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GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
(DEPARTMENT OF COMMERCE)

DIRECTORATE-GENERAL OF ANTI DUMPING & ALLIED DUTIES

NOTIFICATION

New Delhi, the 25<sup>th</sup> March 2008

FINAL FINDINGS

Subject: Sunset Review of the definitive anti-dumping duty on imports of Hydro Fluoric Acid originating in/exported from the China PR.

**No. 4/13/2006-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules (hereinafter also referred as Rules), 1995, thereof;

**A. BACKGROUND**

2. WHEREAS, having regard to above Rules, the Designated Authority (hereinafter referred to as the Authority) initiated anti-dumping investigation on 11<sup>th</sup> December 2001 into alleged dumping of Hydrofluoric Acid (hereinafter referred to as subject product/goods) originating in/exported from China PR (hereinafter referred to as subject country). Provisional antidumping duties were imposed on imports of the subject goods from the subject country vide customs notification No: 35/2002-Customs dated 28<sup>th</sup> March 2002, based on the preliminary findings of the Authority dated

15<sup>th</sup> February 2002. The final findings of the Authority were published vide notification of 26<sup>th</sup> November 2002 and definitive anti dumping duties were imposed on the subject goods from the subject country vide notification No: 10/2003-Customs dated 15<sup>th</sup> January 2003.

3. WHEREAS on the basis of a duly substantiated application filed by M/s. Tanfac Industries Ltd, Cuddalore representing a major proportion of the domestic production of the subject product, the Authority initiated sunset review of the anti dumping duty on imports of the subject product originating from the subject country vide notification dated 17<sup>th</sup> March 2007 under section 9A (5) of the Act, to examine whether the expiry of the duty would lead to continuation or recurrence of dumping and injury.

4. AND WHEREAS vide Notification No: 45/2007- Customs dated 26<sup>th</sup> March 2007, the definitive duties were extended by the Central Government under Section 9A (5) for a period of one year up to 27<sup>th</sup> March 2008 and the time for completion of the Sunset Review findings have also been extended upto 26<sup>th</sup> March, 2008.

**B. PROCEDURE:**

5. The procedure described below has been followed:-

(i) As per Rule 5(5) supra, the Authority notified the Embassy of subject country in India about the receipt of fully documented application from the applicant before proceeding to initiate the review investigation;

(ii) In accordance with Rule 6(2) supra, the Authority forwarded copy of the said public notice to the known exporters/ producers, importers, industry associations, the Embassy of the country concerned and to the applicants and gave them an opportunity to make their views known in writing.

(iii) According to Rule 6(4) supra, the Authority provided a copy of the relevant questionnaire to all the known exporters and the Embassy of subject country in India and other interested parties.

(iv) The Embassy of subject country in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time.

(v) The Authority sent questionnaires, to elicit relevant information, to the following known exporters from the subject countries.

- Quzhua Fluorine Chemical Co. Ltd., Quzhou, }
- Yingpeng Chemical Company., Ltd. Yongkang, } Zhejiang,
- Yingguang Chemical Company Ltd., Dongyang, } China
- Sanmei Chemical Industry Co. Ltd., Wuyi, }
  
- 3-F Jinan Chemical Co. Ltd. Jinan, }Shandong,
- Dongyue Chemical Co. Ltd., Zibo, } China
  
- Melian Chemical Co. Ltd., Taizhou, }
- Ato-3F Changsu Chemical Co. Ltd., Changshu, } Jiangsu,
- Xinhua Chemical Plant. Changshu, } China
- Fudu Chemical Co. Ltd. Sheyang, }

- Shanghai Tianyuan Fluorine Chemical Co. Ltd., Shanghai, China
- Yongfei Chemicals Co. Ltd., Shaowu, Fujian, China

None of the exporters from China PR responded to the exporter's questionnaire.

(vi) A copy of initiation notification along with the importers' questionnaire was also sent to the various importers listed in the application.

- ❖ M/s Competent Dyestuff & Allied Products Pvt. Ltd. Ghaziabad
- ❖ M/s Oswal Enterprises, Ahmedabad
- ❖ M/s MFPL Fluorine Products Ltd. Chennai

However, response to the importers' questionnaire was received initially only from M/s MFPL Fluorine and later from another importer/user, M/s Fluorides & Chemicals, Puducherry, which was taken into account after initial deficiencies were rectified. M/s Overseas Chemtech also responded to the initiation notification and sought to be included in the investigations, but submissions made by them indicated that they were incorporated only after the period of investigation and had no imports, so that the said party did not qualify as an interested party under Rule 2 (c) of the AD Rules.

(vii) Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM, Excise Law Times etc., for wider circulation.

(viii) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation.

(ix) The investigation of dumping and injury covered the period from 1<sup>st</sup> April 2005 to 30<sup>th</sup> September 2006 (Also called the period of investigation or POI). The examination of trends in the context of injury analysis covered the period from 1<sup>st</sup> April 2002 to the end of POI (also called Injury period).

(x) The Authority sought and verified all the information it deemed necessary for the purpose of determination of dumping and resulting injury. The Authority conducted on-the-spot investigation of the domestic industry to the extent considered necessary. The cost of the production of the domestic industry was also analysed to work out the cost to produce and the cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the applicants to ascertain if anti dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

(xi) The Authority held a public hearing on 25<sup>th</sup> October 2007 and another hearing on 21<sup>st</sup> November 2007 to hear the interested parties orally. The hearings were attended by representatives of the domestic industry and the importers. The participating parties were requested to file written submissions of the views expressed, which submissions have been considered by the Authority in this finding, except those of M/s Overseas Chemtech.

(xii) The essential facts of the case were disclosed to all interested parties in the form of confidential and general disclosures. Comments of the interested parties on the disclosure statement, to the extent they are relevant and supported by evidence, have been considered by the Authority.

(xiii) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties. \*\*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.

### C. PRODUCT UNDER CONSIDERATION AND "LIKE" ARTICLE..

6. The product under consideration in the present investigation, as defined in the original investigation, is Hydrofluoric acid of all forms, purities and concentrations originating in or exported from China PR. Hydrofluoric (or HF) Acid could be in the form of liquid or gas and anhydrous or aqueous/diluted. It is used as a catalyst for gasoline alkylation, in manufacture of inorganic fluorides, fluorinated hydrocarbon compounds, refrigerants, as a pickling agent for descaling stainless strips and high silicon sheets, glass etching, etc. The raw materials used are acid grade fluorspar, sulphuric acid and oleum, which are fed into a pre-reactor at predetermined rates, mixed and converted into a homogeneous mixture and pushed into the HF acid reactor. The resulting HF gas is drawn into a pre-scrubbing tower for washing and then condensed using chilled calcium chloride solution. The liquid is then purified by distillation and the anhydrite by-product is withdrawn separately. HF acid is sold in dilute concentrations ranging from 20% to 70% denoted in the findings as HF - 20% to HF- 70% or as 100% pure anhydrous, i.e., HF -100%.

7. Hydrofluoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act under Customs Sub-heading 281111 of the Customs Tariff Act, 1975 and the International Trade Classification. The classification, however, is only indicative and in no way binding on the scope of the present investigation, which being a sunset review investigation, has its scope limited to the product already identified in the original investigation. The subject goods produced by domestic industry are used interchangeably with those imported from the subject countries,

Therefore, the Authority holds that the two are “like articles” within the meaning of the Rules.

**D. STANDING OF THE DOMESTIC INDUSTRY**

8. The sunset review has been initiated on the basis of a duly substantiated request submitted by M/s. Tanfac Industries Ltd, Cuddalore, on behalf of the domestic industry, supported by M/s Navin Fluorine International Ltd, Mumbai. The petitioner and the supporter are the only merchant sellers of the subject product. Two other producers of HF acid, viz., M/s Gujarat Fluorine and M/s SRF Ltd consume the product captively. Both had imported the product in the POI, M/s SRF Ltd having imported HF 100% in substantial quantity. Therefore, M/s Gujarat Fluorine and M/s SRF are deemed not to form a part of the domestic industry under Rule 2 (b) of the AD Rules. The Authority holds M/s Tanfac Industries and M/s Navin Fluorine to constitute the domestic industry for the purpose of the current investigation.

**E. VIEWS OF THE INTERESTED PARTIES**

9. The views of the interested parties are incorporated at appropriate places in the findings, but those of a general nature are as below:

a) On admissibility of the petition

10. The co-operating importers have contended that the petitioner does not constitute the majority of the domestic industry and production is not more than 50% of domestic production, if the total production capacity of all four units of the domestic industry was considered. Only a part of the production of Tanfac, Navin Fluorine and SRF Ltd. were being sold as HF and the petitioner's claim that SRF was consuming all its production captively was not true. Therefore, the petition should be dismissed. In response, the domestic industry has stated that the petitioner was a major domestic producer of the subject product and constituted domestic industry within the meaning of the Rules. Further, that after initiation, Navin Fluorine has provided full information. The two together constitute the entire domestic production for the merchant market. The combined capacity of SRF and Gujarat Fluorine was below 20 TMT and was only for captive consumption. Even if their production was included, the production of the petitioners constituted more than 50%. The Authority observed that the petitioners jointly constituted over 70% of the domestic market, while the other two units had imported the subject product in the POI, so that they did not constitute part of the domestic industry.

**b) On extension of duty**

11. The importers have claimed that anti-dumping duty cannot be extended on a product not covered by the original investigation and the contention that HF-70% was being imported to circumvent duty was untenable. They have further stated that when HF-70% was not viewed as a dumped commodity, the question of review did not arise, as the technical properties of the product had not changed. Besides, even if there had been duty on HF-70%, the landed value was much higher and would not have attracted duty. The domestic industry has responded that in a review, the Authority re-determined the dumping margin for extending duty and exclusion of HF-70% from the review would facilitate circumvention of duty by importing it, while inclusion of HF-70% in the scope of the product did not imply enlargement in the scope. The Authority noted that in the original investigations, the product under consideration was HF acid as a whole.

*c) On insufficient capacity of and captive consumption by the domestic industry*

12. The importers have claimed that the petitioners' production capacity was 30- 40 TMT of HF acid annually, of which 85-90% was captively used to produce value added products. Only a small part of production was sold as HF acid in various concentrations in the domestic and export markets. The quantity produced by the petitioner could be entirely captively consumed without making any quantity available for merchandise sale. That the petitioner on incorporation was licensed to manufacture only aluminium fluoride with captive use of HF, but 5 years later, the company diverted part of HF acid produced for merchant sales without increasing capacity. Availability of the subject product for sale thus depended on orders for value added production. In the absence of clear demarcation of capacity and availability of the product, the petitioner's production should not be included in total domestic production. Besides, there can arise a paradoxical situation where capacity utilization of the plant can be 100%, but product availability can be 0%, so that without quantification of availability, any discussion on capacity would be meaningless. Further, one of the domestic units had reduced sales quantity from 500 MT to 150 MT, creating shortages in the market and importing anhydrous HF acid for their own consumption. The severe shortage of the subject product and the doubling of Chinese prices in the past 12 months have led to rising input prices which could result in close-down of the downstream industry and loss of jobs. The domestic industry has refuted this argument, affirming that on account of dumping from China, they were not utilising their full capacity despite increase in demand. Levy of duty would remove the unfair advantage caused by dumping, prevent decline and maintain availability of wider choice to the consumer.

**d) On HF acid being raw material for many small scale units**

13. The importers claimed that HF users are in the small scale sector and produce derivatives similar to what was produced by the petitioner, who can control HF availability in the market and stop supply to users. If imports are not allowed, the SSI users would face closure. Besides, as import constitute a very insignificant percentage compared to total production, no injury is suffered by the large scale manufacturers as seen from their economic parameters. The domestic industry has claimed that there was no reason to assume that Indian producers would not supply the material to the consumers since capacity has been set up for production and sales.

**e) On the petitioner's export and domestic prices**

14. The importers have alleged that the petitioners export HF acid and other value added products at prices much lower than the domestic sales price. Thus, though the cost of production was much lower, the product was sold at a good premium. The export price clearly demonstrate that the domestic producers could compete globally and do not require any safeguard. The domestic industry has stated that the price at which they were forced to export was not an appropriate parameter to decide dumping or injury.

**f) On nil duty on fluorspar and lower exchange rates**

15. The importers have alleged that the duty on the basic raw materials was brought to nil within 5 years and the \$ - Rs. exchange rate was all time low. With the raw material available at the international price, there was no need for any safeguard to the domestic industry when it was faced with a level playing field. The domestic industry has stated that the injury parameters considered on the basis of the actual cost of raw materials incurred by the petitioners automatically took into account all changes in the rate of duty and exchange rate.

g) On price variation between HF acid 70% and below 70%

16. The domestic industry has claimed that Chinese producers maintained significant price differences between HF-70% and other concentrations because of absence of duty on the former and revocation of duty would lead to export of other concentrations at significant levels. However, the importers have disputed this claim, as when prices are converted on HF-100% basis, they were at par. HF-70% would be priced cheaper due to reduced packing cost, freight advantage, etc and was imported only by the actual users and down-stream product manufacturers possessing the necessary expertise in its handling and use. Traders in HF acid import only HF-60% because of lack of expertise.

F. CONTINUATION OF DUMPING.

17. Under Section 9A (1) (c) of the Customs Tariff Act 1975,

“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 to 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 transhipped 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.”

18. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). None of the exporters from China PR responded.

## F.1 Normal value determination for China PR

### F1.1 Views of the interested parties

a) **On absence of dumping by Chinese suppliers.**

19. The importers have claimed that the Chinese suppliers export only at fair and above normal value in India and sell at market determined prices as seen by the steady increase in the price of the imported HF acid. There was no dumping, but domestic producers raised their prices abnormally without proportionate increase in the cost of inputs. The only mechanism to protect the SSI from such a monopolistic and restrictive trade practice was to allow imports. The domestic industry has dismissed these contentions as baseless and unjustified, stating that there is sufficient legal mechanism within the country to address such concerns.

**b) On dumping margin**

20. The domestic industry has submitted that as no exporter from the subject country has responded to the Authority, they may be considered non-cooperative and the DA may record findings on facts available basis as per Rule 6(8). Further, that the exporters may be considered as operating under non-market economy (NME) conditions. However, the importers have claimed that the lack of exporter response demonstrate the disinterest of the Chinese exporters in dumping, in view of exports already being restricted by their own Government policy. They contend that identifying acid grade fluorspar as a key raw material, China had decided to cut down its export availability by about half from 2002 to 2010, effecting the restriction by introducing export licences for the raw material and the finished product, scrapping the 13% export subsidy from Dec 2006 and introducing 10% customs duty and export tax on fluorspar. End-user certificate certified by the Chamber of Commerce and endorsed by the Chinese Embassy have to be forwarded by the importers to the exporter to enable them to procure export licence. The appreciation of the RMB against the dollar has also increased the price of HF acid. Further, though China has a number of HF acid producers, only 2-3 companies export, since domestic consumption has increased and there was no surplus. This has resulted in a spurt in export price per MT to India from \$ 600-645 in 2004-05 to \$ 645-700 in Apr- Nov 06, \$ 730-790 in Dec 06-Apr 07 and \$ 950 – 990 in May-Oct. 07, being \$ 1067 in Nov 07. When China was discouraging HF exports, there was no need for levying AD duty. Besides, with China being a member of the WTA

Agreement for the past 2 years, prices were at par with international prices and indicated a market economy.

**c) On superior quality of imports**

21. One of the importers has claimed that though they were the first to set up HF manufacturing plant in South India, they were forced to suspend production due to competition from the petitioner and other large scale manufacturers. That they imported the product as the quality of the Chinese product was superior, with very low impurity levels, enabling maintenance of high quality in their finished goods. The domestic industry has refuted any difference in quality and has questioned the rationale of the lower price of Chinese imports if quality was superior.

22. The domestic industry has constructed the normal value based on the price of HF-100% prevailing in USA, which is reported to be the leading world producer of the subject product. As an alternative, the domestic industry has constructed the normal value based on its cost of production adjusted for selling, general and administrative expenses and reasonable profit.

**F.2 Examination by the Authority**

23. The Authority has taken note of the arguments and counter-arguments of the interested parties and the issues have been addressed in appropriate places in the findings.

Section 9A (5) of the CT Act provides that the Authority, in a sunset review, is required to examine whether the cessation of such duty is likely to lead to continuation

or recurrence of dumping and injury. Hence, the issues before the Authority are to examine whether, in the event of definitive duties being removed or allowed to expire:

- ❖ dumping is likely to continue or recur;
- ❖ injury to the domestic industry is likely to continue or recur.

These have been addressed in the ensuing paragraphs.

### **F.2.1 Normal Value & Export Price**

24. The Authority noted that no exporter from the subject country provided information or co-operated in the investigation to enable the determination of normal value and export price of the subject goods from the subject country. Therefore, the Authority has accorded non-market economy status to the non-co-operating exporters from the subject country and determined the dumping margin on the basis of facts available in terms of Rule 6 (8) of AD Rules read with Article 6.8 of the Agreement. The average exchange rate adopted for the purpose of this investigation for the POI was Rs 44.99 per \$.

#### **F.2.1.1 Normal value**

25. The Authority has constructed the normal value based on the cost of production, conversion costs and selling, general & administrative expenses of the domestic industry in India together with a reasonable margin of profit. The normal value so constructed is Rs. \*\*\* or \$ \*\*\* per MT.

#### **F.2.1.2 Export Price**

26. The Authority has taken the official price for calculation of dumping margin and price undercutting. A weighted average export price of the concentration-wise export price to India has been determined for the subject product. Adjustments like freight, insurance, commission and handling expenses have been conservatively allowed. The weighted average export price has been taken as Rs \*\*\* or \$ \*\*\* per MT and after adjustments, the ex-factory export price comes to Rs \*\*\* or \$ \*\*\* per MT.

**F.2.2 Dumping margin for China PR**

	Rs/MT	\$ /MT
CNV	***	***
Net EP	***	***
DM	***	***
DM%	21.22	

27. The dumping margin from China PR was found to be significant.

**G. INJURY AND CAUSAL LINK: CONTINUATION OF INJURY**

28. Rule 11 of Anti Dumping Rules reads as follows:

Determination of Injury:

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.....”

29. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products. Annexure-II (ii) of the Rules provides as under:-

(ii). “While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India With regard to the effect of the dumped imports on prices ...the designated authority shall consider whether there has been 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.

Annexure II to the Rules further provide that

“(iv). 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.”

## **G.1 Views of interested parties**

30. The importers claim that there is no injury to the domestic industry as imports constitute a very small percentage and was insignificant compared to the total production and domestic demand. That imports are mainly due to the inability of the domestic industry to supply the required quantity and quality and on time. The raw materials are being imported at 0% duty and any increase in costs has been compensated by the strengthening of the rupee-dollar rate. Further, as per the annual report of the petitioners, there is no adverse effect on any relevant parameter, despite the increase in the raw material costs. In addition, the domestic industry has raised prices by Rs. 10500 per MT of HF- 70% over a period of 3 months, illustrating a monopolistic, anti-competitive and anti-consumer mindset. The domestic industry, however, claims injury from imports.

## **G.2 Examination by the Authority**

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

32 For the purpose of injury analysis, the Authority has examined the volume and price effects of dumped imports on the subject goods on the domestic industry and its effect on the prices and profitability. To examine the existence of injury and causal links between dumping and injury, if any, since a positive dumping margin has been established for the exports from the subject countries, the entire exports has been

treated as dumped imports for the purpose of injury analysis and causal link examination.

#### A. Volume effect of dumped imports and impact on domestic industry

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#### Import statistics

33. Transaction-wise data from DGCI&S show that the subject product imports has been reported under customs classifications 28111100. Since the product description is only indicative, all imports of subject goods irrespective of their classification have been included for the purpose of determination of volume, value and average import price. Imports have primarily been of HF-70%, except in the POI, when HF-60% and HF-100% have been reported. Other concentrations have not been imported in any substantial quantity. Imports from China PR are mainly of HF-70%.

HF Acid Imports	2002-03	2003-04	2004-05	POI
<b>Total product imports</b>				
Qty (MT)	307	1035	427	1669
Value (Rs lakhs)	102.81	248.30	124.25	602.59
Price/MT	33446	23981	29099	36098
<b>Imports from subject country</b>				
Qty (MT)	Nil	564	417	1616
Value (Rs lakhs)	Nil	121.26	116.58	502.49
Price/MT		21495	27953	31095
Share in total imports	0	54%	98%	97%
<b>Imports from other countries</b>				

Qty (MT)	307	471	10	53
Value (Rs lakhs)	102.81	127.05	7.67	100.10
Price/MT	33446	26955	77149	187706

Source: DGCIS data

The import data reported by the petitioners are as seen below:

Qty (MT)	2002-03	2003-04	2004-05	POI
DGCI&S data	Nil	564	398	1026
IBIS data	324	949	1083	1514

34. The Authority noted that in 2002-03, DGCIS data reported nil imports from the subject country, but from 2003-04, the percentage was 54% of total product imports and in the later years, to 96-97%. The data on average rates in the case of imports from other countries appear, prima facie, to be unreliable. On the other hand, data culled from the World Trade Atlas show Chinese exports of HF reported by China Customs as below:

#### China - Total Exports of Hydrogen Fluoride

Country	Quantity in MT				Value of exports in Rs lakhs			
	2002-03	2003-04	2004-05	POI	2002-03	2003-04	2004-05	POI
Japan	5432	19952	40712	90815	1777.39	6199.65	11839.87	27551.44
India	324	594	523	1881	71.71	120.02	124.95	492.78
Singapore	574	879	2646	6309	180.80	268.73	756.26	1772.40
Korea, S	4144	5501	6987	22904	824.98	1004.94	1570.36	6204.20

Thailand	2735	2566	3400	3577	537.75	580.87	840.99	968.58
Turkey	448	754	1338	2906	100.28	172.05	322.34	727.29
Brazil	178	1392	1262	4143	40.73	261.41	277.57	1047.74
USA	342	1013	962	2905	63.44	234.46	207.75	728.90
Taiwan	11382	13977	12614	23773	1682.17	2363.76	2386.15	4956.14
Malaysia	1855	2359	2367	2490	302.46	370.45	449.81	528.63
World	29775	51588	75183	166270	6112.86	12121.43	19366.87	46177.68

Source of data: China Customs as reported in World Trade Atlas

35. The WTA data for the injury period shows that China exports the subject product to a number of countries, prominently, Japan with a share of 55% in total exports in the POI, Taiwan and South Korea (14%), followed distantly by Singapore, Brazil and India with shares of 4%, 2.5% and 1% respectively. As percentage of total Chinese exports, India's share is extremely insignificant. The value of exports to India is barely above 1% in the POI, mirroring the trend in quantity, with Japan claiming pride of place, followed by South Korea and Taiwan.

Country	Trends in quantity				Share in total exports (%)			
	2002-03	2003-04	2004-05	POI	2002-03	2003-04	2004-05	POI
Japan	100	367	750	1672	18.24	38.68	54.15	54.62
India	100	183	161	580	1.09	1.15	0.70	1.13
Singapore	100	153	461	1099	1.93	1.70	3.52	3.79
Korea, S	100	133	169	553	13.92	10.66	9.29	13.77
Thailand	100	94	124	131	9.19	4.97	4.52	2.15
Turkey	100	168	299	649	1.50	1.46	1.78	1.75
Brazil	100	784	710	2333	0.60	2.70	1.68	2.49
USA	100	297	282	851	1.15	1.96	1.28	1.75

Taiwan	100	123	111	209	38.23	27.09	16.78	14.30
Malaysia	100	127	128	134	6.23	4.57	3.15	1.50
World	100	173	253	558	100.00	100.00	100.00	100.00

Source of data: China Customs as reported in World Trade Atlas

36. Trend computation showed that exports to India rose almost three-fold from 161 in 2004-05 to 580 in the POI, but India's share in total exports ranged between 0.70- 1.15% during the injury period. Barring a few countries, the quantity of exports to others spurted in the POI.

Avg Price/ MT (Rs)					Trends in unit price			
Country	2002-03	2003-04	2004-05	POI	2002-03	2003-04	2004-05	POI
Japan	32723	31073	29082	30338	100	95	89	93
India	22110	20207	23911	26195	100	91	108	118
Singapore	31499	30590	28579	28091	100	97	91	89
Korea, S	19909	18270	22475	27088	100	92	113	136
Thailand	19661	22639	24736	27078	100	115	126	138
Turkey	22387	22825	24093	25031	100	102	108	112
Brazil	22932	18785	22000	25289	100	82	96	110
USA	18573	23140	21586	25089	100	125	116	135
Taiwan	14779	16912	18917	20848	100	114	128	141
Malaysia	16301	15704	19000	21229	100	96	117	130
World	20530	23497	25760	27773	100	114	125	135

Source of data: China Customs as reported in World Trade Atlas

37. The average price per MT of exports to India hovered between Rs. 20000-26000 during the injury period. Except in 2002-03, in all other years, the rate has been below the average world rates, though imports to USA, Taiwan and Malaysia have been at rates lower than the average Indian rate. Further, despite fluctuations, there is an underlying rising trend, albeit at a slow pace, which could have been construed as an attempt to capture a large chunk of the domestic market but for the miniscule quantity of exports vis-à-vis other countries. Compared to DGCI&S data, the average rate of Chinese imports as per WTA is lower, the variation being attributable partly to FOB versus CIF rates and partly to the time lag between order and delivery.

(in Rs per MT)

HF Acid Imports	2002-03	2003-04	2004-05	POI
DGCI&S (1)	Nil	21495	27953	31095
WTA (2)	22110	20207	23911	26195
Difference (1) - (2)		1288	4042	4900

38. In the following analysis, data from the World Trade Atlas is utilised to assess volume of imports and domestic demand. However, for computation of the landed price DGCI&S transaction-wise data is used, with the concentration-wise quantity of imports expressed in the anhydrous form.

a) **Import volumes**

39. With regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

40. For the calculation of the domestic consumption/demand of the subject goods, the Authority added the sales volume of the domestic industry to the total imports into India.

Parameter (in MT)	2002-03	2003-04	2004-05	POI <sup>1</sup>
Total Imports	632	1065	533	1290
Indexed	100	169	84	204
Imports from subject country	324	594	523	1254
Indexed	100	183	161	387
Imports from other countries	307	471	10	36
Indexed	100	153	3	12
Sales of Domestic industry	5707	4804	5309	6122
Indexed	100	84	93	107
Captive consumption	***	***	***	***
Indexed	100	105	100	118
Sales of other domestic producers	2200	2200	2200	2200
Domestic demand	***	***	***	***
Indexed	100	101	98	116
Domestic production	***	***	***	***

Note: <sup>1</sup>: Annualised on pro rata basis

Source: Domestic industry, DGCIS.

41. The Authority noted that domestic demand (indexed) grew by 116 over the injury period, compared to 107 in the domestic sales, 118 in captive consumption and 204 in total imports, while subject countries imports recorded a 4-fold rise over the same period. Total imports have fluctuated over the injury period and a similar

fluctuation of a smaller magnitude is observed in the subject country imports. Imports from other countries have sharply fallen off from 2004-05 leaving the field clear to imports from China PR. All along, domestic production has been less than domestic demand, a considerable part of which comes from the petitioners themselves. Inevitably, imports are needed to satisfy the unmet demand.

42. In their post-disclosure comments, the domestic industry have claimed that the inference that imports were necessitated due to its focus on captive consumption or inability to meet the merchant demand was factually incorrect, as demand was far lower than current capacity and with significant imports in the POI, production would be less than demand, so that what was relevant was the difference between domestic capacity and demand. The Authority has taken cognizance of this argument in the light of the increase in capacity by the domestic industry.

**b) Actual and potential effect on sales and market share of the domestic industry:**

% share in domestic demand	2002-03	2003-04	2004-05	POI <sup>1</sup>
a) Subject country imports	1.29	2.34	2.12	4.31
Indexed	100	181	164	333
b) other imports	1.22	1.86	0.04	0.12
Indexed	100	151	3	10
c) total imports	2.52	4.19	2.16	4.43
Indexed	100	167	86	176
d) domestic industry	22.74	18.91	21.57	21.03
Indexed	100	83	95	92
e) captive consumption	***	***	***	***

Indexed	100	103	102	102
f) other domestic producers	8.77	8.66	8.94	7.56
Indexed	100	99	102	86
Dumped imports/domestic production	***	***	***	***
Dumped imports/Total imports	51.34	55.76	98.13	97.24

Note: <sup>1</sup> : Annualised on pro rata basis

Source: Domestic industry, DGCI&S.

43.. The Authority noted that total subject product imports increased from 2.52% of total demand to 4.43% over the injury period, while subject country imports increased from 1.29% to 4.31%. In other words, while total imports rose from an indexed figure of 100 in the base year to 176 in the POI, subject country imports rose to 333. Imports from other countries are effectively negligible. The Authority observed that the share of imports from the subject country to the total product imports has almost doubled from 51% in the base year to 97% in the POI. The share of other domestic producers has remained constant over the injury period. In any case, these producers are said to be consuming the subject product captively and not offering any quantity for merchant sale. Even in the domestic industry, captive use has increased over the injury period from 66% in the base year to 67% in the POI, though a peak of 68% was achieved in 2003-04. The market share of the domestic industry fell from 22.7% in 2002-03 to 21% in the POI, after slumping to 19% in 2003-04. However, if captive consumption were also included in domestic industry sales, then the fall in its market share is merely 0.7% over the injury period, despite the share of imports increasing by 3%. As a percentage of domestic industry production, subject country imports increased from 1.41% in 2002-03 to 4.79% in the POI, in tandem with the market share.

44. In their post-disclosure comments, the domestic industry have claimed that the determining market share and the volume effect inclusive of captive consumption was highly misleading. Therefore, the market shares have been recalculated excluding captive consumption in the demand and the position is as shown below.

% share in domestic demand	2002-03	2003-04	2004-05	POI <sup>1</sup>
Demand in MT (excluding captive consumption)	***	***	***	***
Indexed	100	95	94	113
Subject country imports	3.80	7.36	6.50	13.05
Indexed	100	194	171	344
Other imports	3.60	5.84	0.12	0.37
Indexed	100	162	3	10
Domestic industry sales	66.84	59.54	66.02	63.69
Indexed	100	89	99	95
other domestic producers	25.77	27.26	27.36	22.89
Indexed	100	106	106	89
Dumped imports/Total imports	7.40	13.20	6.62	13.42
Indexed	100	178	90	181

45. Domestic demand exclusive of captive consumption depicts a fluctuating trend, increasing in the POI by a factor of 113 from the base year demand. Total imports as a percentage of demand has risen by 6% over the injury period, of which a 9% increase in subject country imports has partly offset the 3% decrease in imports from other countries. Sales of both the domestic industry and of the other domestic producers have fallen by 3% over the injury period, from 67% and 26% respectively in 2002-03 to 64% and 23% in the POI. However, it is observed that exclusion of captive consumption under-states the real demand for the product.

c) Actual and potential effects on capacity, output and capacity utilization of the domestic industry

46. The performance of the domestic industry has been examined with reference to its capacity, output, capacity utilization and impact of dumped imports on these parameters, if any.

Parameter	2002-03	2003-04	2004-05	POI <sup>1</sup>
Capacity	23955	26635	37670	37670
Indexed	100	111	157	157
Production	***	***	***	***
Indexed	100	100	98	114
Capacity Utilization (%)	***	***	***	***
Indexed	100	90	62	73
Domestic Demand (MT)	***	***	***	***
Indexed	100	101	98	116

Note: <sup>1</sup>: Annualised on pro rata basis

Source: Domestic industry.

The Authority noted that capacity was enhanced by the domestic industry twice during the injury period, as seen by the indexed figure increasing from 100 in the base year to 111 in 2003-04 and further to 157 in 2004-05. From 2003-04, capacity exceeded demand, which has increased only by 116 in the POI, compared to 2002-03. While the rise in capacity in 2003-04 was by de-bottlenecking the production plant, in 2004-05, it was through setting up of a new plant. Capacity utilisation fell consecutively to 87% in 2003-04 and 60% in 2004-05 due to the expansions and rose to 70% in the POI. The Authority noted the despite the increased capacity, domestic production remained below demand all along the injury period.

## B. Price effect of dumped imports

47. With regard to the effect of the dumped imports on prices, the 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.

48. For the purpose of this analysis, the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed price of imports from the subject countries to examine whether there has been significant price under-cutting or under-selling by the dumped imports compared with the price of the like product in India or whether such imports have depressed the prices or prevented price increases that otherwise would have occurred to a significant degree.

**a) Price under-cutting and under-selling**

49. Price under-cutting has been determined by comparing the landed value of dumped imports converted to the anhydrous form, with the weighted average ex-factory NSR of the domestic industry, where the rebates, discounts, commissions offered and the excise duties paid have been excluded. For price under-selling analysis, the landed value of dumped imports was compared with the NIP of the subject goods, determined by taking into account verified cost and SGA expenses of the industry, together with a reasonable profit margin.

Parameter (Rs. /MT)	2002-03	2003-04	2004-05	POI
Landed Price		37218	48399	47544
Indexed		100	130	128

Year to year change			11181	-856
Selling price	***	***	***	***
Indexed	100	112	111	123
Year to year change		5782	-404	5769
Net Sales Realization of Domestic industry	***	***	***	***
Indexed	100	112	112	124
Year to year change		5477	138	5680
Cost of sales	***	***	***	***
Indexed	100	111	123	131
Year to year change		4590	5152	3433
Price undercutting <sup>1</sup>		***	***	***
Price undercutting %		28.83	7.69	18.18
Non-Injurious Price				***
Price Underselling <sup>2</sup>				***
Price Underselling %				8.23

Note: <sup>1</sup>. NSR (-) landed value of imports. <sup>2</sup>. NIP (-) landed value

Source: Domestic industry, DGCIS.

50. The Authority noted that the indexed landed value of the subject country imports increased by 134 since 2003-04 and of NSR increased by 124 from 2002-03. The landed value was lower than the NSR and the cost of sales throughout the injury period. Computing the yearly changes, in 2004-05, the landed value is seen to increase by about Rs 11200 per MT compared to 2003-04, whereas the domestic selling price per MT decreased by Rs 400 and the NSR increased by about Rs 140 respectively, while cost of sales rose by Rs 5150 per MT. Despite the increase in the cost of sales in 2004-05 and in the POI, the selling price and NSR of the domestic industry increased substantially in the POI by about Rs 5700-5800 per MT, indicating that the industry

earned large profits in the POI. Price under-cutting decreased from 29% in 2003-04 to 8% in 2004-05 and rose to 18% in the POI. The NIP for the domestic industry has been determined at Rs \*\*\* per MT in the POI following the Supreme Court orders in CA No: 1294/ 2001 against a landed value of Rs 47544, so that price under-selling is about 8%.

51. In their post-disclosure comments, the domestic industry has stated that:

- a) the weighted average of the NIP should be determined on the basis of merchant sales only, not of gross production.
- b) the treatment of packing cost did not seem correct, as HF-100% should have been segregated for determining packing cost, since it has not been packed and ISO container charges have been disallowed.
- c) The NSR did not appear correct because of exclusion of ISO container charges paid from cost of production.

52. However, the Authority observed that:

(a) for determining weighted average NIP, export sales alone are reduced from total production to arrive at production available for domestic requirement;

(b) the unit cost of consumption of packing material claimed has been allowed, in line with the practice followed in the original investigation and the ISO container charges claimed have not been disallowed; © as ISO container charges were not disallowed for determining NIP, they have not been reduced from sales price to derive NSR.

**b) Price suppression and depression**

53. To examine the price suppression effect of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of sales. From the table, it is observed that though both cost of sales and

NSR of the subject goods increased in the POI, the trend in sales realization has been lower than that in the cost of sales. But while the cost of sales increased by a factor of 8 from 2004-05 to the POI, the selling price and the NSR increased by a factor of 12 between the respective periods. Hence, there is no price depression. Further, both the selling price and the NSR have been higher than the cost of sales, barring a marginal fall in NSR in 2004-05. Comparing the changes in cost of sales with that in the selling price of the domestic industry over the injury period, it is observed that the change in the cost of sales has been higher from 2004-05, partly due to the increases in the raw material costs and capacity under-utilisation resulting in higher costs spread over marginally lower level of production relative to 2003-04 and partly due to the absorption of the cost increase without passing them on to the consumers through higher selling price. Hence there is some price suppression.

### G.3 Examination of other injury factors

#### a) Actual and potential effects on profits

54. Profitability position of the domestic industry has been as under:

Parameter (in Rs. Lakhs)	2002-03	2003-04	2004-05	POI <sup>1</sup>
Cost of Sales of the DI	***	***	***	***
Sales realization of the DI	***	***	***	***
Profit/Loss on Domestic sales	***	***	***	***
Indexed	100	102	20	68
Profit/Loss (Rs./MT). <sup>2</sup>	***	***	***	***
Indexed	100	122	21	63
Interest	***	***	***	***

Indexed	100	84	97	89
PBIT	***	***	***	***
Indexed	100	100	30	71

Note: <sup>1</sup>: Annualised on pro rata basis

<sup>2</sup>: Sales Realization – Cost of Sales

Source: Domestic industry.

Though the cost of sales of the domestic industry was less than the sales realization all through, the level of profits fell in 2004-05 and has not regained the earlier level in the POI, as seen by the trend. Nonetheless, the recovery in the POI has been remarkable.

#### b) Actual and potential effects on employment and wages

55. Employment level of the domestic industry has been as under:

Parameter	2002-03	2003-04	2004-05	POI <sup>A</sup>
Employees (No.)	***	***	***	***
Wages (Rs. Lakhs)	***	***	***	***
Indexed	100	76	72	87

Note: <sup>1</sup>: Annualised on pro rata basis

Source: Domestic industry.

The Authority noted that employment levels for the production of the subject product have increased slightly, while wages have fallen over the injury period. However, these

parameters have not been considered as conclusive indicators of injury on account of the multi-product nature of the domestic industry.

**c) Actual and potential effects on productivity**

56. The Authority noted that per employee productivity and sales increased throughout the injury period, so that there is no injury reflected in these parameters. Nonetheless, because of the multi-product nature of the domestic industry, these parameters are not also being taken into account for injury analysis.

Parameter	2002-03	2003-04	2004-05	POA <sup>1</sup>
Productivity per Employee	***	***	***	***
Indexed	100	99	90	107
Sales per Employee (in Rs)	***	***	***	***
Indexed	100	93	94	124

Note: <sup>1</sup> : Annualised on pro rata basis

Source: Domestic industry.

**d) Actual and potential effects on cash flow, profits and return on investment**

57. As the domestic industry is multi product, examination of cash flow may not be appropriate for the injury purposes. The Authority therefore, has examined cash profit situation of the domestic industry, capital employed and return on investments.

Parameter (in Rs. Lakhs)	2002-03	2003-04	2004-05	POA
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PBT	***	***	***	***
Indexed	100	102	20	68
Depreciation	***	***	***	***
Cash profit	***	***	***	***
Indexed	100	101	27	75
PBIT	***	***	***	***
Indexed	100	100	30	71
Capital Employed.	***	***	***	***
Indexed	100	114	162	196
Return on capital employed (%)	***	***	***	***
Indexed	100	88	19	36

Note: <sup>1</sup> : Annualised on pro rata basis

Source: Domestic industry.

As already observed, PBT, PBIT and cash profit have been positive in all years. Although these three financial parameters were negatively affected in 2004-05, there has been a substantial improvement in the POI. Return on capital employed (% indexed) though positive, have declined in three years of the injury period, with a marked decline in 2004-05 on account of the fall in PBIT and the increase in capital employed, but increased by a factor of 16 in the POI compared to the previous year. However, all these parameters are lower in the POI relative to the base year, except for capital employed, which is almost double the base year level.

#### e) Inventories

58. Inventories position with the domestic industry has been as under:

Parameter (in MT)	2002-03	2003-04	2004-05	POI <sup>1</sup>
Average stock of inventory	***	***	***	***
Indexed	100	130	123	73
As % of sales	***	***	***	***

Note: <sup>1</sup> : Annualised on pro rata basis

Source: Domestic industry.

The Authority noted that average inventories have declined over the injury period, both in absolute terms and as percentage of sales. Hence, this parameter does not reflect injury.

#### f) Ability to raise capital

59. No evidence has been placed before the Authority to substantiate that the domestic industry has been facing problems with regards to the ability to raise capital.

#### g) Growth

60. The Authority notes that the growth in demand and the improvement in the performance of the domestic industry in terms of the physical parameters such as production and sales from the base year to the POI, albeit with some fluctuations, while the financial parameters have not performed as well.

#### h) Degree of dumping margin

61. The Authority notes that dumping margin from the subject country, as an indicator of injury, is found to be significant.

#### **G.4 Overall assessment**

62. The above analysis of the factors shows that despite the gradual rise in imports from the subject country, the domestic industry has more or less been able to maintain its share in the market and has recorded only a fall of 1.7% over the injury period computing demand inclusive of captive consumption and by 3% if captive consumption is excluded.. There is price undercutting of 18%, price underselling of 8% and price suppression but no price depression.

#### **G.5 Conclusions on injury**

63. The Authority noted that the volume effect of subject country imports has been significant in absolute and relative terms and the price effect has resulted in price under-cutting, price under-selling and price suppression.. However, the physical parameters of the domestic industry do not reflect considerable injury. Certain financial parameters which showed signs of injury in 2004-05 relative to the base year partly regained lost ground in the POI , though still below the base year's level.. Therefore, the Authority concludes that the domestic industry has suffered injury. from dumped imports.

### **H. CAUSAL LINK**

64. On issues of non-attribution, the mandatory factors have been examined as follows:

- ❖ **Contraction in Demand:** - Demand for the subject goods has increased during the injury period, although not consistently.
- ❖ **Pattern of consumption:** - Interested parties have stated that captive consumption by the domestic industry have been growing over the injury period resulting in reduced availability of the subject product for the market. This is

seen to be the case. The Authority observed that the focus of the constituents of the domestic industry differed between increasing domestic sales and increasing the production of value added products, so that the overall availability for the market has been affected.

- ❖ **Imports from other countries-** Total subject product imports originating in countries other than the subject country are effectively insignificant, being replaced by increasing imports from the subject country.
- ❖ **Conditions of competition:** - The goods are freely importable. Though there are four domestic producers of the product including the petitioners, the other two are not competing in the domestic market as they produce other value added goods. However, the two domestic industry constituents cater to the same domestic market.
- ❖ **Developments in technology:** - There are no developments in technology to be taken note of.
- ❖ **Exports of the domestic industry:** The position of exports show that while the quantity (indexed) rose from 100 to 127 in 2004-05, it fell to 97 in the POI.

Parameter	2002-03	2003-04	2004-05	POI
Exports-volume (MT)	***	***	***	***
Indexed	100	119	127	97
Exports- value (Rs lacs)	***	***	***	***
Indexed	100	122	140	112
Average rate (Rs/ MT)	***	***	***	***
Indexed	100	103	111	115

## H.2 Factors establishing causal link

65. Examination of the performance of the domestic industry over the injury period shows that the performance has been partly affected due to dumped imports from the subject country. Despite the substantial increase in the volume of dumped imports by 3% in the POI vis-à-vis 2002-03, the market share of the domestic industry has only declined by 1.7% over the injury period if demand inclusive of captive consumption is considered and by 3% if demand excluding captive consumption is computed.. The increase in demand has resulted from increased captive consumption by the petitioners. There is price under-cutting of 18% and price under-selling of 8% in the POI. Domestic sales have increased, as also capacity. Production has increased, but not

as much as the increase in capacity and therefore, capacity utilization had declined in the interim, and improved in the POI relative to the previous year. Resultantly, profits, cash flow and return on investment of the domestic industry deteriorated in 2004-05 and improved in the POI. Many of the financial parameters, which had slumped in 2004-05, recouped their position quite substantially in the POI. The decline in 2004-05 is, in part, attributable to the capacity under-utilisation resulting from increased capacity addition and partly to dumped imports.

#### I. MAGNITUDE OF INJURY AND INJURY MARGIN

66. The Authority has determined the NIP taking into account the cost of production and other associated costs of the domestic industry during the POI as per the principles laid down in the aforesaid judgment, which works out to Rs..51457 per MT. The injury margin from the subject country is as below:

#### Injury margin (Rs. / MT)

Per MT	Form	NIP	Landed value	Injury Margin	IM %
Rs per MT	Bulk	***	41563	***	9.42
	Packed	***	47544		8.23
\$ per MT	Bulk	***	932.82	***	9.42
	Packed	***	1056.76		8.23

#### J. LIKELIHOOD OF CONTINUATION OF DUMPING AND INJURY

67. Section 9A of the Act requires the Designated Authority, in an expiry review, to examine whether cessation of the duty would lead to continuation or recurrence of dumping and injury.

## J.1 Views of the interested parties

### **i) On export orientation of Chinese producers and excess production capacity**

68. The domestic industry state the major raw materials for production of HF acid are fluorspar and sulphur, both which are available in huge deposits in China and mined under State control. These minerals from China face anti dumping duties imposed on them by other countries. Chinese producers had capacities in excess of domestic demand and compete aggressively in domestic and export markets, being willing to sell the product at any price to capture markets. As the Indian market was huge and HF acid had fairly big and rapid increasing demand, revocation of duty would result in significant surge in dumped imports, which had continued and was growing, with imports in the current period at eight times that in the period of the original investigation. The importers deny this, stating that China PR considered fluorspar as a strategic material, with progressive annual increase in prices and concurrent restriction in export quantity. The petitioner has also imported fluorspar from other countries, but the quality of the Chinese product was internationally recognised as the best. Besides, existence of significant disposable capacity with Chinese producers was not true nor that China possessed huge deposits of sulphur..

### **ii) On continued dumping and its likelihood**

69. The domestic industry has claimed the volume of imports from China PR have increased since the period of the earlier investigation. The dumping margin established in the original investigation was 38%. Continued exports from China PR after imposition of duty clearly indicated that volumes would increase further if duties were revoked. Earlier, the Chinese producers were dumping HF acid of all concentrations except 70% but after imposition of duty they started exporting HF-70% at dumping prices to cater to the requirements of HF-70% market as well as other lower concentrations.

## J.2 Examination by the Authority

70. The Authority observed that in the current scenario, the volume of the imports from the subject countries recorded a very significant jump in the POI, crowding out

imports from other countries. Imports from China have mainly been of HF-70% concentration and those of lower concentrations were being imported from the European Union and USA. However, despite the significant increase in imports, the domestic industry has lost only 1.7% of its market share in the POI, if captive consumption is included in the computation of demand and 3% of demand excluding captive consumption. Domestic production was less than the demand, despite higher capacity and the bulk of the production has been used captively. As regards the effect of subject country imports on prices, there is price under-cutting, price under-selling and price suppression, but no price depression.

71. In assessing the likely scenario, data reported by China Customs in the World Trade Atlas show a clear spurt in exports of HF acid to various countries, including India and evidence of restriction in fluorspar exports. The position of exports of both is as shown below:

China - Total Exports of Hydrogen Fluoride (in MT)					
Country	2002-03	2003-04	2004-05	2005-06	2006-07
Japan	5432	19952	40712	58393	63391
India	324	594	523	1000	1914
Singapore	574	879	2646	3928	4969
Korea, S	4144	5501	6987	14505	16604
Taiwan	11382	13977	12614	15101	19436
World	29775	51588	75183	105117	122357
China - Total exports of Fluorspar – 25292200 (In MT)					
World	830364	813323	666080	689207	654209
USA	351781	374381	320896	415881	297339
Netherlands	72632	78963	55362	77881	125551

Japan	208318	201285	162146	107934	100914
Canada	37816	39323	54621	52927	48638
Italy	83498	56313	42354	13959	47775
India	36277	30078	18303	464	177

**Source of data: China Customs, WTA**

72. India in particular, has witnessed an extremely steep fall in fluorspar imports from China from 36,000 MT in 2002-03 to 177 MT in 2006-07, disassociated with any fall in demand. On the contrary, with demand for HF acid increasing, logically there would be an increase in fluorspar requirements. Fluorspar imports are from countries such as Kenya, Mexico, Mongolia, etc. But HF acid exports from China have more than tripled in the past two years, with the Chinese focus shifting to exports of value-added products rather than the basic raw material.

73. The Authority noted that raw material costs have increased relative to the base year for each key raw material. While the fluorspar rates could have increased due to imports from countries other than China, the sulphuric acid/oleum rate increases are linked to the rising petroleum prices and the possibility of these rates increasing is very likely, as the petroleum prices have continued to rise subsequent to the POI.

74. The Authority also noted that the reference price fixed in the original investigation was \$ 797.60 per MT of HF acid in its loose/ unpacked form and \$ 871.80 for the packed form. Considering the packed form of HF acid, the rupee benchmark price that prevailed over the injury period was lower than the landed value of the product imports from the subject country in 2004-05 and the POI, so that in effect, there was no duty in these years. Besides, as the bulk of product imports from China have been of HF-70%, no duty was payable, since HF-70% had been excluded from the ambit of duty in the original investigation, as imports of this concentration had been above the normal value computed.

## K. INDIAN INDUSTRY'S INTERESTS

75. The purpose of anti dumping duties in general is to eliminate injury to the domestic industry caused by the unfair trade practice of dumping so as to re-establish a situation of open and fair competition in the Indian market in the interests of the country. Though anti dumping duties might affect the price levels of the products manufactured using subject goods and thereby have some impact on their relative competitiveness, their imposition would not restrict imports from the subject countries in any way, and, therefore, would not affected the availability of the products to the consumers.

## L. CONCLUSIONS:

76. After examining the issues raised and based on the analysis of current dumping and injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

- i) The subject goods have entered from China PR at less than its normal value and the dumping margin of the subject goods imported is significant.
- ii) There is a likelihood of dumping to continue if the duties are revoked.
- iii) The domestic industry has suffered some injury at present due to the dumped imports; and there is a likelihood of intensified injury if duties are withdrawn.
- iv) Therefore, continued imposition of anti dumping duty is warranted against subject goods originating in or exported from China PR.

## M. RECOMMENDATIONS

77. Having conducted the review and concluded that there is a likelihood of continuance of dumping from the subject country and consequent injury to the domestic industry, the Authority is of the opinion that continuation of the measure is required against imports from the subject country. However, considering the current level of dumping from the subject countries and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, the Authority considers it necessary to recommend continued imposition of the anti-dumping duty on imports of subject goods from the subject country, in terms of Section 9A(5) of the Act, in the form and manner described hereunder.

78. Having regard to the lesser duty rule, the Authority recommends continued imposition of definitive anti-dumping duty equal to the margin of injury or dumping, which is lesser to remove the likelihood of injury to the domestic industry. The duty in the original investigation was imposed on reference price basis and the Authority considers it appropriate to re-impose it on reference price basis. Therefore, the Authority recommends continuation of definitive antidumping duty, on all imports of subject goods originating in or exported from China PR, as the difference between the landed value and the reference price as indicated in Col 9 of the table below, if the landed value at the time of importation is below the value indicated at Col.9. For this purpose, landed value of imports will be determined as the value of the goods as assessed by Customs plus applicable basic Customs duty.

S.No :	Sub-Heading/ Tariff Item	Description of Goods	Specifications	Country of Origin	Country of Export	Producer	Exporter	Reference price	Unit of Measurement	Currency
1	28111100	Hydrofluoric Acid	All concentrations (bulk)	China PR	Any	Any	Any	10.108 multiplied by % concentration	MT	USD
2	28111100	-do-	All concentrations (packed)	China PR	Any	Any	Any	132.94 + 10.108 multiplied by % concentration	MT	USD
3	28111100	-do-	All concentrations (bulk)	Any	China PR	Any	Any	10.108 multiplied by % concentration	MT	USD
4	28111100	-do-	All concentrations (packed)	Any	China PR	Any	Any	132.94 + 10.108 multiplied by % concentration	MT	USD

**N. FURTHER PROCEDURE:**

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

80. 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 to time. No request

for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

(R. Gopalan )  
Designated Authority.