

NO.15/1/2005-DGAD
Ministry of Commerce & Industry
(Department of Commerce)
Directorate General of Anti-Dumping & Allied Duties

Dated: February 3, 2006

Final Findings

Subject: Mid-term Anti-dumping review investigations in the matter relating to imports of Borax decahydrate from Turkey. : Final Findings

A BACKGROUND OF THE CASE

1. Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules), vide Notification No. 14/40/2002-DGAD dated 21st November 2003, the Designated Authority (hereinafter referred to as the Authority) notified its final findings recommending definitive anti-dumping duty on import of Borax decahydrate (hereinafter referred to as subject goods) originating in or exported from the Turkey and China PR. The definitive anti-dumping duty was imposed on the subject goods vide Customs Notification No. 2/2004-Customs dated 7.1.2004.
2. Whereas the Rules require the Authority to review, from time to time, the need for continued imposition of Anti-Dumping Duty and if it is satisfied, on the basis of positive information received by it that there is no justification for continued imposition of such duty, the Authority may recommend to the Central Government for its withdrawal. Notwithstanding, the above provision, 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 anti-dumping 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. In terms of the above provisions, the producer M/s ETI Maden Isletmelerie Genel Mudurlugu (hereinafter also referred to as ETI Maden) , Turkey and exporter M/s Borochemie International Pte Ltd, Singapore filed a request for a changed circumstances mid-term review of the anti-dumping duty in force.
3. The producer M/s ETI Maden, Turkey and exporter M/s Borochemie International Pte Ltd, Singapore listed the following grounds for changed circumstances review
 1. The CIF export price to India has increased and the landed value is higher than the reference price fixed.

2. The Customs duty on Borax decahydrate(BDH) has been reduced from 30% to 20%.
3. The normal value has come down significantly.

This change in circumstances was considered appropriate to initiate a review.

4. Having decided to review the final findings notified vide Notification No 14/40/2002-DGAD dated 21st November 2003, the Authority initiated the investigations in terms of the Rule 23, to review whether continued imposition of the duty on imports of Borax Decahydrate originating in or exported from the Turkey 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. PROCEDURE

5. The procedure described below has been followed with regard to this investigation:
 - i) After initiation of the review the Authority sent questionnaires, along with the initiation notification, to all known exporters/producers in the subject country, and domestic industry in India in accordance with the Rule 6(4), to elicit relevant information;
 - ii) The Embassy of the subject country in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.
 - iii) Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).
 - iv) Investigation was carried out for the period starting from 01.01.2004 to 31.12.2004 (POI). However, injury examination was conducted for a period from 2000-01 to the end of POI.
 - v) 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 investigations;. However, the DGCI&S report has not been relied upon in this investigations as they were understated in terms of quantities imported from the subject country and further, it was seen that many imports effected from ICD's (for example ICD Ferozabad) were not taken into account by DGCI&S.

- vi) No response to the initiation notification was received from any other exporter except M/s Borochemie international, and M/s ETI, Maden, Ankara.
- vii) No other exporter from Turkey has submitted any response, in any manner, to the initiation notification.

VIII) M/s Borax Morarji, the domestic producer of the subject goods and the applicant in the original investigation submitted its responses opposing the review. However, M/s. Raj Industries, Valsad, Gujarat, who are also the manufacturers of borax and allied chemicals have submitted that imports from Turkey do not cause any injury to their production and sale of borax decahydrate. They have further added that they would have no objection if antidumping duty is removed on imports of borax decahydrate into India from Turkey. Another domestic industry M/s. Shakti Borax Pvt. Ltd have submitted that imports from Turkey are not a threat to their operations and they have requested the Authority not to impose any antidumping duty on imports of Borax Decahydrate into India from Turkey.

- ix) The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- x) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xi) The Authority examined the information furnished by the domestic industry to the extent possible examine the injury suffered by them.
- xii) The Authority also verified the data of the cooperating exporter and applicant for the subject review, to determine the normal value and dumping margin as per the Rules. The Authority also examined the import information and resale price of some of the importers of the subject goods from Turkey. Following verification, a copy of the verification report was sent to the exporters for their comments and the comments received have been incorporated in the final findings. A copy of the Non-confidential verification report was also placed in the public file for the information of all other interested parties.
- xiii) The Authority held a public hearing on 16th August 2005 to hear the interested parties orally, which was attended by representatives of the domestic industry, exporters of the subject goods from the subject countries. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding to the extent these have been considered relevant to the investigation.

In accordance with Rule 16 of The Rule supra, the essential facts/ basis considered for these findings were disclosed to known interested parties on 24th November 2005 and comments received on the same are duly considered in Final Findings.

xiv) **** In the Notification represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND 'LIKE ARTICLE'

6. The product involved in the original investigation and the current review is Borax Decahydrate (BDH) falling under heading No.284019 in Chapter 28 of the First Schedule to the said Customs Tariff Act and ITC HS classification. This classification, however, is indicative only and, in no way, binding on the scope of the present investigation. There are no arguments on the product under consideration. As regards like article, it is noted that there is no significant difference in Borax Decahydrate produced by the domestic industry and those imported from and sold in the subject countries. Borax Decahydrate produced by the domestic industry and imported from subject countries are comparable in terms of physical characteristics, functions and uses, specifications, distribution and marketing, pricing and tariff classification of goods. The consumer can use and are using Borax Decahydrate imported from the subject countries and Borax Decahydrate produced by the domestic industry interchangeably. Thus, borax decahydrate produced by the domestic industry are considered as domestic like product to those imported from Turkey.

D. Initiation of the Review, arguments raised by various interested parties and Examination by the Authority

7. The domestic industry has drawn the attention of the Authority towards the fact that there are insufficient grounds for review brought out by the petitioner in this case. In this regards, they have submitted that there are three tests, which are required to be considered by the Designated Authority in the case of midterm review under rule 23. These tests are identification of specific factors which would constitute sufficiently changed circumstances to warrant a review, the dumping or injury would be unlikely to continue or reckon if the measures were removed or changed and whether because of existing measures, the domestic industry has been able to offset injury and counteract dumping which was causing injury or the duty is no longer sufficient to counteract dumping which is causing injury. In the present case, the domestic industry has submitted that the alleged circumstances do not constitute changed circumstances warranting midterm review and the application filed by M/s. ETI Holdings and exporter Borochemie International lacks positive evidence demonstrating changed circumstances warranting a midterm review. The domestic industry has also submitted that higher landed value of subject goods from subject country does not imply the

absence of dumping or injury to the domestic industry. It has also been submitted by domestic industry that there is a possibility of compensatory arrangement between exporter and importer. The domestic industry has also submitted that the exporter is required to establish no likelihood of dumping with the revocation of antidumping duties. They have further added that onus of establishing the need for withdrawal is on the petitioner. With regard to the dumping of the subject goods the domestic industry has requested the Authority to investigate the claims of the exporter with regard to cost of production and whether the same reasonably reflects the cost associated with the production and sale of the product under consideration. The domestic industry has also requested the Authority to verify the adjustments on account of its own expenses and profits. With regard to likelihood of dumping the domestic industry has submitted that the selling prices in the Indian market have not improved despite increase in the export price or the landed value of imports and therefore, these landed prices of imports could at best be temporary and artificial. They have also submitted that a number of producers of the product under consideration in India have suspended production in the last few years. Thus, the market for foreign producers has increased and is likely to be attractive to the petitioner. With regard to the injury to the domestic industry the domestic industry has provided information in the form and manner prescribed. In particular, the domestic industry has submitted that imports have increased not only in absolute terms but also in relation to production and consumption of subject goods in India and the market share of imports from subject country in total imports as well as in total demand has increased. It has also been added by the domestic industry that sales, production and capacity utilization of the domestic industry has declined and the domestic industry is holding substantial inventories of the subject goods. The domestic industry has also submitted that the decline in the productivity, positive price undercutting and sub optimal return on capital employed have affected the domestic industry in such a way that it continues to make financial losses despite the imposition of antidumping duty. It has also been submitted that such injury would only intensify should the present antidumping duties be withdrawn at this premature stage. At the end the domestic industry has submitted that the Designated Authority should restrict the scope of review only to dumping aspect through corrigendum.

8. The petitioners to this Midterm Review, namely, M/s. ETI Maden, Turkey and M/s. Borochemie International Pte. Ltd dispute the claims of the domestic industry with regard to wrong initiation. They maintain that the three changed circumstances brought out by them in their review application aptly demonstrated the need for midterm review. They have also submitted that positive information was supplied by them to the Authority for initiating the midterm review. It has also been submitted by them that one year period has already lapsed in this case after the imposition of antidumping duty and one year time frame could be considered as a reasonable period of time. They have also maintained that they took part in the original investigations as an exporter and producer of subject goods in the subject country and they are thus, an interested party under the

Antidumping Agreement. With regard to the prices of subject goods in Turkey and exports to India they requested the Authority to examine the detailed transactions in the home market and exports of subject goods to India. The "Petitioners" further pointed out that the producer in Turkey is ETI Maden (formerly known as ETI Holding). ETI Maden has a number of factories, and one such factory at Bandirama is engaged in the manufacture of BDH. Thus, the producer and the exporter in Turkey is only one legal entity ETI Maden and the goods has been shipped directly from Turkey to India. However, the final invoice on the importer in India is raised by Borochemie International Pte, Singapore (Borochemie), to whom the goods had been sold by ETI Maden. As in the original investigation, both ETI Maden and Borochemie International have submitted confidential and non-confidential versions of their questionnaire response. The Authority was requested to depute a team of officers to verify the information and decide the case accordingly. The petitioners also agreed for verification of the entire cost data pertaining to the cost of production of subject goods in Turkey. The petitioners have strongly disputed the claim of domestic industry with regard to compensatory price arrangement with the Indian importers and had offered for verification of any resale price of the importers in India should the Designated Authority decide to verify the same. Incidentally, the petitioners have not made any claims with regard to injury to the domestic industry.

9. The Authority has carefully examined various submissions made by the interested parties in connection with the initiation of this review investigation.

10. Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall, from time to time, review the need for continued imposition of anti dumping duty and if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal.

11. Article 11.2 of the Agreement provides that the Authority shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the 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. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately. The Authority holds that it has been its consistent practice to commence a review at the substantiated request of an interested party only after a lapse of one year from the date of imposition of Anti dumping duty and this requirement has been notified by a trade notice 1/99. In this instance case, the review has been accordingly initiated 13 months after the date of imposition of anti dumping duty.

12. The domestic industry has argued that under Article 11.2 of ADA read with Rule 23 of Indian Antidumping Rules, substantiation of grounds of review are mandatory and the applicant has failed to do so. Therefore, the initiation of the review is flawed. The Authority notes the "Petitioners" had submitted positive information, *inter alia* that the domestic price has come down subsequent to the imposition of the final anti- dumping duty. It was also added that in comparison with the domestic selling price (normal value) of BDH in Turkey, in the original investigation, there is a significant reduction in the domestic selling price, ranging from about 15% to 20%. Invoices in support of the current domestic prices were also submitted along with request for initiation. It was further submitted that in the original investigation a variable anti- dumping duty based on a reference price was imposed. This reference price was at the landed level and hence included customs duty at 30% as applicable during the original period of investigation. Subsequent to the imposition of the anti- dumping duty, the customs duty on BDH has been reduced from 30% to 20%. Therefore, it was submitted by the petitioners that even if everything else remains the same, the reference price should come down corresponding to the decrease in the customs duty warranting a review to refix the reference price. The above submissions have been considered as positive evidence by the Authority for initiating a mid term review.

13. Based on the non-confidential version of the response, a submission was made by the domestic industry that the claim of the "Petitioners" that there was a reduction in normal value was not true. It was pointed out that as per Appendix 2A the average price for the domestic market was indexed at 0.88 in 2002 and 2003, whereas it had come down only to 0.86 in 2004. In this connection, it may be pointed out that the average rate shown for the years 2002 and 2003 is based on the average exchange rate that prevailed during the said years. However, in the original investigation, the Authority has taken the view that since there was significant fluctuation in the exchange rate, each transaction in the domestic market should be converted into US \$ at the exchange rate applicable on the date of the transaction. Incidentally, during the verification, it was noted that all the domestic sales invoices of the subject goods had also carried the amount in US \$ based on the exchange on the particular day of the sale. On this basis, the normal value was determined, which resulted in dumping margin of 12.44%. The Authority notes that the petitioners had adopted similar methodology in making its claim that the domestic price for the period of review is significantly lower than the domestic price which was prevalent (as determined by the Authority) during the period of original investigation. Hence the Authority notes that the claim has been rightly made by them in their request for a review. On the basis of above, the Authority concludes that the midterm review of antidumping duty imposed on Borax decahydrate from Turkey has been correctly initiated.

E. DUMPING DETERMINATION

NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

14. 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 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 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.

15. The producer in Turkey is ETI Maden (formerly known as ETI Holding). ETI Maden has a number of factories, and one such factory at Bandirama is engaged in the manufacture of BDH. It has also been noted that the producer and the exporter in Turkey is only one legal entity and the subject goods have been shipped directly from Turkey to India. However, the final invoice on the importer in India is raised by Borochemie International Pte, Singapore, to whom the goods had been sold by ETI Maden. Thus, in the present investigations, M/s ETI Maden (name changed after the original investigations where it was ETI Holdings, A.S.) exported borax decahydrate to India during the POI and previous two years through their agent M/s. Borochemie International Pte. Limited, Singapore. M/s. ETI Maden has submitted that it manufactures the subject goods and sells in the domestic market thorough its depots throughout the country. However, it does not export the product directly as it exports to India through M/s. Borochemie International Pte. Limited, Singapore. Both the producers as well as the exporter have submitted response to the exporter's questionnaire. In order to establish normal value for only exporter/producer M/s. ETI Maden in Turkey, it was first

determined that whether the total domestic sales of the subject goods by the producer M/s. ETI Maden was representative when compared to their total sales of the subject goods concerned sold in the exporting country and whether their sales are under ordinary course of trade in terms of Rule 2 of the annexure I to the anti dumping rules. The Authority notes that the domestic sales of the M/s. ETI Maden were representative sales. For the determination of the ordinary course of trade test, the cost of production of the product concerned was examined with reference to the records maintained by the producer and verification done by the Authority. It was noted that Tincal Concentrate, which is the raw material for the manufacture of BDH, is mined and extracted at Kirka. Kirka also produces Borax Penta Hydrate (BPH). No other works of ETI Maden is involved in the extraction of Tincal or Tincal Concentrate. It was also verified that the Tincal Concentrate extracted at Kirka is being used captively for the manufacture of BPH and is also transferred to Bandirma Boron Works for use in the manufacture of BPH and Borax decahydrate (BDH). It is recalled that there has been arguments from the domestic industry that the Authority must verify the cost of the production of the major input. It was also alleged by the domestic industry that same input was being sold in their domestic market or exported at a much higher price than what is being reflected in their cost of production of subject goods. The Team verified the cost of production of Tincal Concentrate. The Authority has verified the cost of production of the M/s. ETI Maden and after physical on-site verification has determined that raw material tincal is not being supplied by any affiliate but produced by the same company who is selling the goods in the domestic market. The Authority has also verified that only a minuscule percentage of the tincal concentrate is sold in the domestic market and that too to customers like universities and for research and development purposes. The rest of the tincal has been used in their plant for the production of other boron products. The Authority, after verifying the records holds that 'tincal' produced and captively consumed in the manufacture of borax decahydrate has been valued at actual cost of production. Thereafter, the Authority verified the actual cost of the production of the subject goods by taking into account the cost of the tincal, the major raw material and its freight cost to the plant at Bandirama. The Authority, thereafter, verified the domestic sales quantity of subject goods and their prices during the POI. Further, all domestic sales transactions were examined with reference to the cost of production of the subject goods as verified earlier to determine whether the domestic sales were in the ordinary course of trade or not. After examination, It was noted that the weighted average sales price of the product concerned is higher than cost of production of subject goods. Thereafter, the Authority also carried out 80:20 tests to determine whether less than or 20% of the total sales have been made below costs in terms of volume. In this case, it was found that more than 20% of the total sales made in the domestic market have been made below costs. Thus only the profitable transactions have been taken into consideration for the determination of normal value for the cooperating exporter. It was further noted that M/s. ETI Maden has sold **** MT of the subject goods for a price of US\$ **** and the weighted average, normal value during the period of investigation comes to US \$ **** per MT. The sales price at the ex factory level for the domestic sales has been

established after making adjustments towards the handling charges and inland freight as indicated by M/s. ETI Maden and verified by the Authority. The weighted average normal value for ETI Maden at the ex-factory level comes to US **** per MT. The Confidential copy of calculations of normal value and export price is enclosed as Annexure attached.

16. Following the disclosure statement, the domestic industry submitted that it is greatly concerned with the proposed determination holding that dumping margin in respect of ETI is (—)0.01%. They requested the Authority to re-examine the dumping margin determinations. Following the response, the Authority has re-examined the dumping margin calculations and maintains that its determination for the normal value, export price and dumping margin were correctly determined. However, the percentage-dumping margin is shown in the disclosure statement as (-) 0.01% whereas it should have been only (-) 1.38%. There is thus no change in the normal value, export price and dumping margin. The Authority has also correctly determined the cost of production. With regards to determination of export price, the domestic industry has submitted that it is not clear whether or not Borochemie price to India has been taken as the starting export price. It is again reiterated that the Authority has considered the export price to India as the starting point. With regards to the adjustments in the export price, the domestic industry With regards to the non receipt of the verification report following the verification visit at the premises of the exporters in Turkey, it is reiterated that a non confidential copy of the verification report had been placed in the public file for all interested parties and the domestic industry did not any stage ask for the inspection of the public file. In response to a letter dated 27th December 2005 and received on 3rd January 2006, the Authority had conveyed to the domestic industry with regard to availability of non-confidential version of verification report in the public file and had asked the domestic industry to inspect the public file if it wanted the same. Since then, the domestic industry has collected a copy of verification report. With regard to a specific query of the domestic industry as to whether the export price had been reduced for discounts, transport, insurance, handling, loading and other expenditures, it is stated that ocean freight, marine insurance, the margin of Borochemie International Singapore, inland freight in Turkey, port handling and port charges, have been reduced from the export price to arrive at the price at the ex-factory level. The margin of Borochemie in India is not applicable in this case as they are not responsible for selling the subject goods in India. The credit cost has not been taken into account in this case as transactions are on CAD and DP at sight basis. The bank charges have been covered as part of the SGA expenses of M/s. Borochemie International. With regard to the margin of Borochemie, Singapore and reduction of SGA and profits of exporters/traders from the export price, it is noted that the Turkish producer invoices the subject goods to M/s. Borochemie International, Singapore. M/s. Borochemie International, Singapore, sells the subject goods to unrelated Indian importers directly. Therefore, the Authority has taken the final export price to India as reflected in the invoices raised by M/s. Borochemie International, Singapore on the Indian customer. From the said price, the Authority has deducted selling expenses like on ocean freight and marine

insurance. The Authority has further deducted ****% towards SGA expenses of M/s. Borochemie International, Singapore based on the accounts of Borochemie Singapore. During the verification, it was found that M/s. Borochemie International has earned a profit of **** on the sale of subject goods. Therefore, the Authority has deducted ****% towards profit margin of Borochemie Singapore to arrive at the net export realization of Borochemie Singapore. This net export realisation corresponds to the FOB price charged by the Turkish producer. Therefore, the Authority has taken the FOB price of Turkish producer and deducted inland freight and handling charges of the producer to arrive at the ex-factory export price. Therefore, it is noted that all the required adjustments have been made from the final export price applicable to and an unrelated Indian customer for the purpose of determining the ex-factory export price.

16. With regard to the submissions of the domestic industry that Borochemie India is also involved in trading of the goods, as an affiliate of Borochemie, Singapore and Borochemie India is acting as an agent for Borochemie Singapore and providing all kinds of sales service of Borochemie Singapore, the Authority has examined the documents submitted by the domestic industry. From the records and documents, it is noted that M/s. Borochemie India is a private limited company incorporated in India and it is a subsidiary of M/s. Borochemie International, Singapore from the year 2003. The primary business of Borochemie India is manufacture of Boric Acid powder with their own manufacturing unit in India. With regard to the query of the domestic industry, with regard to the trading of the goods, it has been submitted that during the year 2004 (i.e. period of investigation), Borochemie, India has purchased 1 MT of Borax Decahydrate from the domestic market in India (from M/s. Saral Chem, Mumbai) and re-sold the same to their customers in India. From 'Schedule L - Notes forming part of accounts' - Sl. No. 13 of the 6th Annual Report for the year 2004 of Borochemie, , it is seen that that during the year 2004, Borochemie, India has purchased 1 MT of Borax Decahydrate valued at Rs. 27,404 and has sold the same in the Indian market valued at Rs. 30,000/-. Apart from this one transaction of Borochemie India did not appear to have dealt with the product concerned, i.e. Borax Decahydrate during the period of investigation. Similarly, during 2003-04, Borochemie India locally purchased 2,850 Kgs [2.85 tons and sold it to their customers. It has also been submitted that during 2002-03, one of the customers of Borochemie International Singapore had placed an order for import of one container (21 Ton) of subject goods . When the consignment was on the way, the customer backed out. It was not possible to find an alternate customer immediately. Therefore, as a special case, Borochemie India took delivery of the goods after transferring the Bill of Lading in their favour on 2nd August 2002. Incidentally, this was prior to the initiation of the original anti-dumping investigation,. After taking delivery of the goods, Borochemie India gave 18 Tons to United Chemical, Firozabad as a consignment agent who in turn sold them in the market. The balance 3 tons was sold in Mumbai during 2002-03.

17. Apart from these one off transactions, it is noted that Borochemie India is not concerned with the subject goods.

18. With regard to the deductions of handling expenses from the export price and the domestic price, it is noted that the handling expenses is included in the inland freight which has been deducted from the export price. With regard to exchange rate taken into account by the Authority in the determination of dumping margin, it is stated that the actual exchange rate that was prevailing in Turkey on the dates of transaction have been adopted in the determination. With regard to the query of the domestic industry as to whether there is no export sales of tincal, it is noted that a minuscule percentage of Tincal concentrate is sold in the domestic market in Turkey to customers like Universities (for research and development purposes) and the rest of the Tincal has been used in their plant for the production of other Boron products. Accordingly, the Authority has held that tincal mixed and captively consumed in the manufacture of Borax Decahydrate has been valued at actual cost of production. From the above, it is noted that there are no export sales of Tincal.

19. With regard to the cost of production of tincal and its elements, it is noted that the cost of production of tincal has been taken on actual basis and the Authority has verified the same.

20. With regard to query of domestic industry regarding allocation and apportionment statement and cost of production statement, it is stated that ETI has not deducted from its cost of production any amount towards miscellaneous income. Appendix 7 and appendix 8 referred to by the domestic industry does not show any deduction from the cost of production.

21. With regard to allocation of direct labour, indirect labour and Arasafha amongst the total production, subject goods production and production of other goods, it is stated that ratio of their allocation between BDH and other products would vary significantly because, they are not comparable and they have not been allocated on the same basis. It is further noted that the direct labour is not allocated and it is based on actuals for the subject goods and for other products. The indirect expenses relate to auxiliary production units. The auxiliary units allocate their expenses directly to various main production units on the basis of the services or products received by the concerned main production unit. Therefore, basis of allocation used by the auxiliary production unit is termed as 'direct' in the costing system followed by the Turkish producer. The same has been indicated in Appendix 7. However, the costs incurred at the auxiliary production units represent 'indirect costs' that have been allocated to the main production unit. Thirdly, Ara Safha represents the cost of production of Tincal plus transportation expenses from the mines to the factory. This is allocated to

subject goods and other products based on actual consumption. This ratio would not be the same as that of direct or indirect labour.

22. With regard to the financial expenses of the company, it is stated that financial expenses had been claimed on actual basis. With regard to the apportionment of SGA and interest between Subject goods and others, it is stated that SGA and interest expenses have been allocated on the basis of turnover. However, while submitting the questionnaire response, the turnover percentage had been incorrectly applied. Therefore, a revised Appendix-7 and 8 indicating the correct allocation was handed over at the time of verification visit and the same was got verified.

23. With regards to transaction wise data for export to other countries, it is noted that when the normal value is being calculated on the basis of domestic selling prices, there is no need to collect transaction-wise details of export prices to third countries. In any case, Appendix-2A and Appendix-3 give quantities and values of exports to third countries. This information is considered sufficient to determine whether the Indian export prices are in the same range as that of the export prices to other countries. .

EXPORT PRICE

24. The export price for M/s. ETI Maden through exporter M/s Borochemie international has been established on the basis of the prices actually paid or payable for the product when sold to India. The Authority notes that **** MTs of the subject goods have been exported to India during the POI for US \$ ****. The exporter has made adjustments towards discounts, transport, insurance, handling, loading and other expenditures to arrive at ex-factory export price. The weighted net export price at ex -factory level comes to US \$ ****/MT.

DUMPING MARGIN:

25. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The dumping margin has been established on the basis of a comparison of weighted average normal value with weighted average export price. The dumping margin for exports of the subject goods from ETI Maden is assessed as Negative by the Authority for the cooperating exporter.

Other Exporters from Turkey

26. There are no other producers of the subject goods from Turkey and all the subject goods have been exported by their exporter M/s Borochemie international. In view of the fact that the Authority has examined 100% of the exports from the subject country and also the fact that there are no other producers from that country and no other exporter has exported the subject goods from Turkey during the POI, it is considered appropriate to base the residual dumping margin on the margin of dumping as calculated for the

cooperating exporter in the original investigations. Thus, the dumping margin in case of Non-co-operative/other exporters of Borax Decahydrate from Turkey is assessed as Negative.

27. The exporter agrees with the calculation done by the designated Authority and the findings that the dumping margin is negative. They have also concurred with the decision of the Authority with regard to the negative finding in relation to compensatory arrangement between the exporter and importer. Lastly, the exporter has submitted that provision of determination with regard to recurrence of dumping has been provided only in article 11.3 of the WTO Agreement, which deals with the Sunset Review. The exporter has also added that a specific provision requiring the authorities to examine the issue of likelihood of continuance of recurrence of dumping and injury is conspicuously absent in article 11.2. The exporter has requested the Authority to terminate the investigation due to the determination of negative dumping margin.

Dumping margin determination for Turkey

producer/exporter-	Normal value	Export Price	Dumping Margin	Dumping Margin%
ETI Holdings, Turkey and M/s Borochemie International	****	****	(****)	-.1%(Negative)
Other producers in Turkey	****	****	(****)	-.1%(Negative)

Examination of the other claims of the domestic industry with regards to the compensatory arrangement between exporter and importer

28. With regard to the claim made by domestic industry that there may be compensatory arrangement between the exporter of the subject goods to India and various importers, the Authority sought information from two biggest importers of subject goods in India who have imported borax decahydrate from the exporters M/s. Borochemie International. After examining the appendix 2 of the exporter's questionnaire, the Authority asked the two importers i.e. M/s. Bhansali Chemicals, Chennai and M/s. United Chemical Industries, Ferozabad, India. The two importers were requested to provide the information to the Authority in terms of the quantities and values of the subject goods imported by them and the quantities and values of the subject goods sold by them to the independent customer or user. Both the importers were also asked to submit Balance Sheets and Profit & Loss accounts in so far as it concerns the subject goods. During the verification, the Authority examined the import invoices as provided to them by M/s. Borochemie International and the sale invoices

with respect to the independent customers to whom they had sold the subject goods during the period of investigation. After examining all records, it was found that both the importers had sold the subject goods during the period of investigation at prices which were consistently higher than the prices at which the goods have been imported after taking into account the element of various expenses including *inter alia* the customs duty, the central excise duty, freight and other charges. On the basis of above the Authority concludes that no compensatory arrangement existed between the exporter and importer with regard to sale of subject goods from Turkey to various importers in India.

Lasting nature of the changed circumstances and likelihood of dumping

29. The producer and exporter has quoted the article 11.2 of the agreement on antidumping and rule 23 of the antidumping rules saying that the midterm review has been rightly initiated as they had submitted positive information substantiating the need for review thought they maintain that such a requirement is not contemplated by rule 23.

30. In accordance with the practices of the Authority, it was examined whether changed circumstances could be said to be of lasting nature or if there would chances of recurrence of dumping if the anti dumping duty is withdrawn. It was found after examination of the records that petitioners had significant exports of subject goods to countries other than India during the last three years as well as during the POI. In this context, it may be mentioned that exports to countries other than India and to India had significantly gone up during POI and two years prior to that. During the POI, it was seen that exports of the subject goods declined after reaching a high in August while exports to countries other than India remained very high through out the POI.

31. It was also found that sales in the domestic market remained very high throughout the POI and two years prior to that. In fact, domestic sales increased marginally during the second half of the POI.

32. From an examination of the records of the producers and exporters, it was considered reasonable to assume that domestic demand for the subject goods in the domestic market of the exporting country would be increasing in the foreseeable future. Though the exports of the subject goods to India have increased from the original investigations, so has been the increase in case of exports to other countries and in the domestic market of the exporting country. In fact, the exports to other countries continue to grow and is more than 6 times of the exports to India. Further, the spare production capacity of the producer in Turkey has declined since the original investigations and there is less freely disposable capacity of the exporter indicating the unlikelihood of substantially increased dumped imports to the importing members market, taking into account the availability of the other export market to absorb additional exports.

33. The Authority has also verified the domestic sales price after the POI in Turkey to determine whether the reduction in the normal value after the original investigations is of a lasting nature and whether there is a likelihood of the return to the higher prices of the subject goods as observed during original investigations. The Authority after examination of some of the invoices after the POI notes that sales have been made at similar price ranges as was noted in the POI of the mid term review.

34. With regards to the prices of the imports into India and prices of imports to other countries, it is noted that exporter has increased its price to India substantially since the original investigation period though the contracted price of the exporter with the producer remains the largely the same. It was then decided to verify whether the export prices charged by the exporter is of lasting nature or if there is any absorption of anti dumping duty by increasing the prices to India. In this regard, the Authority has verified the resale price of the two largest importers of the subject goods by M/s Borochemie international and after on the site verification and examination of records, it was noted that the resale price of the subject goods to the independent customers have been consistently higher than landed price of the subject goods after taking into account the element of landing charges and all duties.

35. Following the disclosure statement, the domestic industry has commented upon the lasting nature of the changed circumstances and likelihood of dumping. The US and EU practices referred to by the domestic industry may not be strictly applicable to the facts and circumstances of the present case. Section 751 (C) referred to by the domestic industry relates to sunset review and hence may not be entirely relevant. However, the basic objective is to examine whether the exporter has artificially hiked up the export prices so as to get a good result in a review with a likelihood of reducing the prices after completion of the review. In this regard, normally, two indices may be examined. One is the export price to third countries and the other is the resale price of the imported goods by the Indian importer in India.

36. A comparison of the export prices to other third countries with the export price to India indicates whether the two sets of prices are in the same range. If the export prices to India are significantly higher than the export prices to other countries, probably, it may be an indication that the export prices to India may fall down to the price levels prevailing for other countries. A perusal of Appendix-2A clearly shows that the export price to third countries other than India is Rs. 1.04 as against the export price to India of Rs. 0.87. The quantity sold and prices for exports to India and other countries are tabulated below:-

<u>Particulars</u>	<u>Quantity</u>	<u>Unit Price [indexed numbers]</u>
Export to India	11.76	0.87
Export to other countries	77.18	1.04

37. Thus, it may be seen that quantity of exports to other countries was almost 7 times more than the exports to India. Export price to other countries(charged by the producer M/s ETI) was also higher than the export price to India by about 19%. Under these circumstances, the Indian export prices may not be held to be higher which may fall down further. Thus, based on the third country export prices, there may not be enough basis to discard the export price to India or to make any downward adjustment.

38. Secondly, the Authority has actually gone and verified the importers in India. The Indian importers have resold the product to other customer in India at a significantly higher price than the price at which they had imported it. Thus, it is clear that the export price to India is not artificially high but it is in the normal course of trade to India reflecting the ability of the market to absorb still higher prices. Therefore, there may not be enough ground to discard the export prices and to rely on third country export prices as alleged by the domestic industry. With regards to the query of the domestic industry as to if the duties could be revoked incase the dumping margin is de-minimus , it is noted that there is no dumping based on the verification of the factual data relating to the period of investigation for the review. As the export prices charged by M/s ETI, producer of subject goods to Borochemie international (the exporter) to India are significantly lower than the prices at which the subject goods are being exported by M/s ETI to other countries, it is difficult to contend that the prices would go down still further and they reflect any temporary or artificial changes to export prices. Further, the importers have resold the product at a significantly higher price to the end-users in India. This clearly shows that the Indian market is capable of absorbing this price.

39. It is therefore concluded that a return to dumping practices with regard to the sale of subject goods by the petitioners is unlikely.

F Conclusions:

40. The Authority has after considering the foregoing come to the conclusion that

- I. No dumping margin for the subject goods has been established with regard to imports from Turkey and there is no likelihood of continued dumping of subject goods from Turkey.

II. In view of the above, the continued imposition of antidumping duty on the subject goods from the Turkey is not necessary to offset dumping and injury to domestic industry.

41. Having concluded that the no dumping margin for the subject goods has been established on account of imports of subject goods from Turkey and there is no likelihood of dumping of the subject goods from Turkey, the Authority finds no justification for continuation of the duty against Turkey and therefore, in terms of Rule 23 of the said Rules recommends revocation of duty in force against Turkey. Hence, in view of the above, the Authority recommends withdrawal of the anti dumping duty on Turkey recommended earlier by notification No. 14/40/2002-DGAD dated 21st November 2003 and imposed vide Customs Notification No. 2/2004-Customs dated 7.1.2004.

(CHRISTY FERNANDEZ)
ADDITIONAL SECRETARY & DESIGNATED AUTHORITY