Customs notification dated 14.11.2003. The present investigation to review the need for continued imposition of duty has been initiated on 03/06/2005 on the basis of an application filed by M/s Hindustan Lever Limited, Mumbai.

## **B. PROCEDURE**

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

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application from M/s. Hindustan Lever Ltd., alleging changed circumstances and requesting initiation of midterm review investigation concerning imports of Caustic Soda (hereinafter referred as subject goods) originating in or exported from Chinese Taipei, Indonesia and European Union (excluding France) (hereinafter referred to as subject countries).
- ii. The information provided by the applicant showed sufficient prima facie justification that there was a need for review of anti dumping duties earlier imposed. On being satisfied, the Authority issued a public notice dated 03.06.2005 published in the Gazette of India, Extraordinary, initiating anti-dumping midterm review investigations concerning imports of the subject goods classified under chapter 28 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from Chinese Taipei, Indonesia and European Union – Excluding France in order to determine whether there is no justification for continued imposition of existing duties and whether the same can be withdrawn.
- iii. The Authority forwarded a copy of the public notice to the known producers and/or exporters in the subject countries and gave them opportunity to provide

relevant information and make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):

- iv. The Authority forwarded a copy of the public notice to all the known importers and/or consumers of subject goods in India and advised them to provide relevant information and make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- v. Requests were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India for the period of investigation and preceding three years.
- vi. The Authority provided copies of the non confidential version of the application to the known producers and/or exporters and the Embassy/territory of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- vii. The Authority sent a questionnaire to elicit relevant information to the government of subject countries including known exporters/producers, in accordance with the Rule 6(4). One of the exporters from Chinese Taipei M/s. Formosa Plastics Corporation, Taiwan (hereinafter referred to as FPC) filed response in the prescribed exporters questionnaire within duly granted extended time period.
- viii. Questionnaire was sent to the known importers/user and associations of the subject goods for necessary information in accordance with Rule 6(4).  
Following parties filed response to the questionnaire:-

- a. M/s. National Aluminium Company Ltd.,

The Authority provided opportunity to the industrial users of the product under consideration, and to the known representative consumer organizations, to furnish information considered relevant to the investigation regarding dumping, injury and causality.

- ix. The Authority held a public hearing on 29th November 2005 to provide an opportunity to the interested parties to present relevant information orally, which was attended by petitioner, representatives of the domestic industry, Formosa Plastics and other interested parties. The parties attending the public hearing were advised to file written submissions of views and information presented orally. The interested parties were allowed to present rebuttal arguments on the views/information presented orally by other interested parties. Designated Authority has considered these written submissions received from various interested parties.

- x. Arguments raised and information/evidence provided by various interested parties during the course of the investigation, to that extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in the present findings, .
- xi. The Authority during the course of investigation satisfied itself as to the accuracy of the information supplied by various interested parties upon which these findings are based. For the purpose, the Authority conducted on-the-spot verification of the foreign producer, the domestic producers and consumers to the extent considered relevant and necessary. Additional details regarding injury were sought from the domestic industry, which were also received.
- xii. The Authority made available non-confidential version of the evidence presented by various interested parties through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xiii. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the domestic industry so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xiv. In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed on 2/05/2006 to known interested parties and comments received have been duly considered in these findings;
- xv. Investigation was carried out for the period starting from 1st January 2004 to 31st December 2004 (12 months) and has been referred to as the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2001 - March 2002, April 2002 – March 2003 and April 2003 – March 2004 and the POI;
- xvi. \*\*\*\*In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits. Information provided by various interested parties on confidential basis were examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. Wherever an interested party has refused access to, or has otherwise not provided, necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.

## **B. Product under consideration AND LIKE ARTICLE:**

### **B.1 VIEWS OF THE INTERESTED PARTIES:**

5. Domestic industry has submitted that;

- a. The present review investigation is a midterm review investigation. The product involved in the original investigation and in the present investigation is Sodium Hydroxide generally known as Caustic Soda. Caustic Soda is chemically known as NaOH. It is an Inorganic Chemical classified under Chapter 28 of the Customs Tariff Act. Caustic Soda is a soapy, strongly alkaline odorless liquid widely used in diverse industrial sectors, either as a raw material or as an auxiliary chemical. It is mainly used in the manufacture of pulp & paper, newsprint, viscose yarn, staple fiber, aluminum, cotton, textiles, toilet & laundry soaps, detergents, dyestuffs, drugs & pharmaceuticals, vanaspati, petroleum refining etc. Caustic soda is produced in two forms - lye and solids. Solids can be in the form of flakes, prills, granules or any other form. All forms of caustic soda are the subject matter of the present petition. Issues related with product under consideration and like article were examined in detail by the Designated Authority in the original investigations and is required to be confirmed.
- b. The Designated Authority has recently held that there is no necessity of reviewing the scope of product under consideration and like article in a review case. Such being the case, Indian Producers submit that the scope of the product under consideration and like article is not required to be examined at this stage. Imports of product under consideration are made both in lye and solid form. The lye form imports would normally be in shipment size of minimum 500 MT or multiple thereof. Indian Producers submit that the lye and solid differ in associated costs and prices. Since there have been imports of both the forms of caustic soda in the investigation period, the Designated Authority may kindly ascertain normal value, export price and dumping margin accordingly.

### **B.2 VIEWS OF THE APPLICANT, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES:**

6. The applicant, importers, consumers and other interested parties has submitted that:

- a. M/s. NALCO has submitted that the Caustic Soda lye and solids/flakes are different products and cannot be treated as like product for the present investigation. They have submitted that Caustic Soda lye form is used world over in the production of alumina in the aluminum industry, thus solids/flakes

is not commercially substitutable for lye Caustic Soda. The difference between lye and solids arises on account of the former having a lower concentration of Caustic Soda than the later which has a greater concentration of Caustic Soda. Therefore, it is submitted that solids/flakes and lye Caustic Soda cannot be treated as like product. Hence, Caustic Soda lye should be considered as product under consideration. Their end use is different along with the market value, handling, storage and transportation etc.

### **B.3 EXAMINATION BY THE AUTHORITY:**

7. The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature NaOH), commonly known as Caustic Soda (referred to as caustic soda in the present findings) originating in or exported from Chinese Taipei, Indonesia and EU (excluding France). The product under consideration is the same as was considered in the original investigation. Caustic soda is an inorganic, soapy, strongly alkaline and odorless chemical and finds application in various fields like manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminum, cotton, textiles, toilet and laundry soaps, detergent, dyestuffs, drugs and pharmaceuticals, petroleum refining etc. Caustic soda is produced in two forms, i.e. lye and solids by three technological processes, i.e., mercury cell process, diaphragm process and membrane process. The difference in these processes does not lead to a difference in product in terms of various characteristics. Caustic soda is classified under chapter 28 of the customs Tariff Act, 1975 under Customs Head 2815.11 and 2815.12. As per ITC eight digit classification, the product is classified under the Custom Heading 2815.1110, 2815.1120 and 2815.1200. The classification, is however, indicative only and is in no way binding on the scope of the present investigation.

8. It is noted that Caustic Soda is produced and sold primarily in lye form. Since it is used in huge quantities, transportation in lye form even after paying higher transportation cost due to low concentration results in lower effective cost to the consumer, whereas conversion of flake leads to additional cost to the user. Caustic Soda solid form can be used for similar functions & uses wherever lye form is required. It is noted that the difference in prices is due to the differences in concentration, cost of transportation, and incremental conversion cost required for solid form. The differences in caustic soda in two different forms do not render these a different product, the product continues to be essentially caustic soda, with the same product characteristics. However, in view of differences in prices, for the purpose of comparison of normal value with export price and landed price of imports with non injurious price, the Authority has considered the difference in physical forms and have compared the two forms separately. Separate normal values and non-injurious prices have been determined for determining dumping margin and injury margin for lye and

solid form. However, keeping in view the Rules, the Designated Authority has relied upon weighted averages of dumping margin and injury margin, after ensuring fair comparison.

9. In order to determine whether goods produced by the domestic industry can be considered like article to the goods produced and/or exported from the subject countries, the Authority considered various relevant parameters such as physical & technical characteristics, production technology, manufacturing process, functions & uses, pricing, customer perception, etc. The goods manufactured by domestic industry are like article to the goods produced and/or exported from the subject countries. Both are technically and commercially substitutable and the consumers are using and can use the domestically produced and imported goods interchangeably. Considering the submissions made by various interested parties and keeping in view the essential product characteristics, substitutability and interchangeability of the goods exported from subject countries by goods produced by the domestic industry, the Authority holds that subject goods produced by the domestic industry are like articles, as per Rule 2(d) of rules Supra, to the product under consideration. It is further noted that the Hon'ble CESTAT has upheld the determination of the Authority with regard to like article and the interested parties in the present investigations have brought no new facts/evidence in this regard.

## **C. DOMESTIC INDUSTRY:**

### **C.1 VIEWS OF THE DOMESTIC INDUSTRY:**

10. The domestic industry has submitted that;

- a. The present submissions are being filed by and on behalf of Alkali Manufacturers' Association of India (AMAI). All Producers of Caustic Soda in India are members of AMAI. A number of manufacturers of subject goods in India have provided information relevant to injury, including costing information. There is no legal and factual basis for the argument that the composition of domestic industry should remain the same as it was in the original investigations and all subsequent investigations.

### **C.2 VIEWS OF THE APPLICANT, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES:**

11. The interested parties have submitted that the composition of the domestic industry has changed in this sunset review without any legal or factual reasons for such change. Thus, participating companies are posing as domestic industry when the majority of them are incapable of filing injury information.

### **C.3 EXAMINATION BY THE AUTHORITY:**

12. As per Rule 2(b) of the AD Rules, “domestic industry means the domestic producers as a whole engaged in manufacture of like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry.”

13. The Authority notes that the following domestic producers has provided sufficient information relevant to determination of injury (and extent thereof) to the domestic industry,

- a. M/s. Bihar Caustics & Chemicals Ltd.,
- b. M/s. DCW
- c. M/s. Gujarat Alkalies & Chemicals Ltd., (Baroda and Dahej)
- d. M/s. Indian Petrochemical Corporation Ltd.,
- e. M/s. Jayshree Chemicals Ltd.,
- f. M/s. Punjab Alkalies & Chemicals Ltd.,
- g. M/s. Shriram Alkalies & Chemicals,
- h. M/s. Standard Alkalies
- i. M/s. SIEL Chemical Complex,
- j. M/s. Solaris Chemtech Ltd.,

14. The total production of the industry was 1794587 during the POI and the production of the participating producers was 911244 MT during the period of investigation in this MTR. The production of the participating companies thus constitutes more than 50% of the production by the Indian industries. The Authority, therefore, holds that these companies constitute domestic industry within the meaning of the Rules. During the course of the investigations and in comments to the disclosure statement, interested parties have argued that the composition of the domestic industry has been changed in the present mid-term review investigation without giving any legal or factual reasons for effecting such a change. The Authority notes that no legal and factual basis has been provided by these interested parties why constitution/scope of the domestic industry in a review investigation would remain the same as the original investigations. It is also noted that there is no legal requirement that the scope and constitution of the domestic industry in MTR investigation and in the original investigations should be the same.

### **D. OTHER ISSUES**

## D.1 VIEWS OF THE DOMESTIC INDUSTRY:

15. The domestic industry has submitted that

- a. The Designated Authority should consider relevant provisions of the Cost Accounting Records Rules as well as the earlier determination of the Designated Authority while coming to a conclusion whether chlorine is a joint product or by-product of caustic soda.
- b. In the present midterm review investigation the economic condition of the domestic industry has shown positive trend in most of its economic parameters in the period of review.
- c. The claim that the duty should be terminated if the industry has experienced improvement cannot be regarded as reconciling with purpose behind midterm reviews as contemplated in Article 11.3 of the ADA and Section 9A(5) and Rule 23 of the Indian Anti dumping Laws.
- d. The purpose for initiating a midterm review is to examine whether dumping and injury is likely to continue or recur if the duty is removed or varied.
- e. The domestic industry has provided information relating to dumping and injury in the prescribed formats. Analysis of different parameters relating to injury to the domestic industry establish that domestic industry was yet to achieve financial stability and reasonable returns considering huge investments made in Caustic Soda Industry.
- f. The anti-dumping duties in force on subject countries should not be revoked since likelihood of continuation or recurrence of the dumping and injury to the domestic industry if anti dumping duty is revoked.
- g. Severe imports of Caustic Soda from various sources continue for the last several years and this establishes that anti-dumping duties in force were never against imports per se but to restrict dumped imports. India is not the only country who has imposed ADD on dumped imports of Caustic Soda.
- h. Worldwide production capacity of caustic soda in 2004 was assessed as 65.41 Million MT whereas the world demand of caustic soda was only 52.8 Million MT. Thus, there existed a surplus of 12.52 Million MT which amounts to nearly around 20% of capacity. The producers in subject countries are having significant surplus production capacity, whereas demands of product in their respective countries are significantly lower.
- i. Likelihood of recurrence of dumping is established from the fact that exports from one of the subject countries stopped after imposition of anti dumping. Producers in subject countries have built capacities far in excess of their domestic demand and the same have been created considering export markets.
- j. The price at which the product is being sold in the Indian Market is higher than price at which material is being exported to other countries. Prices prevailing in

the Indian market are higher than some of the other markets where the Foreign Producers are selling significant volumes.

- k. Causal link has no relevance in a review investigation and not required to be examined, as held by the WTO. Nevertheless, the information clearly shows that revocation of anti dumping duties is likely to lead to continuance or recurrence of injury.
- l. HLL has full information with regard to the volume and price at which the company has purchased material from the Indian Producers, why did company suppress the information and resorted to prices mentioned in the AMAI bulletin
- m. If industrial users were to be recognized as and included in the definition of interested party, there would not have been the necessity of a separate provision defining industrial user.
- n. Domestic industry has never said that HLL can not participate in the investigation, however, participating in an investigation and making petition for review investigation by a industrial users are two different issues.
- o. Costing information being confidential in nature cannot be filed on non-confidential basis. The product under consideration is caustic soda and not chlorine and therefore neither the Indian Producers nor the Designated Authority has any obligation to disclose basis of apportionment of expenses between caustic and chlorine. Costing information of domestic industry contains business sensitive information not amenable of summarization and, therefore, has not been provided alongwith the non-confidential version.
- p. Caustic soda lye and solids are like articles. Injury analysis is required to be done for “like product” and not separately for each form of the product.
- q. Indian Producers are not the petitioners before the Designated Authority. Indian Producers have not sought the present mid term review of anti dumping duties in force. The principle laid down in legal procedures is that one who asserts has to establish his assertion. Indian Producers have referred to published information provided by Chlor Alkali. The company is required to establish based on their data that their exports are not at dumping prices (whether made to India or third countries) and dumping is unlikely to recur in the event of revocation of anti dumping duties.

## **D.2 VIEWS OF THE APPLICANT, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES**

16. The applicant, importer and other interested parties have submitted that

- a. The production of Caustic Soda results in an Electro Chemical Unit (ECU) which comprises of two products of equal economic importance, namely caustic soda and chlorine. While determining the cost of production, for the purpose of injury determination, the Authority should apportion cost between

the two at the point of split on a reasonable and equitable basis. The Hon'ble Authority has already determined in the past in the case of imports of caustic soda from Korea and China that net sales realization based method is not appropriate for such cases and a volume based apportionment should be resorted to.

- b. The international price of Liquid Caustic Soda as derived from Chlor-Alkali Report shows wide upward variation to the extent of 200% increase in the period of investigation. In addition to this the Chlorine price under the spot market was showing over 100% increase in prices.
- c. The ECU realization in the market has drastically gone up over the period of investigation to the extent of 100% - 200%. The Hon'ble Authority has fixed the ROCE without proper application of mind and the determination of the ROCE has no factual basis. ROCE is keeping in view the Drug Price Control Order (DPCO), but the DPCO has no application to the facts of the present industry and is unsustainable in law and on facts.
- d. The imposition of the anti dumping duty on the import of caustic soda, which is the main raw material in the production of alumina, is making NALCO incompetent in the global market. The EC has held in certain large electronic aluminum capacitors from Japan and DRAMS from Korea that the interests of the down stream industry due to anti dumping duty are an important element to be considered. In the past among the Indian Producers who are supporting the present petition, only two producers have offered or supplied against NALCO's requirement. Majority of the domestic industry has not participated in the tenders of NALCO due to cost logistics arising from their geographical location.
- e. The non-confidential version of the initiation petition shows that the domestic industry is experiencing historic profits, despite the reduction in customs duty to 20%. The Annual Reports of the AMAI reflects that the domestic industry is not suffering any effective injury due to the alleged imports of caustic soda. Production of caustic soda consumes large amounts of electricity and AMAI in annual report admitted that in India the high cost of power as compared to other parts of the world.
- f. NALCO only procured the Lye Caustic Soda under the tender, therefore, the consideration of the solid forms of caustic soda has the effect of distorting the determination for the issue of like product. Liquid form of caustic soda has lesser concentration than the solid form, which results in different end uses and market perception and the marketing patterns. The imports of caustic soda into India comprise around 85% of liquid caustic including the caustic soda imported by NALCO.
- g. Hindustan Lever has cited a number of investigations by the EC and the Designated Authority in order to establish that Hindustan Lever is an interested

party and the present investigations were rightly initiated. Interested parties clearly have a right to furnish information relevant to the investigation regarding dumping, injury and causal link. Indian Producers have not given any materials supporting its arguments that the interested parties has no right to furnish information which is relevant to the investigation.

- h. Applicant has furnished positive information and thereafter onus shifts to the domestic industry to provide information. It is further stated that no record of the Indian Producers is available in the Public Folder except an unsigned and undated submission. The non-confidential of the costing information is yet to be filed and to be made available in the Public file. Thus, claim of performance improvement is insufficient and is to be provided by the Indian Producers.
- i. For import data reliance has been placed upon the data of the DGCI&S, IBIS and the import invoices. The claim of the Indian Producers that the Indonesian prices reported in DGCI&S are correct needs to be verified by sourcing the transaction wise data from the Authorities. Petitioner has relied upon the monthly news published by AMAI to ascertain the selling prices of the Domestic industry in India. Monthly news bulletin published by AMAI is an authentic document of Indian industry.
- j. The domestic industry has kept the treatment of chlorine as confidential. Costing information in the indexed form has not been provided to the exporter to determine the basis of NIP. Also the treatment of the by-product chlorine is not assessed. Worldwide caustic soda and chlorine are treated as co-products. The costing/pricing of caustic soda and chlorine are intimately linked and measured in the concept of an ECU. Only one case of the Mexican industry ADD on Caustic Soda in 1995 exists. The claim that there have been duties on the subject goods against 11 countries raises a question as to why India is singled out for dumping by the global manufacturers.
- k. The Taipei Economic and Cultural Center has argued that non injurious price for the domestic industry has been determined by adding a reasonable profit margin on the capital employed at the rate of 22% returned on capital employed which is very high as suggested by the alkali industry of Chinese Taipei. It is also argued that the profit margin for the non-injurious price in the original investigation was 16% which was itself unreasonable for this kind of industry.
- l. They have recalled that this case is covered by consultation held under the WTO framework and the conclusion of the dispute settlement is entirely depends on the outcome of this review. It has been suggested to reconsider the findings of the review with a view to find a mutually satisfactorily resolution to the anti dumping case as well as the pending disputes settlement.
- m. Ministry of Trade, Republic of Indonesia has submitted M/s. P.T. Kiani Kertas, M/s. P.T. Musi Pulp Mills and M/s. Asahimas Subentra Chemical did not produce and export to India. They have further stated that the imports from

Indonesia has declined during the POI whereas the imports other sources has increased during the same period. In view of the examination of injury parameters in the disclosure statement, the Indonesian Government submits that most of the parameters are showing negative trend except return on investment and employment. They have requested to terminate the investigation and exclude the above mentioned exporters/producers in view of no exports.

- n. The exporter has submitted that the domestic industry did not disclose the treatment of Chlorine and fell to provide a non-confidential version of the costing information with index data. In absence of the information we are not in a position to file comments on the determination of non-injurious price determined for the domestic industry.
- o. The exporter has submitted that world wide the caustic soda manufacturers treat caustic soda and chlorine as co-products. It is a matter of chemical reaction which necessarily produce caustic soda and chlorine and the costing/pricing of caustic soda and chlorine intimately linked and measured in the concept of ECU.
- p. The exporter has submitted that 22% of return on capital employed based on the determination made under Drug Price Control Order (DPCO) is not relevant to the present industry and at the same time it is very high. The determination of ROCE will have a material bearing on the finding of injury to the domestic industry, therefore, the ROCE may be recalculated for this industry and accordingly injury parameters may be assessed.
- q. M/s. P.T. Asahimas Chemical has submitted that they have not exported liquid caustic soda to India since 2003, therefore they may be exempted for filing the exporters questionnaire and duty did not be imposed on them.
- r. ICMA (Indian Chemical Manufacturing Association) has submitted that the prices of caustic soda has gone up by 60% between January to June 2005, therefore, the period of investigation the purpose of review should be considered as May 2004 to June 2005. They have also submitted that the current benchmark of US\$ 258.46 to US\$ 271.46/DMT is redundant as the current import price is between the range US\$ 325 to US\$ 375/DMT, therefore there is no need to continue with AD duty. It is state that caustic soda is an important commodity both from its wide spread use and capital intense in nature and looking at the profit margin of industry, the Authority may look into the concern of user industry.
- s. M/s. Supreme Paper Mills Ltd., has submitted that due to the protection of anti dumping duty to the domestic industry prices of caustic soda has been increased from 14000 to 26000, which has resulted into suspension of production by many agro based paper mills.

### **D.3 EXAMINATION BY THE AUTHORITY:**

17. It was argued by the interested party that Chlorine should be treated as joint product in the production of Caustic Soda since the majority of the producers worldwide treats Chlorine as a joint product in Chlor industry. The Authority examined the arguments raised by the interested party keeping in view the Generally Accepted Accounting Principles (GAAP), Cost Accounting Record Rules (as amended from time to time and as applicable during the investigation period) and Annexure I to AD Rules and WTO Agreement on Anti Dumping requiring determination of costs on the basis of records kept by the company under investigation provided such records are in accordance with the GAAP and such records reasonably reflect the cost associated with the production and sales of the product under consideration. The Authority also considered the available evidence on proper allocation of costs, which was made available by the participating domestic and foreign producers. The Authority notes that the decision whether to treat chlorine as a co-product or a by-product can not be universal decision, applicable and relevant for all times. It is a determination to be made by the Authority in every case, keeping in mind facts and circumstances of that particular case. It is noted that it would not be appropriate to consider Chlorine either as a joint product or a by-product in respect of the entire Chlor Alkali industry, it would be rather reasonable and appropriate to determine the cost of production of caustic soda after adopting the treatment of Chlorine as adopted by the company and cost auditors concerned in its accounting books, including cost records. The Authority considers it appropriate to accept and adopt the basis adopted by the companies in their records, duly verified/certified by the cost auditors. In this mid-term review investigation the Authority has considered and treated Chlorine in respect of domestic industry accordingly. It is also noted that there is no adverse qualification by the cost auditors against the treatment accorded by the companies concerned.

18. The actual cost of production of the subject goods has been determined taking into account the optimum cost of production on the basis of GAAP as per the consistent approach followed by the Designated Authority. The non injurious price for the domestic industry has been determined after taking into account all the relevant factors including cost of raw materials used in the production of the subject goods, the consumption thereof, the cost of utilities i.e., power, steam, water etc., interest cost, cost of labour, depreciation cost and selling, general and administrative (SGA) expenses. The factors such as investments and the capacity utilization have also been examined in the cost analysis. All these factors have been considered with reference to the basic books of accounts and production and financial statements of the participating companies to determine the cost of production. Non injurious price for the domestic industry has been determined by adding a reasonable profit margin @22% return on the capital employed, on the cost of production (capital employed is determined as the sum of net fixed assets and working capital for the product under

consideration). Return is defined as interest plus profit, i.e., interest expense in the cost of production has been deducted to determine reasonable profit. On comments to the disclosure statement, the exporter and Taipei Culture Centre has argued that 22% return on capital employed is unreasonable to this industry, has a bearing on the injury to the domestic industry and the Authority had allowed only 16% return in the original or earlier investigations. On examination of this issue, it is noted that the Authority had considered the same rate of return in the previous investigations relating to this product. It is also noted that 22% return on capital employed is not the profit element rather it is determined after deducting interest from the return so determined and the Authority has applied lesser duty law and in any case, the resultant duties have not exceeded dumping margins determined.

19. The interested parties have argued that caustic soda lye and flakes are not like article to the product under consideration, since these two are used for different end applications by the user industry. The argument of the interested party was examined, keeping in view the scope of the product under consideration and definition of like article. Product under consideration includes both caustic soda lye and solid forms. It is noted that the solid forms can be in the form of lumps, prills, chips, flakes etc. It is further noted that both the forms of caustic soda are one product and are similar in terms of essential product properties, function and uses, production technology and process, plant and equipment, pricing. The difference in pricing is only due to, as stated before, incremental production process and differences in transportation costs. The Authority agrees with the argument made by the interested parties that some consumers may be using caustic soda only in lye form because of their convenience and technology adopted by them, but the Authority holds that this does not mean that the product in different form becomes different product and loses its essential features, functions & uses, nor does this mean that other forms cannot be used for similar functions. This has been well demonstrated during the verification visits to various producers. The product remains essentially the same regardless of specific end applications. However, given differences in the resultant prices, price parameters have been considered separately for lye and flakes for the purpose of determination of dumping margin, price undercutting, price underselling, price suppression, and price depression and injury margin.

20. The interested parties have argued that ECU realization may be considered for the purpose of allocation. It is noted that the present findings are based on actual ECU realization of the domestic industry, in as much as realization from chlorine has been either reduced from the cost of production or chlorine treated co-product and cost of production determined accordingly and therefore, the concern of the interested parties have been addressed. It is noted that if a company has treated chlorine as a by-product

and if chlorine realization has been higher during the relevant period, higher deduction on this account has been made.

Domestic industry vehemently disputed the right of Hindustan Lever as an interested party. It is noted that the definition of interested parties is an inclusive definition and the Authority has a right to consider any party as an interested party. The Designated Authority has considered Hindustan Lever as an interested party and has considered it appropriate to proceed with the application and the present investigations. Hindustan Lever has been allowed them to provide information relevant to the present investigations and make submissions as an interested party.

NALCO has repeatedly argued that their interests as consumers should not be ignored and referred to some decisions of the EC also in this regard. It is clarified that right of NALCO as a large consumers of the subject goods have been well recognized in the present proceedings and the company has been provided full opportunities to provide relevant information and make submissions. Submissions made by NALCO have been duly considered in these findings.

Some of the exporters/producers have submitted that they have not exported during the POI, it is noted that they may apply for new shipper review under Rule 22 of AD Rules.

21. It is argued by the interested parties that the vital information has been kept confidential depriving the opposing interested parties of the right to challenge the information and make meaningful submissions to the Authority. The Authority notes that Rule 7 of the AD Rules provides for submission of information by the interested parties on confidential basis subject to the condition laid down therein. The Rules provide that certain information which are either business proprietary information or any other information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. The Rules further provide that such information shall not be disclosed to other interested parties without specific permission of the party submitting it. In this review investigation certain business sensitive information has been kept as confidential, which includes information pertaining to costing and prices of the subject goods and other sensitive information, disclosure of which would be of significant competitive advantage to a competitor and would adversely affect the business interests of the company. The information claimed confidential by the interested parties was examined as per confidentiality provision under AD Rules and such information was considered confidential by the

Authority on being satisfied that the information claimed confidential is indeed confidential. The non-confidential summary of the information submitted on a confidential basis was placed in the public file, which was made available for the inspection, by all the interested parties in terms of Rule 6 (7) of the AD Rules.

## **E. DUMPING & DUMPING MARGIN:**

### **E.1. VIEWS OF THE DOMESTIC INDUSTRY:**

22. The domestic industry has submitted that dumping is taking place from all the subject countries during the period of investigation. However it is noted that imports from Taiwan has ceased during the POI due to the anti dumping duty in place therefore, likelihood of recurrence of dumping is established from the fact that exports from one of the subject countries stopped after imposition of anti dumping. Producers in subject countries have built capacities far in excess of their domestic demand and the same have been created considering export markets. Further the current dumping in case of Taiwan may also be examined in view of prices available of Taiwanese exports to other markets.

### **E.2 VIEWS OF THE EXPORTER:**

23. The Exporter has submitted that most of the export sales, mainly to Australia and the USA, long term contracts have been formalized. With the long term contracts these customers are committed to purchase a significant quantity every year. Due to such contractual obligation the prices for these customers have been separately fixed from the price prevailing in the spot market, which have been determined as per the demand and supply situation prevailing in the market. They have further submitted that the sales in the domestic market are made on a spot price basis therefore it is incomparable to the export sales prices to the third countries other than India during the period of investigation. The exporter has suggested to consider spot prices of South East Asia for the purpose of looking into the phenomena of dumping and likelihood examination of recurrence of dumping and injury to the domestic industry. They have further suggested the quantity discounts and the level of trade based on the constructed export price from FPC to India. In the comments to the disclosure statement Taipei Economic and Cultural Center, New Delhi has submitted that recurrence of injury in case of revocation of duty is groundless. They have stated that there were no exports during the period of investigation i.e., 1st January 2002 to 30th September 2002 of the original investigation and again there is no exports during the period of investigation of this mid term review investigation. In view of this there was no injury either in the original investigation nor any injury is likely to recur in this mid term review investigation in case of revocation of duty. The Authority has

constructed the export price on a reasonable basis as per Section 9A (b) as being the price at which the exporters sell to third countries other than Taiwan.

24. They have submitted that the Authority should have considered the spot market price to India as per CMAI journal provided by FPC instead of considering actual price based on long term contracts to Australia, USA and Singapore. They have also stated that the weighted average normal value at ex-factory level should have been US\$ 207/DMT instead of US\$ 231/DMT as per the domestic selling price of the unaffiliated parties. It has been suggested by the exporter to consider the price reported in the CMAI journal instead of actual verified prices of the exporter for the determination of dumping margin. The Authority has erred in making a determination on dumping margin when there is no exports of subject goods during the POI. The level of trade which has been considered by the Authority is inadequate, therefore adjustments with regard to level of trade should have been given due to difference in long term prices and spot prices.

### **E.3 EXAMINATION BY THE AUTHORITY:**

25. In anti-dumping investigations, normal value shall be determined in accordance with the Rules which provides that :-

“normal value”, in relation to an article, means-

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no

comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

### **CHINESE TAIPEI:**

26. The Authority sent copies of the exporter questionnaire to all the known producer/exporters for the purpose of determination of normal value in accordance with Section 9A (1)(c). M/s. Formosa Plastics Corporation has submitted its response to the exporters' questionnaire. They have not exported the subject goods to India during the period of investigation and the same has been verified from the DGCI&S import statistics. Thus, in the absence of export price, no current dumping margin can be determined. In comments to the disclosure statement, TECC has submitted that there were no exports during the period of investigation of neither the original investigation nor any exports during the period of investigation of this mid term review. While the fact of exports in the previous investigations is not relevant to the present investigations, it is clarified that there was exports during the period of investigation of the original investigation, which formed the basis of determination in that investigation, and this issue was addressed in the original investigation itself. As regards the present investigation, the Authority has proceeded in accordance with A D Rules and WTO Agreement on Anti Dumping.

27. Under Rule 23 of AD Rules, the purpose of review is to determine the need for continued imposition of the duty and investigate whether there is sufficient justification for withdrawal of duty. Since there were no imports of subject goods from Chinese Taipei during the period of investigation, it is pertinent to determine whether this is a sufficient justification for withdrawal of anti dumping duty. Since the Authority is required to determine whether the continued imposition of the duty is necessary to offset dumping, it is required to be determined whether the fact of no exports is sufficient to hold that continued imposition of the duty is unnecessary to offset dumping. The Authority is required to determine, in a situation of no current dumping, likelihood of dumping with the withdrawal of duty and in this regard, the normal value of the exporter and current pricing of the exporter in respect of third country are relevant, the Authority, therefore, examined whether or not the subject goods were sold to third countries at dumped prices. It has been assessed whether, should the measures be revoked, the Taiwanese exporters are likely to resume dumping in the Indian market, following the same pricing behavior. It was further assessed, should the exporter resume exports to India, whether the same are likely to be dumped. It is also recalled that in the original investigation, the individual dumping margin was significant.

### **DUMPING MARGIN ON THE BASIS OF EXPORTS TO THIRD COUNTRIES**

28. FPC had sold the subject goods to both affiliated and unaffiliated companies in home market and exported to a number of countries other than India during the period of investigation. Comparison of sales volumes and average prices to these segments shows as under:-

Indexed information as per the response of FPC:

	Affiliated home market		Unaffiliated home market		Exports to third countries	
	Volume	Rate	Volume	Rate	Volume	Rate
Jan-04	100.00	100.00	198.91	104.71	205.09	62.54
Feb-04	100.00	100.00	125.29	108.78	78.24	60.81
Mar-04	100.00	100.00	137.44	112.61	277.42	74.66
Apr-04	100.00	100.00	137.40	110.40	80.46	66.12
May-04	100.00	100.00	137.27	109.44	373.00	68.82
Jun-04	100.00	100.00	130.98	110.19	199.16	65.76
Jul-04	100.00	100.00	121.95	107.33	69.43	68.44
Aug-04	100.00	100.00	116.74	106.80	193.55	62.72
Sep-04	100.00	100.00	117.23	107.57	98.65	67.20
Oct-04	100.00	100.00	148.39	110.29	174.18	76.09
Nov-04	100.00	100.00	130.81	108.23	32.68	84.26
Dec-04	100.00	100.00	70.11	121.39	147.13	77.38
POI	100.00	100.00	124.42	109.32	156.62	67.61

29. The exporter has significant export sales to countries other than India. They have claimed that such export sales are made under long-term contracts and the sales volume is significantly higher compared to volumes sold in the domestic market and, therefore, there is differential in prices of export sales. The exporter has also claimed an allowance while comparing the domestic price with the export price. It is noted that the exporter has significant domestic sales to its own affiliate. The volume of goods sold to its affiliate is comparable to the volumes involved in the export sales. It is, however, found that the export price to the third countries is much lower as compared to the price to its affiliated companies. On examination of domestic sales made to unrelated customers in the home market, it was found that the price could be higher in case of higher volumes and lower in case of lower volumes. The sales of the exporter were analyzed and a comparison was made on average basis for the investigation period and thereafter on month-to-month basis during the investigation period. However, no consistent pattern could be established which would have ascertained that the prices in the home market varied with the export prices with the sole difference in volumes, as claimed by the exporter. It is thus noted that the claim of price adjustment can not be considered and allowed while comparing normal value with export price on the basis of such parameters, since it could not be established by the exporter that the prices of the exporter in two different markets varied with the sole difference in volumes.

30. The exporter has provided copies of Chlor Alkali Market Report of 2004 issued by CMAI for each month of POI. They have claimed that spot price of the subject goods were US\$214–DMT for South East Asia as per this report. The same report shows annual spot price for Taiwan as US\$ 179- DMT based on simple average. The domestic industry has provided month wise price summary of the subject goods for the POI as published by M/s. Harriman Chemsult Limited (named Chlor Alkali). In this publication, prevalent prices in Asian Countries (far east) and specifically in Taiwan are available. As per this report, the average domestic price in Taiwan is US\$ 207 per DMT, whereas simple average prices in Far East comes to US\$ 197 per DMT. The exporter has requested to consider these sources prices for the purpose of determination of normal value. The exporter claimed that it was selling to third countries under long-term contracts. It was however found that the entire export sales were not under long term contracts. There were significant sales for which no claim of contract sales was made. In any case, the argument of the exporter itself, even if accepted, that the prices varied with volumes, implies that the difference in the contract price and other price was at best to the extent of the price adjustment claimed. It has been argued that the average purchased quantity per each purchase order from domestic customer during the period of investigation was 183 MT approx. whereas the average purchase quantity per each order from exports customers (of third countries) during the POI was 6429 DMT or 35 times more than the domestic order quantity. Accordingly for a similar magnitude of difference between and average domestic sales volume and average export sales volume, a factor of US\$ 35 per DMT may be considered to the domestic price when comparing with the constrictive export price.

31. The claim of the exporter that the normal value should be determined based on CMAI is required to be rejected in view of the Section 9A(1)c and the AD Rules, which provides for the methodology for determination of normal value. In a situation where the exporter has significant viable representative domestic sales, normal value has been determined on the basis of domestic selling price and CMAI or Chlor Alkali prices can not get precedence. The Authority has examined the argument of providing an allowance on the basis of a differential of a similar magnitude of difference between average domestic quantity and average export quantity. It is seen that the exporter has sold the subject goods at much higher price in the domestic market in comparison to the sales based on long term contract in countries other than India. Even after granting an allowance of US\$ 35 per DMT from the weighted average domestic price, the export price to third Countries, namely Australia, USA and Singapore were found to be significantly below the normal value.

32. The exporter has provided the domestic sales transactions in Appendix 1 of the exporter questionnaire response. The sample invoices of the domestic sales were

verified and copies of the same were obtained during verification. The domestic sales were made both to the affiliated and non affiliated parties during the period of investigation, which has been segregated for the purpose of determination of normal value. Only sales to unaffiliated companies have been relied for determination of normal value. The exporter has provided details of its cost of production for the subject goods as per Appendix 8 and same were verified. The exporter has reduced the realization on account of Chlorine from the cost per MT of Caustic Soda, which has been accepted, as the same was claimed to be on the basis of records maintained by the company. The financial expenses have not been apportioned on specific product on turnover basis, for which the exporter has gave clarifications. It is seen that even after allocating the similar cost per unit on account of financial expenses as allocated during the previous accounting year and allowing a reasonable profit margin, the weighted average domestic selling prices to unaffiliated parties is in the ordinary course of trade after conducting the 80/20 test and all the profitable transaction were considered for the purpose of determination of normal value. It was first determined whether the form of the goods sold in the domestic market and export market was similar. It was found that both domestic and export sales considered involved sales of caustic soda in lye form only. It was then determined whether the total volume of domestic sales of subject goods was representative in relation to the export sales. It was found that the volume of the subject goods sold in the domestic market was much higher than the volume exported to third countries. Sales in the home market were therefore considered representative. It was then determined whether the domestic sales were in the ordinary course of trade. It was found that all the domestic sales were made above cost of production and therefore all sales to unrelated customers in home market were considered as sales in the ordinary course of trade. Therefore, normal value was assessed on the basis of prices actually paid or payable for all sales of the subject goods, whether or not profitable. In view of the above, the normal value for the exporter has been determined based on all domestic sales to unrelated customers in the home market. The Authority verified the expenses and allowed the same, as claimed. The normal value is thus determined at ex-factory level.

## **EXPORT PRICE**

33. The exporter has provided details regarding exports to all third countries and sales to Australia, USA and Singapore constitute the major volume of their exports. The Authority considers that the exporter has provided adequate details with regard to exports to third countries. The Authority considered it appropriate to consider all exports sales made by the exporter to the third countries and determined weighted average export price at ex-factory level. The price adjustments claimed were verified and allowed to arrive at ex-factory level. In order to compare the normal value with

the export price, the Authority considered various arguments of the exporter. The exporter primarily argued that the normal value was not comparable with the export price for the reasons that the exports were under long term contract and the sales volume involved in exports were significantly higher than the domestic sales. The Authority notes in this regard that the fact that exports were made under long term contract is irrelevant to determination of export price. The fact that the prices varied with volume is a matter of fact, for which the exporter could have claimed a price adjustment, after establishing the same. However, as noted above, the exporter has not been able to demonstrate that its prices varied with volumes in the home market. Indeed it was found that the prices could have been lower for lower volumes and higher for higher volumes. Even after granting an allowance of US\$ 35 per DMT from the weighted average domestic price, the export price to third Countries, namely Australia, USA and Singapore were found to be significantly below the normal value. On comments to the disclosure statement the exporter has argued that the Authority should have considered the spot market price in Taiwan as per CMAI journal instead of considering actual domestic selling price in their home market. It was found appropriate to reject the claim of the exporter and determine the normal value as per AD Rules and WTO Agreement on Anti Dumping.

34. Normal value determined for the exporter was compared with the export price on a weighted average to weighted average basis and it was found that the dumping margin was significant. Weighted average dumping margin was determined, considering the volume of exports to third countries, which has been adopted for the purpose of the determination whether continued imposition of the duty is necessary to offset dumping. It was concluded, on the basis of significant dumping margin in respect of exports to third countries that continued imposition of the duty is necessary to offset likelihood of dumping with the withdrawal of the measures. In order to further establish whether the continued imposition of the duty is necessary to offset dumping, the Authority compared the normal value determined for the exporter whether the exports to India below the normal value and below the measures being recommended are likely to cause injury to the domestic industry. The Authority considered, that whether exports to India are likely to be made below the normal value and therefore, are likely to result in dumping and injury. The DA also considered whether such exports to India likely to be below the revised non-injurious price for the domestic industry and therefore, likely to cause injury to the domestic industry. In order to be competitive in Indian market, the exporters from Taiwan would have to match the prices of domestic industry which is already below the non-injurious price determined for the domestic industry. During the course of investigation it is found that the exporter from Taiwan would have to export at price much below the normal value established by the Authority for FPC. Accordingly, it is noted that the FPC

would have to compete with the Indian producers thus, substantiating the likelihood of recurrence of dumping in the event of removal of measures already in force.

35. The domestic industry has submitted that FPC was undertaking significant expansion to the tune of 4,66,000 MT (evidenced from the website of FPC). It is noted that even though the exporter claimed that the expansion was being undertaken to cater to third country market, no evidence was provided to the Authority that entire volumes of this expansion was committed to third countries buyers and significant surplus capacity was not available. The investigation established that FPC has capacity to produce significant additional volumes for exports to India and these additional volumes could well reach significant levels or beyond the levels found during the period of original investigation. Should the landed price of these exports be below the benchmark being recommended, these would be exports made at dumped prices. Considering the prices at which the exports have been made to third countries, these exports would in any case are likely to be at dumping prices. Should the exports be made prices close to or less than the selling prices of the domestic industry, it is evident that the exports would be at dumping prices, if the landed price of such imports is less than the benchmark being recommended. The Indian market would be more attractive for the Taiwanese producers than the third country markets give huge and expanding demand and geographical proximity. As a matter of fact the investigation has shown that (a) the caustic soda prices in Australia, Singapore and USA were much lower than the prices in the Indian market, and in the past, the exporter committed as high as 150,000 MT material to various traders for eventual supplies to Indian customers and was in fact awarded an order for supply of 86,000 MT material for shipments in less than a year. Finally the exporter supplied 13500 MT to NALCO against an order placed on a third country trader for shipments to be made by a producer in another third country and there are number of other producers in Taiwan preferred non cooperation.

36. On the basis of evidence on record it is noted that the Taiwanese exporting producers or other interested parties could not to demonstrate that the continued imposition of the duty is unnecessary. On the contrary, the investigation has revealed that continued imposition of duty is necessary to off-set dumping. It is also noted that none of the other producers/exporters responded in this investigation. The information provided by the FPC suggests that the surplus capacities with the Taiwanese producers are significantly higher than the apparent consumption. It is also seen that the export price from Taiwan to other countries is also significantly lower than the normal value as per the trade journal and the normal value established for the sole responding exporter. This data also shows that continued imposition of duty is necessary to off-set likely dumping by other producers in Taiwan. Since none of the other exporters/producers cooperated in this mid-term review investigation and likely

dumping has been established based on the information filed by FPC, contributing 90% production and sales of the subject goods during the POI, it is proposed to continue with the same dumping margin for all the exporters/producers from Chinese Taipei.

## **INDONESIA**

### NORMAL VALUE

37. The Authority sent questionnaires to all known exporters/producers for the purpose of determination of dumping margin. None of the exporters / producers from Indonesia filed submissions and response to the questionnaire in the form and manner prescribed. Article 6.8 of the Agreement provides that in cases an interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary or final determinations, affirmative or negative, may be made on the basis of the facts available. Since none of the exporters / producers from Indonesia has filed the submissions for determination of normal value, the normal value for all exporters / producers has been constructed based on facts available as per Rule 6(8) of AD Rules. The domestic industry has submitted that it made best efforts to procure evidence of the domestic prices prevailing in Indonesia but could not procure actual transaction prices for the period of investigation. Since actual transaction information is unavailable, the domestic industry submitted that information provided by Chlor Alkali price can be considered as a reasonable and sufficient basis for determination of normal value with appropriate adjustments. Investigations in respect of Taiwan revealed that the prices published in Chlor Alkali are quite close to the actual transaction prices. In fact, investigation relating to Taiwan has shown that the prices reported in Chlor Alkali were slightly lower than the actual prices claimed by FPC thus, the Authority considers that the prices reported in Chlor Alkali are quite representative and reasonable evidence of normal value of the subject goods in Indonesia. The normal value is therefore is determined on the basis of prices published in Chlor Alkali. The prices were considered as delivered prices and an adjustment for possible inland freight made to determine the normal value at ex-factory level. The normal value is accordingly determined as US\$\*\*\*\*/MT. for all exporters / producers from Indonesia.

### EXPORT PRICE:

38. The export price is determined on the basis of transaction wise import statistics provided by DGCI&S containing bill of entry no., date, country code, quantity, value, description of the product and name of the importer etc. On examination of import data, it was found that the transaction wise data provided by the DGCI&S were

having data pertaining to other products also. Therefore, import data was analyzed and segregated for the product under consideration, which was further segregated for caustic soda lye and flake/solid forms. As per DGCI&S import statistics Indonesia has exported 3745 MT of caustic soda lye during the POI. To arrive at the ex-factory export price, adjustments have been considered as provided by the domestic industry, in the absence of any response from the exporters/producers from Indonesia and any information from other interested parties. The ex-factory export price was determined as US\$\*\*\*\*/MT for all exporters/producers from Indonesia.

## **EUROPEAN UNION (EXCLUDING FRANCE)**

### NORMAL VALUE

39. The Authority sent questionnaires to all the known exporters for the purpose of determination of dumping margin. None of the exporters/producers from EC (excluding France) filed submissions and response to the questionnaire in the form and manner prescribed. Article 6.8 of the Agreement provides that in cases any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Since none of the exporters / producers from EU excluding France has filed the submissions for determination of normal value , the normal value for all exporters/producers has been determined based on facts available as per Rule 6(8) of AD Rules.. The domestic industry has submitted that it made best efforts to procure evidence of the domestic prices prevailing in Indonesia but could not procure actual transaction prices for the period of investigation. Since actual transaction information is unavailable, the domestic industry submitted that information provided by Chlor Alkali price can be considered as a reasonable and sufficient basis for determination of normal value with appropriate adjustments. In the absence of better information, the information provided by the domestic industry from the secondary sources, i.e., Chlor Alkali price has been considered as the basis for determination of normal value with appropriate adjustments of expenses for the purpose of assessment of extent of current dumping. Investigations in respect of Taiwan revealed that the prices published in Chlor Alkali are quite close to the actual transaction prices. In fact, investigation relating to Taiwan has shown that the prices reported in Chlor Alkali were slightly lower than the actual prices claimed by FPC thus, the Authority considers that the prices reported in Chlor Alkali are quite representative and reasonable evidence of normal value of the subject goods in subject territory. The normal value is therefore determined on the basis of prices published in Chlor Alkali. The prices were considered as delivered prices and an adjustment for possible inland freight made to determine the normal value at ex-factory level. The

normal value is accordingly determined as US\$\*\*\*\*/MT. for all exporters / producers from European Union (excluding France).

The normal value is therefore, constructed as US\$\*\*\*\*/MT. for all exporters / producers from EU excluding France.

**EXPORT PRICE:**

40. The export price is determined on the basis of transaction wise import statistics provided by DGCI&S containing bill of entry no., date, country code, quantity, value, description of the product and name of the importer etc. On examination of import data it was found that the transaction wise data provided by the DGCI&S were having import data of other products also. Therefore, import data was analyzed and segregated for the product under consideration, which was further segregated for caustic soda lye and flake/solid forms. As per DGCI&S import statistics, subject territory exported 165 MT of caustic soda flakes during the POI. To arrive at ex-factory export price, adjustments have been considered as provided by the domestic industry. The ex-factory export price is determined as US\$\*\*\*\*/MT. for all exporters / producers from EU excluding France.

**E.5 DUMPING- MARGIN**

41. Based on the normal value and export price as determined above for the subject goods, the Authority assessed the dumping margin as under:

Exporter/Producer	Normal Value (US\$/MT)	Export Price (US\$/MT)	Dumping margin as % of Export Price
All producers/exporters from Chinese Taipei	****	****	68.93
All producers/exporters from Indonesia	****	****	165
All producers/exporters from European Union(Excluding France)	****	****	56.53

42. In order to determine whether the continued imposition of the duty is necessary to offset dumping, the Authority considered the following parameters:-

1. Dumping margin determined in the original investigations;
2. Dumping margin determined in the present investigations – for the purpose, wherever exports to India existed during the investigation period, the same were considered and dumping margin determined. Where there were no exports to India during the investigation period, the Authority determined dumping margin in respect of exports to third countries and likelihood of dumping considering the normal value established and the benchmark being recommended.

3. Surplus unutilized capacities, present and potential, considering known expansions undertaken by the foreign producers, prices prevailing in India, past actual and potential volume of exports.

On examination of these factors it is noted that

- a. Dumping margins in respect of exports to third countries are significant;
- b. Considering the benchmark proposed to be recommended, should the exports be made below this benchmark, the same would be at dumped prices. Should the exports be made at prices above the normal value, anti dumping duty is not payable. Therefore, the exports are likely to be at dumped prices, if the imports are below the benchmark proposed to be recommended;
- c. Ex-factory realization of export price to third countries are at such prices that should the exports be made at these prices, the resultant landed price of imports would be significantly below the selling prices in India and non injurious price;
- d. One of the Taiwanese exporters had committed as high as 1.5 lac MT supplies against single tender, which is quite indicative of its surplus capacity and export potential;
- e. Export price from Taiwan to third countries are significantly below not only the normal value but also the prevailing prices in India and non injurious price;
- f. It has not been demonstrated by the exporters that withdrawal of anti dumping duty would not lead to likelihood of injury to the domestic industry and continued imposition of the duty was unnecessary to offset dumping.
- g. Producers in Taiwan have been found to have shipped goods in the past against orders placed on third country producers/exporters.
- h. Considering the level of capacity utilization achieved by the producers in the exporting countries in the past over the injury period and the capacity utilization achieved during the investigation period, the Authority determined unutilized capacities in Taiwan, Indonesia and Europe. It is noted that the unutilized capacities with the Indonesia producers were to the extent of 87000 MT, while the same were to the extent of 236000 MT in case of European producers. In other words, producers in these countries can readily offer material to these extents.
- i. As per information provided by Chlor Alkali:-

Taiwan surplus capacity	54,000
Taiwan Expansion planned	466,666
Total likely surplus of Taiwan	520,666
Indonesia surplus capacity	327,000
Europe surplus capacity	1,886,000
Total Surplus	2,733,666
Indian Demand	

excluding captive consumption	18,74,596
including captive consumption	21,22,251

- j. As per CMAI reports, the present demand-supply situation in the world is as follows:-

Demand	5,00,31,000
Capacity	5,75,74,000
Surplus	7,543,000

As there is surplus capacity on a worldwide basis, it is noted that there is likelihood of exports from the subject countries being diverted to Indian market. Having regard to the evidence regarding capacity, production, sales and demand on record, it is noted that withdrawal of anti dumping duty would lead to dumping and on this account, the continued imposition of the duty is necessary to offset dumping.

## **F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK**

### **F.1 VIEWS OF THE DOMESTIC INDUSTRY**

43. The domestic industry has submitted that;

- a. Article 11.1 of AD Agreement provides that an AD duty shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury. If there is a changed circumstance in which either dumping or injury to the domestic industry cease to exist any interested party can request for an interim review. For initiating such a review at the request of a party, there must exist an additional condition that a reasonable period of time of at least one year must have passed since the imposition of definitive measures. The Authority is required to review, on the basis of positive information submitted by any interested party substantiating the need for a review, provided that a reasonable period of time has elapsed since the imposition of the definitive antidumping duty, whether continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both;
- b. The examination of the existence of material injury in a review proceeding is similar to the process of examination in an original anti dumping investigation. The existence of material injury to the domestic industry has to be examined as laid down under Article 3 of the Anti Dumping Agreement and Annexure II to the AD Rules. In a review investigation, Designated Authority is required to examine the impact of revocation of duty. Present performance of the domestic

industry is relevant only to the extent that it shows the existence or otherwise of continued injury. Improvement in the present performance may be due to anti dumping duty in force and in such a case, the Designated Authority is required to examine likelihood of recurrence of injury to the domestic industry. Causal link examination may not be relevant in a review investigation. WTO Panel has ruled that causal link is not required to be examined in a sunset review investigation. Similarly in a Mid-term Review investigation also, the Indian Producers submits that the causal link is not required to be examined as the causal link had already been established in the original investigation. Notwithstanding, the Indian Producers submit that there exists a causal relationship between the recovering condition of the domestic industry and the dumping.;

44. Regarding no imports from Chinese Taipei, domestic industry has submitted that there is likelihood of recurrence of dumping and resultantly injury to the domestic industry. In this regard, domestic industry has filed evidence regarding present capacity and expansion plan during next three years, domestic demand, exports from Chinese Taipei to the entire world, domestic selling price of caustic soda, export price of caustic soda exports to countries other than India, financial performance of the producers etc.

45. Domestic industry has submitted that there is significant excess capacity in Chinese Taipei for production of Caustic Soda and evidence available on records shows that the existing producers are adding further capacities. They have further stated that the present capacity in Chinese Taipei is about 50% higher than their domestic consumption and the producers, therefore, do not have any option but to sale their produce at any prices. Though, there are no exports from Chinese Taipei, however, producers from Chinese Taipei regularly participating in NALCO tenders. The price at which material is being exported by Chinese Taipei to other countries is significantly below the price at which material is being sold in the domestic market. In 2002-03 and 2003-04 Taipei's producer participated in NALCO tender and offered 150000 MT and 62000 MT to NALCO through different agents. Further, Formosa Plastics is adding significant additional capacity. The domestic industry has argued that the above situation indicates the likelihood of recurrence of dumping and injury to the domestic industry and if the anti dumping duty is revoked, the exporter would flood the material to India and use its additional capacity for Indian market;

46. The domestic industry has submitted the following parameters to establish causal Link;

- a. Price sensitivity of the product:
- b. Likely and existence of significant price undercutting

- c. Consumers would switch over to imports
  - d. Domestic industry be forced to reduce the prices or domestic industry would be forced to loose sales volumes
  - e. Inability of the domestic industry to affect legitimate price increases
  - f. Sub-optimal profits
- i. The present initiation of investigations is without sufficient cause and justification with no material evidence with regard to changed circumstances;
  - ii. the claim of the petitioner with regard to no dumping in the review period has to be established by the petitioner or exporters in subject countries;
  - iii. no dumping in the current POI, in itself, is insufficient to revocation of duty;
  - iv. facts and circumstances relating to the exporter are such that the exporter is likely to intensify its dumping activities, should the present anti dumping duties be withdrawn at this stage;
  - v. onus of establishing "no dumping" and "no likelihood of dumping" is on the applicant and not on the domestic industry .
  - vi. What is relevant for examination of likelihood of recurrence of injury is not limited to the planned capacities in 2005, but also the planned capacities thereafter. Even if it is admitted that the exporter has entered into long-term contracts, such contracts are not for entire additional capacities.
  - vii. NALCO has pleaded for separate benchmark for lye and solid caustic soda. Indian Producers have no objection to separate benchmark being fixed for lye and solid caustic soda. There is no basis to argue that lye and solid are not one like product. Solid caustic soda is produced by further incremental processing (drying) of lye caustic soda.
  - viii. The domestic industry has submitted that even assuming that cumulation cannot be done, the evidence on record clearly establishes continuance or recurrence of injury from each of the subject countries individually.

## **F.2 VIEWS OF THE APPLICANT, EXPORTER / IMPORTER /OTHER INTERESTED PARTIES:**

47. The interested parties have submitted that

- a. Domestic industry has not provided any material evidence in support of its arguments of material injury due to dumped imports.
- b. reliance has been placed upon the import data from DGCI&S, IBIS and the import invoices. The claim of the Indian Producers that the Indonesian prices reported in DGCI&S are correct needs to be verified by sourcing the transaction wise data from the Authorities.

- c. The Designated Authority should call costing and injury information from the original petitioner domestic industry and disclose the same to other interested parties.
- d. All the listed factors mandated under Article 3.4 of the ADA have not been examined in the Proforma IV-A by the Indian Producers. There is no causal link between alleged dumping & alleged injury. Some of the parameters like utilization of capacity, inventories, wages and exports etc. has been carried out only for the caustic soda lye and not for caustic soda in solid form and flake form.
- e. Methodology to calculate price underselling and price undercutting for Chinese Taipei as being positive has been not supported by any evidence. Prices in domestic market was significantly higher than imports price, therefore, there has been no injury and causal link. There exists no threat of injury to the domestic industry from the imports of the subject goods from Chinese Taipei.
- f. More than 12% return on capital employed by the domestic industry is already in the region of 8.5% on GFA and 15.5% on NFA basis. A ROCE of around 22%-30% is untenable. The issue of ROCE has been dealt in the Indian Spinners Association v/s. DA 2004 (170) ELT 144 (Tri – Del) and the case should be taken as a guidance on this issue. The domestic industry has not suffered any material injury during the period of review as assessed from the injury analysis and is thus in violation of Article 3.1 and Rule 11(2) and Annexure II. All the listed factors mandated under Article 3.4 of the ADA have not been examined.
- g. ADD in force should be terminated, as the information provided by the Indian Producers is incomplete and deficient, preventing the interested parties from defending the injury allegations. There is no causal link between alleged dumping & alleged injury. Imports from the subject countries during the POR constitute 4.75% whereas the sales from the other countries correspond to 95.25% of the total Indian imports.
- h. The injury analysis carried out of the domestic industry is incomplete. Some of the parameters like utilization of capacity, inventories, wages and exports etc. has been carried out only for the caustic soda lye and not for caustic soda in solid form and flake form. The exporter is unable to verify and comment on the allegations of dumping from Chinese Taipei as evidence not disclosed by the domestic industry. Methodology to calculate price underselling and price undercutting for Chinese Taipei as being positive has been not supported by any evidence.
- i. Prices in domestic market was significantly higher than imports price, therefore, there has been no injury and causal link. There exists no threat of injury to the Domestic industry from the imports of the subject goods from Chinese Taipei. In a situation where there are no dumped imports during the

POI, the essential pre-condition for levy are not satisfied. There must be dumped imports in the period of review and without dumping in the POR there can be no sustainable case for threat of material injury.

- j. The Indian Producers cannot misled the Designated Authority on the issue of increasing planned capacities by Exporters and thus threat of dumping. There is no plan for increasing the capacities or the production quantities for 2005 by the Exporters. The increase in the capacities has been planned for the exports to Australia and other Southern American markets.
- k. As regards the determination of price undercutting and price underselling, the Authority has not provided any data on the basis of which such a finding has been reached. It may be required to be disclosed since the present mid term review was initiated at the behest of the exporter. It is pertinent to note that Taiwan has stopped exporting the subject goods after the imposition of anti dumping duty therefore question of determination of undercutting and underselling does not arise.
- l. They have submitted that the most of injury parameters are showing a positive trend during the period of investigation therefore there could not be any injury to the domestic industry due to imports. It has also been stated that dumped imports from subjected countries decreased in POI, especially imports from Indonesia and EU have declined drastically and there is no exports from Chinese Taipei.

### **F.3 EXAMINATION BY THE AUTHORITY:**

48. Article 11.1 of AD Agreement provides that an AD Duty shall remain in force only as long as and to the extent necessary to counteract dumping, which causes injury. In the mid-term review the authority examines, whether the circumstances with regard to dumping and injury have changed significantly, or whether the existing measures are required to address the injury previously established. The Authority is required to review, on the basis of positive information submitted by any interested party substantiating the need for a review, provided that a reasonable period of time has elapsed since the imposition of the definitive antidumping duty, whether continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. Present midterm review has been initiated on the basis of positive information filed by M/s Hindustan Lever Limited.

49. The Authority has taken note of the submissions made by interested parties regarding the continuation or recurrence of injury to the domestic industry and examined the same in the light of arguments made before the Authority. It is noted that duty was originally imposed on reference price basis on all imports of subject goods from subject countries. It is also noted that a review has been initiated in terms

of Rule 23 of Anti Dumping Rules which requires the Authority to whether there is no justification for the continued imposition of the duty and to examine the degree and extent of dumping and injury and the need for withdrawal for duty, having regard to information provided and arguments raised by various interested parties during the course of the investigations. For the purpose, the Authority is required to first assess whether the domestic industry suffered continued injury over the relevant period. Thereafter, the Authority is required to determine whether the injury to the domestic industry is likely to continue or recur in the event of withdrawal of anti dumping duty.

50. For the purpose of assessing current injury, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry. The dumping margin have been established considering from EU (excluding France) and Indonesia and likelihood of dumping has been established from Chinese Taipei, EU and Indonesia. Entire exports from EU (excluding France) and Indonesia have been treated as dumped imports for the purpose of injury analysis and causal link examination.

#### Cumulative Assessment of Injury

51. Subject countries in the present investigation are Chinese Taipei, Indonesia and European Union excluding France. Annexure II of Anti Dumping Rules provides that in case more than one country is simultaneously subjected to anti-dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent, the imports collectively accounts for more than seven per cent of the import of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles. Present investigation is a midterm review investigation initiated under Rule 23 of the Rules. The Designated Authority therefore, notes that the various conditions of cumulative assessment will apply in this investigation only on mutatis mutandis basis. Accordingly, the Authority has cumulatively assessed injury and likelihood of continuation or recurrence of injury to the domestic industry.

52. On examination of information, the Authority finds that the prices of the subject goods from subject countries are comparable and do not vary significantly. These have been imported under the same tariff classification. The user industry for the imported product and the domestic product is the same. The Authority has, therefore, found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the conditions of competition between the

imported products and domestic like product. It is appropriate to examine cumulatively the effect of injury by imports of subject goods from subject countries on the domestic industry in this investigation.

### Volume Effect

53. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the anti dumping rules provides as under:

“While examining the volume of dumped imports the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”

### Assessment of demand and market share

54. Demand or apparent consumption of the product in India has been computed as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods from various countries. The demand so assessed is shown in the following table.

	2001-02	2002-03	2003-04	POI
Sales of Domestic industry	****	****	****	****
Sales of Other Indian Producers	****	****	****	****
<b>Imports</b>				
EU(excluding France)	22	30,982	86	165
Indonesia	4,972	42,372	18,398	3,745
Chinese Taipei	327	13,428	-	-
Imports from subject countries	5,321	86,783	18,484	3,910
Imports from other Sources	33,650	27,902	52,145	76,100
Total Imports	38,971	114,685	70,629	80,010
Demand	1,623,806	1,792,411	1,811,779	1,874,596
Indexed	100.00	110.38	111.58	115.44

55. It is seen that demand of the subject goods has shown a positive trend during the injury period. The sale of the domestic industry has improved during the injury period, which shows that the domestic industry is recovering from the effects of past dumping. It is also noted that there is continued imports of Caustic Soda from Indonesia and EU (excluding France) at dumped prices during the POI. Investigation has also shown that the exporters/producers in subject countries are likely to continue or resume export at dumped prices should the present anti dumping duties be withdrawn at this stage.

56. It is noted that low volume of imports during the POI does not establish no likelihood of injury in the event of withdrawal of anti dumping duties. Evidence on record rather suggests that the imports are likely to increase significantly in the event of withdrawal of anti-dumping duty, as noted in detail in the para relating to dumping. The Authority thus holds that the interested parties have not been able to establish that the import volumes is unlikely to increase in the event of withdrawal of anti dumping duties. On the contrary, the investigation has shown that the import volumes are likely to increase in the event of withdrawal of anti dumping duties.

### Price Effect

57. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows,

"With regard to the effect of the dumped imports on prices as referred in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which other wise would have occurred to a significant degree."

58. In a review investigation, it is required to examine whether there has been a significant price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of adverse price effect after withdrawal of duty. It is observed that inspite of the imposition of the anti dumping duty, the import price of the subject goods has been significantly lower than the selling price, cost of production and non-injurious price of the domestic industry. The imports are likely to undercut the prices of the domestic industry to a significant extent in the event of withdrawal of anti dumping duties. Further, significant price undercutting is likely to have significant price depression effect on the domestic industry. It is, therefore, noted that there is likelihood of adverse price effect in the event of withdrawal of the anti dumping duties in force.

### Economic parameters relating to the domestic industry

59. Annexure II to the Rules requires that the determination of injury shall involve an object examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows:

"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in

sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."

Actual and potential Production, Capacity and Capacity Utilization, Sales

60. Information on actual capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

	2001-02	2002-03	2003-04	2004-POI
Capacity of domestic industry	910,098	910,098	910,098	910,098
Production of domestic industry	819,011	846,998	883,927	911,244
Indexed	100.00	103.42	107.93	111.26
Capacity Utilization of domestic industry	89.99	93.07	97.12	100.13
Sales of domestic industry	756,219	784,438	837,535	861,367
Indexed	100.00	103.73	110.75	113.90

It is noted that production, capacity utilization and sales of the domestic industry show positive trend during the entire injury period. Production of the domestic industry has increased in response to increase in sales with imposition of anti dumping duties on imports of Caustic Soda from various sources, including the subject countries. However, it is noted exporters from subject countries are exporting significant volume to other countries regularly, and the investigation has shown there is an excess capacity available with the producers in subject countries.

Actual and potential decline in Productivity

	2001-02	2002-03	2003-04	Jan-Dec 04
Productivity per employee	****	****	****	****
Productivity trend – Indexed	100.00	107.65	116.55	129.10

61. The productivity of the domestic industry improved during the injury period. It is further noted that the domestic industry has improved its performance and productivity during the POI due to anti dumping duty on imports from many sources in last four investigations.

Actual and Potential decline in Utilization of Capacity

62. Present utilization of capacity of domestic industry has been as under:

	2001-02	2002-03	2003-04	2004-POI
Capacity of Domestic industry	910098	910098	910098	910098

Production of Domestic industry	819011	846998	883927	911244
Capacity Utilization of Domestic industry	89.99	93.07	97.12	100.13

Based on the above, it is noted that capacity utilization of the domestic industry has improved. Capacity utilization of the domestic industry has increased because of increase in production and sales due to antidumping duty in place on imports from various sources in earlier investigations. It is noted that the capacity of the domestic industry during the entire injury period has not increased, however, the capacity utilization has increased in the increased demand of the subject goods from 100 during 2001-2002 to 115 during the POI.

### Actual and Potential decline in Sales

63. Present sales status of the Domestic industry has been as under:

	2001-02	2002-03	2003-04	2004-POI
Sales of Domestic industry	****	****	****	****
Indexed	100.00	103.73	110.75	113.90

The sales of the domestic industry have increased during the entire injury period. It is also observed that the share of dumped imports from subject countries has declined from 13.65% during 2001-2002 to 5.08% during the POI, whereas the imports from other countries have increased from 86.35% during 2001-2002 to 94.92% during the POI. The volume of imports of the subject goods has increased by roughly around 100% during the POI if compared with the base year 2001-2002.

### Profits, return on investment and cash flow

64. The present and likely status of Profits, return on investment and cash flow of the domestic industry has been examined. Present status of these parameters of the domestic industry has been as under:

In Lacs	2001-02	2002-03	2003-04	2004-POI
Profit Before Tax	****	****	****	****
Indexed	(100.00)	(339.62)	(150.63)	14.12
Profit before interest and tax	****	****	****	****
Indexed	100.00	(3.24)	74.32	179.64
Return on Investment	5.62	(0.50)	1.84	0.04
Indexed	100.00	(8.94)	32.75	0.69
Cash Profit	****	****	****	****
Indexed	100.00	(91.77)	9.51	37.56

65. It is noted that losses to the domestic industry has increased during 2002-03, when compared with the base year and subsequently in 2003-04 and POI the losses of the domestic industry has declined when compared to 2002-03. The original investigation of the present mid term review investigation was fourth investigation of the subject goods and important dates and events of this investigation are as under:

SN	Event	Date
1	First Investigation against USA, Japan, Saudi Arabia, Iran and France (Period of investigation has been April 1998 – Sept 1999)	
	Initiation of Investigation	26.05.2000
	Preliminary Finding	16.11.2000
	Preliminary Finding MOF	26.12.2000
	Final Finding	26.12.2000
	Final Finding MOF	14.05.2001
2	Second Investigation against Qatar (Period of investigation has been Jan 2001 – Sept 2001)	
	Initiation of Investigation	08.10.2001
	Preliminary Finding	18.01.2002
	Preliminary Finding MOF	27.03.2002
	Final Finding	7.10.2002
	Final Finding MOF	31.10.2002
3	Third Investigation against China and Korea (Period of investigation has been 2001-02)	
	Initiation of Investigation	14.05.2002
	Preliminary Finding	21.09.2002
	Preliminary Finding MOF	26.12.2002
	Final Finding	04.08.2003
	Final Finding MOF	26.12.2003
4	Fourth Investigation against Chinese Taipei, Indonesia and EU excluding France (Period of investigation has been Jan 2002 – Sept 2002)	
	Initiation of Investigation	08.10.2002
	Preliminary Finding	08.01.2003
	Preliminary Finding MOF	27.03.2003
	Final Finding	01.10.2003
	Final Finding MOF	14.11.2003

66. It is noted that the domestic industry was suffering due to dumped imports from Korea and China during the base year and subsequently faced injury due to dumped imports from Indonesia, Chinese Taipei and European Union (excluding France). After imposition of duty against these sources, performance of the domestic industry has improved, though, the profit of domestic industry has declined during the POI (PBT). Regarding return on investment, it is noted that the return on capital employed of the domestic industry has declined during the period of investigation. Most of the constituents of the domestic industry are multi product companies and do not maintain separate cash flow for product under consideration, therefore, the cash flow situation

of the domestic industry could not be assessed. However, the cash profit of the domestic industry, which has also declined during the period of investigation.

Actual and Potential decline in market share

67. Actual and potential increase in dumped imports and its impact on market share of the domestic industry were examined. Status of imports from subject countries and share of imports in relation to production/consumption in India is given in the table below.

	2001-02	2002-03	2003-04	POI
<b>Imports</b>				
EU – Excluding France	22	30982	86	165
Indonesia	4972	42372	18398	3745
Chinese Taipei	327	13428	00	00
Subject Countries	5321	86783	18484	3910
Other Countries	33650	27902	52145	73100
Total imports	38971	114685	70629	77010
Demand	1623806	1792411	1811779	1871596
<b>Market share in imports</b>				
EU – Excluding France	0.06	27.02	0.12	0.21
Indonesia	12.76	36.95	26.05	4.86
Chinese Taipei	0.84	11.71	00	00
Subject Countries	13.65	75.67	26.17	5.08
Other Countries	86.35	24.33	73.83	94.92
<b>Market share in Demand</b>				
Domestic industry	46.43	43.76	46.23	46.02
Other producers	51.17	49.84	49.87	49.86
Subject Countries	0.33	4.84	1.02	0.21
Other Countries	2.07	1.56	2.88	4.06
Imports in relation to production of domestic industry	0.65	10.25	2.09	0.43
Imports in relation to sales of domestic industry	0.70	11.06	2.21	0.45

68. It is noted that market share of dumped imports from subject countries in total imports declined from 13.65% during 2001-2002 to 5.08% during the POI and the market share of dumped imports from subject countries in demand is not significant and declined during the POI. Thus, with the existence of the present duties, market share of the imports in demand declined whereas that of the domestic industry first declined and then improved. The Authority also examined likely situation of the market share of subject countries should the present duties be withdrawn. Authority examined the status of exports from subject countries and found that the decline in dumped imports and market share is solely due to imposition of anti dumping duty on imports from various sources. Considering the price levels of the producers and

exporters from subject countries to India and other countries, the information on record shows that the producers and exporters are exporting significant quantity at prices lower than prevailing prices in the Indian market. It is also noted that the exporters in subject countries are exporting to other countries at lower prices and surplus capacity is available with them. It is noted that there is no reason to believe that these produces and exporter would not be exporting significant material to India if anti-dumping duty were revoked. Given the likely volume of imports in the event of withdrawal of anti dumping duty, it is noted that the market share of the subject imports in demand is likely to once again reach significant levels.

### **Employment and wages**

69. It is noted that most of the constituents of the domestic industry are multi product companies, therefore, there may not be direct adverse effect of dumping on employment levels of the domestic industry. Status of employment levels and wages of the domestic industry has been as under:

	2001-02	2002-03	2003-04	2004-POI
Employment	****	****	****	****
Indexed	100.00	96.07	92.60	86.18
Wages	****	****	****	****
Indexed	100.00	99.62	109.98	120.66

Though the employment levels of the domestic industry show a decline during the POI and no substantial argument was provided. Wages does not show any decline and rather show an increase in wages, which is reflective of the increments in wages.

### Undercutting and underselling

70. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In order to assess the effect of imports on the domestic market, Designated Authority analyzed import prices over the injury period and it was found that the exporters from subject countries have continuously kept their prices at low levels in respect of their exports to India. The decline in customs duty and decline in the prices of imports have further triggered a reduction in landed price of imports. Change in cost structure if any, due to competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market and it is

noted that there are no viable substitute to this product and the prices were effected due to dumped prices.

71. Designated Authority determined the net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts and freight & transportation. Entire sales volumes of the domestic industry have been considered for this purpose. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison is done between net sales realization and landed price of imports for caustic soda Lye and Flakes separately. A comparison for subject goods during the period under investigation was made between the weighted average landed value of dumped imports and the domestic selling price in the domestic market. With regard to Taiwan, the price at which goods were exported to third countries were used to determine whether the exports were likely to undercut the prices of the domestic industry, should the same be made at the same price at which these were made to third countries. Price undercutting in case of Taiwan was also determined considering the normal value established during the investigation period, extrapolating the same to determine landed price in order to determine whether the Taiwanese exports were expected to be at dumping prices, should the exports be made at prices equal to or less than normal value. It is found that the landed value of imports from the subject countries was lower than the net sales realization of the domestic industry for the subject goods during the POI thereby establishing that the imports are likely to undercut the selling price of the domestic industry with the withdrawal of anti dumping duties. The undercutting margins were in the range of 10% to 48% during the POI.

72. The Authority notes that price underselling is an important indicator of assessment of injury in order to determine whether the exports are likely to depress the prices of the domestic industry to a significant degree. For the purpose, the Authority considered the non injurious price determined for the domestic industry and compared the same with the landed value to arrive at the extent of price underselling the domestic industry would be forced to in case the domestic industry matches the prices. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI, normatting the capacity utilisation and providing reasonable profit on the capital employed. The analysis shows that the weighted average landed value of the subject goods from subject countries is less than the non injurious price determined for the domestic industry during the period of investigation. The underselling margin were in the range of 17% to 56% during the POI.

73. In case of EU(excluding France) and Indonesia it was found that imports were coming at dumped prices during the POI and these prices were significantly

undercutting the prices of domestic industry. Further in case of FPC and other producers from Taiwan, it was found in order to compete with the prices of imports from EU(excluding France) and Indonesia, it is likely that they too would export at prices which would undercut prices of domestic industry. The Authority notes that withdrawal of the anti dumping duty in force would provide an opportunity to the exporters to sell the material at such prices that the same is likely to depress prices of the domestic industry to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

### Inventories:

74. Designated Authority has examined the inventory level of the domestic industry, which is given in the following table:-

	2001-02	2002-03	2003-04	Jan-Dec 04
Inventory	****	****	****	****
Trend – Indexed	100.00	132.51	103.92	93.00

Based on the above, it is noted that the inventory levels of the domestic industry showed a decline during the POI after a increase during 2002-03 and 2003-04 and the inventory level may increase in case the anti dumping duty is revoked, because revocation of duty would lead to increase in importation and decline in sales volumes of the domestic industry and consequent increase in inventories.

### Growth

75. On examination of various economic parameters of the domestic industry, it is noted that various volume parameters of the domestic industry shows positive trend, which is due to anti dumping duty in force against subject countries, including other countries. It is further noted that the domestic industry has improved its performance with regard to profits, however, still the domestic industry has not been able to make reasonable profits. Thus, the Authority notes that the growth of the domestic industry has been positive with the imposition of anti dumping duties. However, given the adverse volume and price effect that the imports are likely to have in the event of withdrawal of anti dumping duties, it is evident that the growth of the domestic industry is likely to be adversely affected with the withdrawal of anti dumping duties.

### Magnitude of dumping

76. It is noted that the dumping margin is substantial in the case of import from EU(excluding France) and Indonesia and likelihood of significant dumping has been established in case of withdrawal of anti dumping duties. Dumping margin

determined in earlier investigation were also found to be significant. The evidence on record shows that substantial likely dumping is likely to cause injury to the domestic industry.

#### Factors affecting domestic prices

77. Change in cost structure if any, competition in the domestic industry have been examined for analyzing the factors other than dumped imports that might affecting the prices in the domestic market. It is noted that the landed value of imported material from subject country is significantly below the selling price of the domestic industry causing severe price undercutting in the Indian market. It is also noted that there is no viable substitute to this product and the domestic prices compete with one another alongwith the landed value of the imported goods. It is noted that dumped imports from several sources compete with one another and with the domestic products are affecting the domestic markets for which cumulative injury analysis has been done. It is also found that there is a healthy demand of the product in the domestic market.

#### Ability to raise capital and investment

78. It is noted that the capacity of the subject goods of the domestic industry has not increased during the POI and there is no fresh investment during the POI. It is further noted that the domestic industry has not proposed any further investment.

#### Magnitude of injury and injury margin

79. The non-injurious price determined by the Authority has been compared with the landed value of exports for determination of injury margin. The weighted average landed price of the subject goods from the subject countries and the injury margins have been found to be significant.

### **F.4 LIKELIHOOD OF RECURRENCE OF INJURY**

80. The Authority has determined that the subject goods are continuing to enter the Indian market at dumped prices or are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti dumping duties. It is pertinent to examine whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed or varied. It has already been established that the actual landed value of imports from the subject countries without the antidumping duty were below the selling price of the domestic industry and the non injurious price determined for the domestic industry.

81. In addition to the examination of continued injury, likelihood of continued or recurrence of injury to the domestic industry has also been examined by the Authority on the information and evidence presented by the various interested parties during the course of the investigations. The Authority examined the likelihood of continuation or recurrence considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules, which states as under:

*“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors and;*

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

82. The interested parties have provided information regarding capacity, production and demand of subject goods of the exporting countries. It is noted that in the present case, the volume of imports over the injury period, the level of import prices of subject goods from non subject countries, the export price of the cooperative exporter to other countries, surplus capacities available with the exporters suggest that revocation of anti dumping duty would likely result in significant increase in volume of dumped imports from subject countries. In a situation where the goods have been exported to India inspite of anti dumping duty in force, the volume of dumped imports is likely to increase further, in case the present anti dumping duties are withdrawn.

83. Producers/exporters from some of the subject countries have been supplying the subject goods in significant volumes to industrial consumers in India such as NALCO. It is noted that during the last three years, domestic industry has been able to get substantial orders for supply to NALCO, one of the major importers of the subject goods in the past, which is evident from the followings:

Status of NALCO tenders:	2001-02	2002-03	2003-04	2004-05	2005-06
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Qty in MT as per tender	100000	115000	120000	120000	120000
Foreign offers received	352000	262000	86000	38000	118000
Indian offer received	83000	122000	134000	127400	147000
Order placed to Foreign suppliers	100000	86000	32000	18000	0
Order placed to Indian suppliers	0	29000	88000	102000	120000

84. It is noted that Indian producers have improved their share of supply of subject goods to NALCO during the injury period after imposition of anti-dumping duty and during 2005-06 they have bagged the entire quantity of supplies. However, NALCO continues to and is likely to continue to source its requirement through international competitive bidding process. In the present situation, withdrawal of present anti-dumping duties is likely to create intense competition and the foreign producers are likely to offer dumped prices which would result in recurrence of injury to the domestic industry. The cumulative surplus capacity available with the exporters in subject countries is higher than the entire consumption in India, and the investigations in the past have shown that the market for caustic soda is highly volatile and any significant volume of exports made to India at likely dumped prices is likely to lead to price undercutting and consequently injury to the domestic industry. No cogent reason has been provided by the interested parties why the surplus capacities in the subject countries would not be used to supply the material in the Indian market. Nor any cogent reason advanced why the likely prices would be higher than the present export prices to India or third countries and normal values in the exporting countries.

85. In case of Taiwan, only one of the exporters from Chinese Taipei has cooperated and filed information with regard to production, sales, capacity and exports to other countries. The company has also provided information regarding production, demand and exports to other country from Chinese Taipei. As regards the FPC, it is noted that only verified data has been considered for determination of likelihood of dumping and injury. Information regarding the entire country was also provided by FPC in Chinese Taipei. The export price of FPC has revealed that FPC was exporting the subject good to various countries at prices below the domestic selling prices in India, and should FPC export to India at or below the normal value, the landed price of imports would be above the domestic price in India and below the non-injurious price determined for the domestic industry, thus showing likelihood of increase in dumped imports in Indian market which is likely to cause injury to the domestic industry. Should Taiwanese producers sell at normal values established then the landed price of imports would be significantly higher than the domestic prices in India, thus establishing that the Taiwanese producers would have to export at prices significantly below normal value. However, any export at or below the normal value would be significantly below the non-injurious price established for the domestic industry.

86. In order to assess the likely effect of the expiry of measures in force, it is noted that there are clear indications that the subject countries have the potential to raise their production and export volumes. On the basis of export price established in dumping examination, it is likely that in absence of measures the producer from the subject countries could adopt a policy of dumped prices, will cause further injury to the domestic industry which has recovered and improvement has been shown due to the anti-dumping duty in place against dumped imports from subject countries. The possibility for the exporting producers from these countries to lower their prices in view of the dumping and likely dumping can not be overlooked and denied. Such a price behavior of subject countries producers coupled with their ability to deliver significant quantities of subject goods, would in all likelihood have a general price depressing impact on what is very price sensitive commodity market. In view of this it is concluded that should the measures be revoked, there is likelihood of recurrence of injury to the domestic industry.

87. The applicant and other interested parties have argued since there is no evidence of injurious dumping to the domestic industry during the period of review, the Designated Authority is required to examine whether the injury is likely to recur, should the measures are revoked. They have argued since the domestic industry did not submit evidence regarding the likely volume of imports from subject countries in a situation of revocation of duty and the likely prices at which such imports would be made and likely impact on the domestic industry due to such imports. The applicant has further submitted that the domestic industry has made their claim without substantiation regarding sufficient disposal capacity available with foreign producers and likely dumping in future. The sole responding exporter has argued that their production is fully utilised that it has neither sufficient disposable capacity for export nor any abnormal inventory of the subject goods. The wild allegations cannot form the basis of any apprehension for future likelihood of injurious dumping. They have argued that there is no anti dumping measures against FPC that it would result in diverting the subject goods from such country to the Indian market.

88. The domestic industry contended that the exporters from EU (except France) and Indonesia continued to export the subject goods at dumped prices in the Indian market and producers in the subject countries are likely to resort to dumping of subject goods in the Indian market. The capacities in subject countries are much higher than their respective domestic sales/demand. In case of Chinese Taipei, in addition to the present surplus available, massive expansion being undertaken by FPC, which was originally due for commercial production in Aug., 2005 and details of which are available on the website of FPC itself also need be taken into account for determination of likelihood of injury [it is reiterated that FPC has not provided relevant documents in support of their claim that entire expansion was meant for third countries and no surplus would

have been available for exports to other countries]. The domestic industry repeated stressed that the price difference between the domestic and imported material has been so huge that there is no reason to believe that these subject countries would not divert significant volumes of the subject goods to the Indian market in case the anti dumping duties are withdrawn.

89. The arguments and submissions made by the interested parties were examined having regard to the information/evidence made available by these interested parties and on record of the Authority about the present and potential capacity, production, sales, imports, exports, domestic demand, the price levels in respect of domestic sales, exports to third countries and India, likely prices of imports from the subject countries. In order to determine whether the continued imposition of the duty is necessary to offset dumping, the Authority considered the following parameters:-

1. Dumping margin determined in the original investigations;
2. Dumping margin determined in the present investigations – for the purpose, wherever exports to India existed during the investigation period, the same were considered and dumping margin determined. Where there were no exports to India during the investigation period, the Authority determined dumping margin in respect of exports to third countries and likelihood of dumping considering the normal value established and the benchmark being recommended.
3. Surplus unutilized capacities, present and potential, considering known expansions undertaken by the foreign producers, prices prevailing in India, past actual and potential volume of exports.

On examination of these factors it is noted that;

- a. Dumping margins in respect of exports to third countries are significant;
- b. Considering the benchmark proposed to be recommended, should the exports be made below this benchmark, the same would be at dumped prices. Should the exports be made at prices above the normal value, anti dumping duty is not payable. Therefore, the exports are likely to be at dumped prices, if the imports are below the benchmark proposed to be recommended;
- c. Ex-factory realization of export price to third countries are at such prices that should the exports be made at these prices, the resultant landed price of imports would be significantly below the selling prices in India and non injurious price;
- d. One of the Taiwanese exporters had committed as high as 1.5 lac MT supplies against single tender, which is quite indicative of its surplus capacity and export potential;
- e. Export price from Taiwan to third countries are significantly below not only the normal value but also the prevailing prices in India and non injurious price;

- f. It has not been demonstrated by the exporters that withdrawal of anti dumping duty would not lead to likelihood of injury to the domestic industry and continued imposition of the duty was unnecessary to offset dumping.
- g. Producers in Taiwan have been found to have shipped goods in the past against orders placed on third country producers/exporters.
- h. Considering the level of capacity utilization achieved by the producers in the exporting countries in the past over the injury period and the capacity utilization achieved during the investigation period, the Authority determined unutilized capacities in Taiwan, Indonesia and Europe. It is noted that the unutilized capacities with the Indonesia producers were to the extent of 87000 MT, while the same were to the extent of 236000 MT in case of European producers. In other words, producers in these countries can readily offer material to these extents.
- i. As per information provided by Chlor Alkali:-

Taiwan surplus capacity	54,000
Taiwan Expansion planned	466,666
Total likely surplus of Taiwan	520,666
Indonesia surplus capacity	327,000
Europe surplus capacity	1,886,000
Total Surplus	2,733,666
<b>Indian Demand</b>	
excluding captive consumption	18,74,596
including captive consumption	21,22,251

- j. As per CMAI reports, the present demand-supply situation in the world is as follows:-

Demand	5,00,31,000
Capacity	5,75,74,000
Surplus	7,543,000

- k. (It is noted that the exporter has not placed any convincing evidence on record that injury will not recur in event of withdrawal of measures. Having regard to the evidence regarding capacity, production, sales and demand on record, it is noted that withdrawal of anti dumping duty would likely to continuance or recurrence of injury to the domestic industry. Therefore, it is concluded that the evidence on records clearly establishes that injury would recur in event of measures are withdrawn.

Conclusion

90. Considering the above and having regard to the contentions of the interested parties and information/evidence on record, the Authority holds that

- a. The performance of the domestic industry has shown an improvement with the imposition of anti dumping duties. However, the same has not reached a satisfactory level. The situation of the domestic industry continues to be fragile,
- b. Injury to the domestic industry is likely to continue or recur should the present measures be withdrawn.

## **CAUSAL LINK**

91. Submissions made by the interested parties in respect of the issue of causal link have been examined. A detailed examination was made with regards to the issues pertaining to the injury to the domestic industry and causal link between the material injury to the domestic industry and dumped imports. Paragraph (v) of Annexure II of the Anti-dumping Rules reads as under:

*“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.”*

## **OTHERS KNOWN FACTORS**

92. The Authority examined whether other listed known factors could have caused or are likely to cause injury to the domestic industry.

### **Volume and prices of imports from other sources**

Imports from various countries have been as under:-

<b>MT</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>	<b>POI</b>
Subject countries	5321	86783	18484	39130

Countries attracting ADD	29805	16304	29688	33463
Countries Not attracting ADD	3845	11598	22457	42637
Total imports	38971	114685	70629	80010
<b>Share in imports</b>				
Subject countries(%)	13.65	75.67	26.17	4.89
Countries attracting ADD	76.48	14.22	42.03	43.45
Countries Not attracting anti dumping duty	9.87	10.11	31.80	55.37

93. During the POI, in addition to the subject imports, imports have taken place from a number of other countries. Total import from other sources increased from 33650 MT during 2001-2002 to 76100 MT during POI. It is also noted that the weighted average import price from sources not attracting anti dumping duty is more than the dumped price or the likely prices from the subject countries. Therefore, it is noted that the imports from the other sources did not appear to have had significant effect on the domestic industry, both in terms of volume and value.

### **Contraction in demand and / or change in pattern of consumption**

	2001-02	2002-03	2003-04	POI
Demand	1623806	1792411	1811779	1874596
Indexed	100	110	112	115

94. Total domestic demand of the product under consideration has increased from 1623806 MT during 2001-2002 to 1874596 MT during the POI. It is noted that the demand has consistently increased during the entire injury period. Thus, possible contraction in demand is not a factor that could have caused injury to the domestic industry.

### **Trade restrictive practices of and competition between the foreign and domestic producers**

95. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. The domestic industry consists of 10 producers of the subject goods out of 37 producers of caustic soda in the Country. The Indian Producers competes among one another and at the same time compete with the landed price of the subject goods. The price of the domestic industry is influenced by the landed price of subject goods. Present situation of likely injury to the domestic industry cannot be attributed to trade restrictive practices or fair competition between foreign and domestic producers.

### **Developments in technology and export performance**

96. The production facilities of the cooperative foreign producer and the production facility of the domestic industry were found to be of similar technology. There are three technologies for production of the subject goods and all the three forms continue to be deployed. Even though a number of companies are upgrading their technology from mercury to membrane, it is found that this process of change is not a new phenomena, nor the investigations revealed that the producers with latest technology have lower full cost of production or non injurious price. Technology or technology related issues have not been raised by any interested party as a possible cause of injury to the domestic industry. It is noted that the domestic industry has exported small quantity of subject goods during the POI that does not substantially affect the operations of the company. The export performance of the domestic industry is thus insignificant if compared with the entire sales of the domestic industry, therefore, export turnover does not affect performance of the domestic industry.

### **Productivity of the Domestic Industry**

97. Productivity of the domestic industry in terms of labour output and daily output has shown a growth during the POI compared to the base year. It is also noted that productivity has shown a growth during the entire injury period along with growth in production and sales.

98. It is noted that market share of the domestic industry first declined in 2002-03 and thereafter increased again to almost the level of 2001-02. The landed value of the subject goods during the period of investigation were much below the net sales realization and the non injurious price determined for the domestic industry and were thus significantly undercutting the domestic selling prices. Should the exports undercut the prices of the domestic industry, the same is likely to have adverse volume and/or price effect and would be at dumping prices. It is also noted that should the exports be made at prices on or above normal value, the landed price of imports would be significantly higher than the current selling price of the domestic industry. Any exports to India are likely at prices close to or below the selling price of the domestic industry, which would clearly be at dumping prices.

It is thus concluded that likely injury to the domestic industry in the event of withdrawal of anti dumping duty would be due to dumped imports.

## **H. FINAL FINDINGS:**

99. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on

the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i. the subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from EU(excluding France), Indonesia and Chinese Taipei are substantial and above de-minimis. The subject goods are likely to enter Indian market at dumped prices, should the present measures be withdrawn. Thus, it has not been established that the continued imposition of the duty to offset dumping is unwarranted,
- ii. even though the domestic industry has improved its performance over the injury period, the situation of domestic industry continues to be fragile. Further, should the present anti dumping duties be withdrawn, injury to the domestic industry is likely to continue or recur. Thus, it has not been established that injury to the domestic industry is unlikely to continue or recur should the present measures be withdrawn.

100. Having concluded that the situation of the domestic industry continue to be fragile and there is likelihood of continuation or resumption of dumping and injury on account of imports from EU(excluding France), Indonesia and Chinese Taipei if the duties are revoked, the Authority is of the opinion that continuation of the measure is necessary against import from these countries. However, in view of the current level of dumping from EU(excluding France), Indonesia and Chinese Taipei and injury suffered by the domestic industry the anti dumping duty in force needs to be revised. Therefore, the Authority considered it necessary and recommends continuation of anti dumping duty on imports of subject goods from EU(excluding France), Indonesia and Chinese Taipei.

101. The Authority considers it necessary to impose an anti dumping duty on all imports of Caustic soda from EU(excluding France), Indonesia and Chinese Taipei in order to remove the injury to the domestic industry. The Authority recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports has been compared with the weighted average non-injurious price of the domestic industry determined for the period of investigation.

102. Accordingly, the Authority recommends that definitive anti dumping duties as set out below be imposed by the Central Government on all imports of Caustic soda falling under customs heading 2815.11 & 2815.12 originating in or exported from EU(excluding France), Indonesia and Chinese Taipei. The anti-dumping duty shall be the difference between the amount mentioned in column no.9 of the following table and the landed value of imports per MT on all imports of subject goods falling under

chapter 28 of the Customs Tariff, originating or exported from the subject territory/countries mentioned below:-

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount (US\$)	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	2815.11 & 2815.12	Caustic Soda	Any grade	Chinese Taipei	Chinese Taipei	Any Producer	Any Exporter	281.27	DMT	USD
2	2815.11 & 2815.12	Caustic Soda	Any grade	Any country other than Indonesia and Eu (excluding France)	Chinese Taipei	Any Producer	Any Exporter	281.27	DMT	USD
3	2815.11 & 2815.12	Caustic Soda	Any grade	Chinese Taipei	Any country other than Indonesia and Eu (excluding France)	Any Producer	Any Exporter	281.27	DMT	USD
4	2815.11 & 2815.12	Caustic Soda	Any grade	Indonesia	Indonesia	Any Producer	Any Exporter	256.88	DMT	USD
5	2815.11 & 2815.12	Caustic Soda	Any grade	Any country other than Chinese Taipei and Eu (excluding France)	Indonesia	Any Producer	Any Exporter	256.88	DMT	USD
6	2815.11 & 2815.12	Caustic Soda	Any grade	Indonesia	Any country other than Chinese Taipei and Eu (excluding France)	Any Producer	Any Exporter	256.88	DMT	USD
7	2815.11 & 2815.12	Caustic Soda	Any grade	EU (excluding France)	EU (excluding France)	Any Producer	Any Exporter	295.46	DMT	USD
8	2815.11 & 2815.12	Caustic Soda	Any grade	Any country other than Chinese Taipei and	EU (Excluding France)	Any Producer	Any Exporter	295.46	DMT	USD

				Indonesia						
9	2815.11 & 2815.12	Caustic Soda	Any grade	EU (excludin g France)	Any country other than Chinese Taipei and Indonesia	Any Producer	Any Exporter	295.46	DMT	USD

103. 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 under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

104. 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 normally be entertained by the Authority unless the same is filed by an interested party within the time stipulated for this purpose.

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

**(Christy Fernandez)**  
Designated Authority