

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

NOTIFICATION

FINAL FINDINGS

New Delhi: 1st October 2003.

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

No. 14/39/2002-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE

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

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a petition from M/s Alkali Manufacturers Association of India (AMAI) (hereinafter referred to as petitioner) on behalf of the domestic industry, alleged dumping of Sodium Hydroxide commonly known as Caustic Soda (hereinafter referred to as subject goods) originating in or exported from Chinese Taipei, Indonesia and EU(excluding France) (hereinafter referred to as subject countries). The petition was supported by M/s DCW Limited, Mumbai, M/s Gujarat Alkalis & Chemicals Limited, Vadodara, Gujarat, M/s Search Chem Industries Limited, Mumbai, M/s Grasim Industries Ltd, Nagda, M.P., M/s SIEL Chemical Complex, Patiala, Punjab, M/s Bihar Caustic & Chemicals, Ltd., Jharkhand, M/s Jayshree Chemicals Limited, Orissa, M/s Andhra Sugars Limited, Tanaku, DCM Sriram, New Delhi, M/S Indian Petrochemicals Corporation Ltd., Vadodara, M/S Standard Alkali, Mumbai and M/S DCM Sriram Consolidated Ltd., New Delhi.

- ii. The Authority issued a public notice dated 8th October 2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom Code 281511 and 281512 of Schedule I of the Customs Tariff Act, 1975 (28151101, 28151102 and 28151200 of ITC) originating in or exported from Chinese Taipei, Indonesia and EU(excluding France)
- iii. The cost of production of the domestic industry was also analysed to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) based on the information furnished by petitioner so as to ascertain if anti dumping duty lower than dumping margin would be sufficient to remove injury to domestic industry. The cost of production data of the following companies were considered and examined appropriately:--
 - 1. M/s DCW Limited, Mumbai
 - 2. M/s Gujarat Alkalies and Chemicals Ltd., Vadodara
 - 3. M/s Search Chem. Industries Ltd., Mumbai
 - 4. M/s Grasim Industries Ltd., Nagada (MP)
 - 5. M/s.SIEL Chemicals Complex, Punjab
 - 6. M/s Bihar Caustic & Chemicals Ltd.. Bihar
 - 7. M/s Jayshree Chemicals Ltd, Orissa
 - 8. M/s Andhra Sugars Ltd., Tanaku
 - 9. M/s. Indian Petro Chemicals Corporation Ltd., Dahej
- iv. The Authority conducted on-the-spot verification of the domestic industry to the extent considered necessary;
- v. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide Notification No. 14/39/2002-DGAD dated the 8th January, 2003 with regard to Anti Dumping investigations concerning imports of Caustic Soda originating in or exported from Chinese Taipei, Indonesia and EU(excluding France) and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- vi. The Authority forwarded a copy of the Preliminary Findings to known interested parties, who were requested to furnish their views, if any, on the Preliminary Findings within forty days of the date of the letter;
- vii. The Authority also forwarded copy of the Preliminary Findings to the Embassies/High Commissions/Representatives of subject countries in New Delhi with a request to furnish their views on the Preliminary Findings;
- viii. The Authority held a public hearing on 22nd April 2003 to hear the interested parties orally, which was attended by representatives of the domestic industry,

importers and exporters from subject countries. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions thus received from interested parties have been considered by Designated Authority in these finding;

- ix. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7);
- x. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
- xi. Investigation was carried out for the period starting from 1st January 2002 to 30th September 2002;
- xii. **** In the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. PRODUCT UNDER CONSIDERATION /LIKE ARTICLE

VIEWS OF DOMESTIC INDUSTRY

2. The product under consideration in the present investigation is Sodium Hydroxide generally known as Caustic Soda. Caustic Soda is chemically known as NaOH. It is an Inorganic Chemical classified under Chapter 28 of the Custom Tariff Act. Caustic Soda produced by the domestic industry is like article to the Caustic Soda imported from subject countries within the meaning of anti dumping rules. Even though all three technologies are being used in India for manufacturing Caustic Soda, Mercury Cells and Membrane Cells technology are being widely used in India.

VIEWS OF M/s. NALCO

3. M/s. NALCO has submitted that the Caustic Soda lye and solids/flakes are different products and cannot be treated as like product for the present investigation. It is submitted that the specially with respect to aluminium industry, lye Caustic Soda form is only used world over in the production of aluminium. Thus solids/flakes Caustic Soda is not and cannot be used in the production of aluminium and is not commercially substitutable for lye Caustic Soda.

4. The difference between lye and solids arises on account of the former having a lower concentration of Caustic Soda than the latter which has a greater concentration

of Caustic Soda. Therefore, it is submitted that solids/flakes and lye Caustic Soda cannot be treated as like product. Only liquid Caustic Soda should be considered for arriving at as whether there is a dumping and whether there is any injury to indigenous industries. The Caustic Soda liquid is completely different from Caustic Soda solid/flakes as it involves further manufacturing process thereby the cost of production is different. Their end use is different along with the market value, handling, storage and transportation etc.

5. M/s. NALCO submits that as the sole triggering for the investigation is the alleged loss of the NALCO tender, the product under consideration should be the product procured by the Tender. It is stated that the product procured by the Tender was lye Caustic Soda, which alone is used by NALCO and the aluminium industry the world over. It is submitted that considering the other forms of Caustic Soda has the effect of distorting the assessment of dumping undertaken by the Hon'ble Authority in the present investigation. NALCO respectfully submits that in accordance with the worldwide practice of the aluminium industry, aluminium manufacturers only procure lye caustic soda and do not procure solid caustic soda as procurement of the latter would lead to imposition of greater cost on the manufactures, in addition to the diversion of resources from the main manufacturing activity into a subsidiary activity, namely, conversion of the solid caustic soda into lye caustic soda. NALCO appreciates that the Hon'ble Authority has accepted its contentions of the aforesaid issue as set out in the Disclosure Statement.

6. It is submitted that the petitioner, despite seeking an investigation has sought to pad their cost of production by including in the investigation the cost of production incurred for solid and flakes as well, which are costly to produce, given the fact that further processing is required with respect to them. Further, the commercial perception or market value also differs for solid and flakes on account of the greater Caustic Soda concentration is also reflected in the higher price they command in the market.

7. Further it is submitted that only 30,000 DMT has been imported under the tender which constitutes a miniscule part of the total demand of the country, which as per the petitioner's own admission is around 15,55,200 MT. The imported quantity only totals 1% of the total demand of Caustic Soda in the country and therefore cannot be responsible for the loss alleged by the petitioner.

EXAMINATION OF THE AUTHORITY

8. The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature NaOH), commonly known as Caustic Soda originating in or exported from Chinese Taipei, Indonesia and EU(excluding France). Caustic soda is

an inorganic, soapy, strongly alkaline and odorless chemical and finds application in various fields like manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminium, cotton, textiles, toilet and laundry soaps, detergent, dyestuffs, drugs and pharmaceuticals, petroleum refining etc. Caustic soda is produced in two forms, i.e. lye and solids by three technology processes, i.e mercury cell process, diaphragm process and membrane process. The difference in these processes does not mean difference in product in terms of various characteristics. Caustic soda is classified under chapter 28 of the customs Tariff Act, 1975 under Customs Head 2815.11 and 2815.12. As per ITC Eight Digit classification, the product is classified under the Custom Heading 2815.1101, 2815.1102 and 2815.1200. The classification, is however, indicative only and is in no way binding on the scope of the present investigation.

9. It is a well known fact that world over including in India, the Caustic Soda is produced and sold primarily in lye form as (1) Caustic Soda is used in huge quantities, therefore, transportation in lye form even after paying higher transportation cost due to low concentration results in lower effective cost to the purchaser, (2) The conversion of flake requires additional cost. Therefore, the Authority notes that Caustic Soda solid form can be used where lye form is required. The Caustic Soda is produced and sold primarily in lye form as Caustic Soda is used in huge quantities, therefore, transportation in lye form results into lower effective cost even after paying higher transportation for low concentration liquid Caustic Soda. The Authority, therefore, notes that the difference in prices is due to the difference in concentration, higher cost of transportation in lye form vis-a-vis incremental conversion cost required for making solid form.

10. The Authority notes that the goods manufactured by domestic industry are like article to the goods produced, and exported from the subject countries. Both are technically and commercially substitutable and the consumers are using the domestically produced and imported goods interchangeably. The Authority, therefore, notes that the investigation covers all forms of caustic soda both Lye and flakes, and all different forms of the subject goods are used substitutably depending on the requirement of the user. The Authority in view of submissions made by interested parties and keeping in view the substitutability and interchangeability of the goods exported from subject countries and those produced by the Domestic Industry, considers the subject goods exported and the domestically produced subject goods as like article as per Rule 2(d) of rules Supra. The Authority further for the purposes of dumping margin has made appropriate comparisons on DMT basis only.

C. VIEWS OF GOVERNMENT OF INDONESIA

11. While it is claimed that the domestic industry represents more than 50% of output, the Government of Indonesia notes that the market share of the other Indian manufacturers is far greater than the domestic industry.

12. In fulfilling its obligations under Article 5.4 of the Agreement, the Government of Indonesia wishes to request the Authority to explain the procedures that were undertaken to determine that the application was submitted on behalf of the domestic industry.

13. The determination does not provide any details of the calculation resulting in a dumping margin of 299.87%. As the information used is already in the public domain, there is no justification under Article 6.5.1 of AD Agreement to maintain confidentiality. The Government of Indonesia requests that details of the precise calculation be disclosed.

14. In addition, where an Investigating Authority uses facts available in accordance to article 6.8 of the AD Agreement, the responsibility to exercise due circumspection remains. In this respect, the alleged dumping margin of almost 300% casts a shadow over the quality and accuracy of the evidence used. As such, our Government intends to obtain published information in Indonesia on normal value for the final determination to cover the investigation period (POI).

15. Article 3.7 of the AD Agreement precludes a finding of both threat of and actual material injury. In this respect, we wish to request the Authority to explain the changed in circumstances within the IP that created a situation in which the alleged dumping would cause injury.

16. The performance of the domestic industry in India is quite impressive. In spite of the expansion in domestic capacity utilisation still increased during the POI. During the same period, stocks declined and domestic sales continued to increase.

17. While the alleged dumped imports increased in absolute terms POI, they still represented less than 13% of domestic demand. The Government of Indonesia considers that the volume of imports did not cause the alleged injury to the domestic industry.

18. The different production process to manufacture the subject goods may have a significant impact on cost and selling prices and the alleged injury to the domestic industry may be accounted for by the production process chosen.

19. It is noted that the lesser duty principle has not been applied in this proceeding. The Government of Indonesia would appreciate if an explanation could be provided as to why the LDP has not been calculated.

20. We would hope that the Investigating Authority will observe carefully price movements following the imposition of preliminary measures and if its found that imports are restricted, the impact on the consumer should be re-examined for the final determination.

EXAMINATION OF THE AUTHORITY

21. The petition has been filed by M/s. Alkali Manufacturers Association of India, (AMAI), Delhi on behalf of the domestic industry. The Association represents most of all the domestic manufacturers of Caustic Soda in India. The petition has been expressly supported by the following domestic producers, i.e. M/s. DCW Ltd., Mumbai, M/s. Gujarat Alkalies & Chemicals Ltd., Baroda, M/s. Search Chem. Industries Ltd., Mumbai, M/s. Grasim Industries Ltd., Nagda (MP), M/s. SIEL Chemical Complex, Punjab, M/s. Bihar Caustic & Chemicals Ltd., Jharkhand, M/s. Jayshree Chemicals Ltd., Orissa and M/s. Andhra Sugars Ltd., Tanaku. These petitioners companies represents 40.09% of the subject good under production and with support of M/s. Indian Petrochemical Corporation Ltd., Vadodara, M/s. Standards Alkali, Mumbai, and M/s. DCW Shriram Consolidated Ltd., New Delhi, they represnet 55.67% of the production of the domestic industry.

22. The Authority notes that the anti-dumping investigations are carried out as per the anti-dumping rule in line with the guidelines of the WTO Agreement. An investigation is initiated on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

23. Article 5.4 *inter-alia* states that the application shall be deemed to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. In the instant case, Alkali Manufacturer's

Association of India is the petitioner and majority Indian producers of Caustic Soda are members of the Association. Further, there is no opposition to the petition expressed by any Indian producer of Caustic Soda. Therefore, the Authority initiated the investigation after determining the level of support as per Rules supra.

24. With regard to market share in demand, it is noted that M/s. Indian Petrochemicals Corporation Ltd., Vadodara, M/s. Standard Alkali, Mumbai and M/s. DCM Shriram Consolidated Ltd., New Delhi have supported the petition with complete costing information and the production of these companies with supporter is more than 50% of Indian production.

25. The Authority notes that the normal value has been determined on the basis of domestic price of Caustic Soda in European Union, obtained from a leading International Journal i.e., Chlor Alkali, on the basis of facts available as per Rule 6 (8) of Anti Dumping Rules as none of the exporters from Indonesia have cooperated and furnished the domestic sales price in their home market. The export price was determined on the basis of import statistics from Director General of Commercial Intelligence and Statistics, Kolkata. With regard to calculation of export price, the Authority relied on the information published by the DGCI&S. The DGCI&S information is available in public domain.

26. The Authority notes that the Anti-dumping Agreement does not limit only one form of injury should be present at a time. In fact, in case there is material injury suffered by the domestic industry, it may not be desirable to impose anti dumping duty, unless there is sufficient evidence to show that such injury may continue due to dumped imports which requires redressal for Anti-dumping measures for injury to the domestic industry. The findings on threat of injury recorded by the Designated Authority should be seen as a supplemental finding to the main findings that the domestic industry has suffered material injury.

27. As regards the examination of certain factors of injury under Article 3.4, the Authority examined various injury parameters relating to the domestic industry. With regard to improvement in some parameter, it would be relevant to point out that improvement in few parameter do not imply that the domestic industry has not suffered material injury. Even one single parameter may be sufficient to establish that the domestic industry has suffered material injury. With regard to import volumes, the Authority notes that the imports represented a significant 13% of demand in such a short period. This upsurge in increase cannot be described insignificant.

28. Price undercutting is also significant in this case. The Authority verified the costing data of the petitioners and examined the fair selling price of the industry and

arrived at the findings that the landed price of the dumped imports is so low that undercuts the selling price of the domestic industry.

29. With regards to concern of the Govt. of Indonesia about the lesser duty Rule, the Authority notes that the DGAD practices to recommend the amount of anti dumping duty equal to the margin of dumping or the margin of injury which ever is less, which if levied, would remove the injury to the domestic industry.

30. The Authority is in complete agreement with the Govt. of Indonesia that factors such as price depression/suppression are required to be seen by taking actual cost data. The Authority has considered non-injurious price, which is more conservative than the actual cost of production for analyzing the effect of price depression/suppression due to dumped imports.

31. Imports from other countries are either de-minimus or the export price is higher. Therefore, the Authority notes that imports from other countries have not caused injury to the domestic industry.

32. The Authority notes that anti dumping investigations are product specific and other products have no relevance in these product specific investigations. With regard to injury to participating companies due to other products, it may be noted that all the petitioner companies have furnished information with regard to subject goods only.

33. The Authority also notes that there is no reason for concern that injury to the domestic industry could have been due to other Indian producers. On the contrary, there is positive evidence that the domestic industry has lost market due to dumped imports, prices have declined due to steep decline in the import prices and adverse performance of the domestic industry is due to dumped imports. Membrane process, which is the latest available technology world over is being used by the domestic industry; therefore, difference in the technology hasn't caused any injury to the domestic industry. Since Indian Anti-dumping Rules provide for lesser duty Rule, any such impact due to higher cost of production is automatically restricted

D. VIEWS OF EUROPEAN UNION

34. It cannot reasonably be argued that the information on which the Designated Authority has based its calculation on normal value and export price is of a confidential nature. Regarding European exporters, and according to the document provided, normal value data was taken from a "*leading International Journal, i.e., Chlor Alkali*". Export price is said to have been determined "*on the basis of the data collected by them (the petitioners) from DGCI&S*". You are therefore requested to

provide, or make available, the detailed information on which these preliminary findings were established.

35. Although provisional duties are based on the difference between the landed price and a target price, this target price varies per country of origin. Why is this target price different? Furthermore, the same paragraph indicates that the amount of anti dumping duty should equal to the margin of dumping. How can this be when it is based on a target, which is based on injury levels found?

EXAMINATION OF THE AUTHORITY

36. The Authority notes that the normal value has been determined on the basis of domestic price of Caustic Soda in European Union, obtained from a leading International Journal i.e., Chlor Alkali, on the basis of facts available as per Rule 6 (8) of Anti Dumping Rules as none of the exporters from EU (excluding France) have cooperated and furnished the domestic sales price in their home market. The export price was determined on the basis of import statistics from Director General of Commercial Intelligence and Statistics, Kolkata.

37. The Authority also notes that the DGAD practices to recommend the amount of anti dumping duty equal to the margin of dumping or the margin of injury which ever is less, which if levied, would remove the injury to the domestic industry. It is because of this reason the reference price (target price) varies as per Country of Origin.

E. DOMESTIC INDUSTRY:

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

39. The definition of Domestic Industry given above is further clarified by Rule 5 of Rules which reads as follows:-

"----- the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be to the application.

40. The petition has been filed by M/s. Alkali Manufactures Association of India (AMAI), Delhi on behalf of the domestic industry. The Association represents most of the domestic manufacturers of Caustic Soda in India. The petition has been expressedly supported by the following domestic producers, i.e. M/s. DCW Ltd., Mumbai, M/s. Gujarat Alkalies & Chemicals Ltd., Baroda, M/s. Search Chem. Industries Ltd., Mumbai, M/s. Grasim Industries Ltd., Nagada (MP), M/s. SIEL Chemical Complex, Punjab, M/s. Bihar Caustic & Chemicals Ltd., Jharkhand, M/s. Jayshree Chemicals Ltd., Orissa and M/s. Andhra Sugars Ltd., Tanaku,. These petitioners companies represents 40.09% of the subject good under production and with support of M/s. Indian Petrochemicals Corporation Ltd., Vadodara, M/s. Standard Alkali, Mumbai, and M/s. DCM Shriram Consolidated Ltd., New Delhi they represent 55.67%.

41. As per Rule 2(b) of the Anti Dumping Rules, "domestic industry means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry." Further Rule 5(3) of the Anti Dumping Rules states that Designated Authority shall not initiate any investigations pursuant to an application made under sub rule (1) unless it determines on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product that the application has been made by or on behalf of the Domestic Industry provided that no investigation shall be initiated if domestic producers expressedly supporting the application account for less than 25% of the total production of the like article by the Domestic Industry .

42. The Authority also notes that the domestic producers who have supported the petition constitute more than 50% of the total domestic production and there is no opposition to the petition by any of the domestic producers , therefore, have the standing to file the petition on behalf of the domestic industry as per Rule 5 (3) (a) and (b) of the Anti-Dumping Rules and also represent Domestic Industry in terms of Rule 2(b)

F. NORMAL VALUE,EXPORT PRICE AND DUMPING MARGIN:

VIEWS EXPRESSED BY M/s. NALCO

43. The petition filed by the domestic industry is misleading and suffers from concealment of material facts. Assuming without admitting that the petition contains true and correct particulars, it is respectfully submitted that the petition lacks sufficient evidence to even justify initiating the investigation. In light of the aforesaid contentions the petition is not maintainable is entirely without merit

44. As regards NALCO's tender giving an option to the supplier to supply from any country in case of imposition of anti dumping duty, it is submitted that the same is incorporated to reduce the tax burden on NALCO, which would have to pay the same. This is put in as a matter of abundant caution, since the product is available in all countries at international price, it can be supplied from any source. NALCO has kept the provision in contract such that it is not saddled with additional liability on account of anti dumping duty. It, if happens provision for cancellation, was kept to safeguard NALCO's interest. If procurement at international price in Global Press Tender and keeping provision in contract such that additional liability does not occur to company is not taken, then NALCO will be required to answer to various agencies of Govt. of India like Audit, Vigilance etc. The petitioner and not NALCO is guilty of abusing the process of this Hon'ble Authority as it has with the present investigation covered all the sources of international caustic soda production.

45. The total imports in the year 2001 in the petition has been mentioned as 35,544 MT and during period of investigation has been mentioned as 1,97,013 MT. It is respectfully submitted that this needs verification since in the earlier anti dumping investigation for same Caustic Soda for import from China and Korea, the Designated Authority in their preliminary findings had noted that the total imports during 2001-2002 was 93, 291 MT. It may be pointed out that none of the petitioner could satisfy the tender demand of NALCO forcing it to import Caustic Soda. Therefore the domestic industry either through non participating or in adequate participation has brought about the said import and cannot be said to argue that the same has directly or indirectly injured it.

46. Since Nalco's import is the only basis for this anti dumping investigation and NALCO imports only liquid Caustic Soda. Therefore, the only liquid Caustic Soda should be considered for arriving at whether there is dumping and whether there is any injury to indigenous industries. As earlier informed, the Caustic Soda liquid is completely different from Caustic Soda solid/flexes as solid flexes involve further manufacturing process, thereby the cost of production is different. Their end use is different and market value is also different, since for Caustic Soda solid and flexes, the handling, storage and transportation is completely different from Caustic Soda liquid.

47. The petitioners in their non-confidential version have given the prices offered by overseas supplier, but have deliberately not indicated the prices offered in the tender by domestic parties who are part of the domestic industry in the present investigation. These prices being very near to overseas prices, there cannot be any injury to indigenous industries.

48. In order to determine the true profitability of a Chlor Alkali industry it is important to recognize the revenue realization from both Chlorine and Caustic Soda which are co products arising out of the electronic splitting of common salt. The reaction producing caustic soda produces Caustic Soda and Chlorine in the ratio of 1:0:9. It is a commercial reality that the realization of both Chlorine and Caustic Soda is intrinsically linked to each other and manufacturers determine the price of each in terms of Electro Chemical Unit (ECU) i.e., the total realization from the two and not just individual realizations.

49. Caustic Soda and Chlorine prices almost mirror each other and the prices of the products are inversely proportionate to each other. Therefore when the price of Chlorine is high the price of chlorine is low and vice and versa.

VIEWS OF DOMESTIC INDUSTRY:

50. Indian Caustic Soda industry has been largely able to meet entire requirement of Caustic Soda in India. The Indian industry was self-sufficient in its requirement ever since 1975. Caustic Soda has been in the list of imports permitted under OGL particularly for actual users since 1980-81. The imports were, however, limited because of the pricing policy of the Indian industry. The capacities installed by the producers in Chinese Taipei, Indonesia, and EU(excluding France) are far higher than the requirement in their own country. Further, with the imposition of anti-dumping duties on a number of other countries, the producers in the subject countries are finding it lucrative to export to India. The excess capacities in these Countries have put tremendous pressure on the producers to look for markets outside their country. Resultantly, the exporters from Chinese Taipei, Indonesia and EU (excluding France) have quoted very low prices for exports to India. It would also be relevant to point out that the producers in these countries have at times not directly offered for supplies to India, substantial volumes have been offered by traders in third countries for supply of Caustic Soda originating in these Countries. The offers being by traders, naturally, these traders have taken care of their margins also. The prices quoted by the producers in these Countries are, therefore, still lower. The petitioners believe that the prices offered are far below the associated cost of production. Thus, the exporter from Chinese Taipei, Indonesia and EU(excluding France) has resorted to dumping of Caustic Soda in the Indian market.

51. Most of the Indian producers are having multi product plant and uses 100% Chlorine for Captive use only and Caustic Soda is a by-product. The actual situation is absolutely different and reverse.

52. The statement made by the NALCO is incorrect as the prices considered by the domestic industry is for lye and does not include flakes, which is evident from the information on record of the Designated Authority.

53. Designated Authority sent questionnaire along with the notice of initiation to known exporters and producers of Caustic Soda in subject countries and Governments of subject countries with a request to advise its producers and exporters of Caustic Soda to respond to the notice of initiation and questionnaire. However, none of the exporters/producers have responded to the Designated Authority. Such being the situation, the Designated Authority is justified in proceeding with the best available information. Normal value was based on prices published in a leading journal, Chlor Alkali. However, in case of Indonesia, it is submitted that the import prices were so low in the investigation period that these prices could not have enabled the producers in subject countries for recovery of their cost of production. Thus, Chlor Alkali prices can not be in the ordinary course of trade. In fact, petitioners strongly suspect that this has been the reason for no response from the exporters. The producers in these countries must be well aware that the prices quoted in Chlor Alkali are very low and would not pass the test of ordinary course of trade.

54. In Caustic Soda the domestic industry is facing injury due to dumping from one after another sources. The present investigation is fourth investigation for the product by the Designated Authority. The domestic industry has no option but to approach the Designated Authority for imposition of anti dumping duty on one after another sources due to shifting of dumping to newer countries. The tender document conditions of NALCO earlier referred to by the petitioners and reproduced herein below is eye opener in this regard.

"In the event of imposition of Anti Dumping Duty by Government of India after placement of order, the supplier will make all attempts to source supply from other non Anti Dumping origin at the same price and terms and conditions of the order. Time allowed by buyer for arranging material from non Anti Dumping origins from the date of imposition of Anti Dumping Duty by the Government of India will be 30 days. However, if the seller fails to make supply as per above, the buyer reserve right to terminate the order for the balance contract quantity without financial liability on either side. This will not cover for the shipment, which are in transit.

EXAMINATION OF THE AUTHORITY

55. Under Section 9A(1)(c), normal value in relation to an article means:-

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. When there are no sales of the like article in the ordinary course of trade in 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 same 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);

56. 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.

57. The Authority provided opportunity to the exporters from subject countries to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassies/High Commissions/Representative of subject countries in India also. The Authority sent questionnaires to all the known exporters for the purpose of determination of export price and normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act Only M/s. Solvay Belgium filed the response which were incomplete. None of the exporters responded to the preliminary findings and did not offer comment either on dumping or injury.

58. Regarding the argument raised by M/S NALCO about the Chlorine, the Authority notes that for each unit of Caustic Soda, Chlorine is also produced in a particular quantity. However, it is also a fact that Chlorine is hazardous; hence it cannot be freely transported. In India, Caustic Soda plants have been set up as "Caustic Soda Plant" not as a Chlorine plant; therefore, the industry has to be seen for the purpose it has been created. When the producers in India sell Chlorine at available price, credit for the same has been taken in this investigation at relevant places. The Authority notes that the Chlorine is produced in a particular quantity with each unit of Caustic

Soda. Hence, it is well known fact that with particular capacity of Caustic Soda plant, how much Chlorine would be produced. It is one of the products produced and sold by the industry and the Authority examined and verified their costing data in these investigations.

EUROPEAN UNION (EXCLUDING FRANCE)

A. NORMAL VALUE

59. The Authority sent questionnaires to all known exporters for the purpose of determination of normal value in accordance with Section 9A (1)(C). M/s. BASF, Belgium, M/s. BASF, Germany, M/s. Bayer Shell Isoyanates, N.V., Belgium have stated that they have not exported to India during the period of investigation. M/s. Solvay Belgium did not comply to the deficiencies pointed out to them and did not furnish the information in the prescribed exporters questionnaire which is required for the investigation. The exporter didn't offer their comments on dumping and injury.

60. Therefore, in view of the inadequate and incomplete response filed by the exporters from European Union (excluding France) the Authority relied on the information provided by the domestic industry for the purpose of determination of normal value for final findings. Thus the Authority constructed normal value for all producers/exporters on the basis of data provided by the petitioner on the basis of domestic sales price in the domestic market of EU (excluding France) through secondary sources from leading international journal i.e., Chlor Alkali with due adjustments for the subject goods in EU (excluding France).

61. The Authority has referenced the Normal Value for such producers/exporters as ****\$/DMT.

B. EXPORT PRICE

62. The Authority notes that the export price has been determined on the basis of the import statistics of DGCI&S Kolkata. The petitioners claimed adjustments on ocean freight, ocean insurance, commission, port expenses and inland freight to an extent of ****\$/DMT, ****\$/DMT, ****\$/DMT, ****\$/DMT and ****\$/DMT respectively which have been taken to arrive at the ex-factory export price.

The ex-factory export price is referenced as ****\$/DMT.

INDONESIA

A. NORMAL VALUE

63. The Authority notes that none of the exporters from Indonesia have responded by way of questionnaire response and didn't offer their comments on dumping and injury subsequent to the preliminary findings. The Authority in view of non-cooperation has constructed normal value for all producers/exporters of Indonesia on the basis of facts available as per Rule 6(8) of anti dumping rules. Therefore, the Authority constructed the normal value for all producers/exporters on the basis of data provided by the petitioner on the basis of domestic sales price in the domestic market of Indonesia through secondary sources from leading international journal i.e., Chlor Alkali with due adjustments for the subject goods in Indonesia.

The normal value is therefore referenced as *****/DMT.

B. EXPORT PRICE

64. The Authority notes that the export price has been determined on the basis of the import statistics of DGCI&S Kolkata. The petitioners claimed adjustments on ocean freight, ocean insurance, commission, port expenses and inland freight to an extent of *****/DMT, *****/DMT, *****/DMT, *****/DMT and *****/DMT respectively which have been taken to arrive at the ex-factory export price.

The ex-factory export price is referenced as *****/DMT.

CHINESE TAIPEI

A. NORMAL VALUE

65. The Authority notes that none of the exporters from Chinese Taipei have responded by way of questionnaire response and didn't offer their comments on dumping and injury subsequent to the preliminary findings. The Authority in view of non-cooperation constructed normal value for all producers/exporters of Chinese Taipei on the basis of facts available as per Rule 6(8) of anti dumping rules. In view of this the Authority has constructed normal value for all producers/exporters on the basis of data provided by the petitioner on the basis of domestic sales price in the domestic market of Chinese Taipei through secondary sources from leading international journal i.e., Chlor Alkali with due adjustments for the subject goods in Chinese Taipei.

The normal value is therefore referenced as *****/DMT.

B. EXPORT PRICE

66. The Authority further notes that the transaction wise data received from DGCI&S for the period (January-July) 2002 is not showing any imports from Taiwan whereas M/s. NALCO one of the cooperating importers, has shown the import from Chinese Taipei to the extent of 26189 MT upto April 2002. The Authority in this regard notes, the evidence provided by the petitioner, which indicates that, the offer was also made by the importer in India during the POI. The petitioner has claimed that M/s. NALCO had floated the tender on 8th July 2002 and the price bid was opened on 13th August 2002 and order was placed to two foreign parties to supply of Caustic Soda originating in Taiwan. The orders for 30000 MT was placed to M/s. Nissho Hawaii @ US\$ *****/ PMT and 55000 MT @ US\$ *****/ PMT was placed to M/s. Angulf Polymers and Chemicals The Authority in this regard notes that the date of selling could be date of contract, purchase order, order confirmation, or invoice whichever establishes the material terms of sales. The Authority in view of the evidence and information available on record notes that the exporter has indicated an export price pertaining to the shipment made to India as *****/DMT. The petitioners have also claimed adjustments on ocean freight, ocean insurance, commission, port expenses and inland freight to an extent of *****/DMT, *****/DMT, *****/DMT, *****/DMT and *****/DMT respectively.

The ex-factory export price is referenced as *****/DMT.

G. DUMPING-Comparison of Normal Value & Export Price

67. The rules relating to comparison provides as follows:

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

69. The Authority has followed the consistent policy of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I of the Anti Dumping Rules. Based on the Normal values and Export prices as indicated above the Authority assessed the Dumping Margins in case of all exporters/Producers from the subject countries as given in the table below:-

The dumping margin for exporter/producers comes as under:

Sl. No.	Country/Exporter/Producer	Normal Value (\$/MT)	Ex-Factory Export price (\$/MT)	Dumping Margin as % of EP
1	EU(excluding France) All exporters/producers	****	****	124.97%
2	Indonesia All exporters/producers	****	****	99.76%
3	Chinese Taipei All exporters/producers	****	****	89.95%

The above Dumping Margins are above the de-minimus limits.

H. INJURY AND CAUSAL LINK:

70. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:

- i. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
- ii. While examination 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 as referred to in sub-rule (2) of Rule 19 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

CUMULATIVE ASSESSMENT OF INJURY:

71. Annexure II (iii) under Rule 11 supra further provides that "in case where imports of a product from more than one country are being simultaneously subjected to Anti Dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in

relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual country is less than three percent ,the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles".

VIEWS OF M/S NALCO:

72. NALCO has submitted that the alleged sole grievance of the petitioner is the loss of the NALCO tender floated on July 8, 2002 for 115,000 MT. Therefore the peculiarity of the NALCO demand alone should be considered by the Hon'ble Authority in arriving at the issues of like product, dumping, injury and causal link. It is submitted that NALCO, like any other manufacturer of alumina, only use lye Caustic Soda and not solid and flakes. Thus the Hon'ble Authority should only consider the cost of production of lye Caustic Soda alone should be considered in arriving at the issues of dumping, injury and causal link.

73. NALCO has further submitted that only 70000 MT has been imported under the tender, which constitutes a miniscule part of the total demand of the country, which as per the petitioners own admission is around 15,55, 200 MT. The imported quantity totals 4.5% of the total demand of the Caustic Soda in the country.

74. The determination of injury should be done considering realization both from Caustic and Chlorine together not from Caustic alone. From the price summaries report of Chlor Alkali, it may be seen that North-America when the Caustic contract price in July, 2002 was in the range of US\$ 80 – 100 DST FOB, the Chlorine contract price was in the range of US\$ 235 per ST. This being the price difference in international market if cost of production and realization is considered separately as being adopted by Designated Authority it gives distorted view. Therefore, the total realization from Caustic and Chlorine should be considered to determine if there is any dumping by any manufacturers. As earlier mentioned both product being co-generated manufacture is interested in total realization from Caustic Chlorine together rather than on any one product.

75. NALCO appreciates that the Hon'ble Authority has accepted its contentions on the fact that any determination of the non-injurious price would need to consider the valuation of Chlorine a valuable co product in the generated in the production of Caustic Soda. NALCO hereby reiterates its contentions set out in its submissions dated March 10, 2003 wherein the accounting process for the costs of caustic soda and

chlorine has been set out in greater detail and the contents of the same are not repeated herein for the sake of brevity.

76. It is submitted that the high cost of production in India for Caustic Soda is attributable to the high cost of power, as essential input, in the country. The high cost of power coupled with the inefficient storage process followed by the domestic manufactures in India with respect to chlorine should be taken into account by the Hon'ble Authority in any determination of a non-injurious price.

77. It is submitted that the Chlor Alkali report has been used as the basis for arriving at the normal value. However, the rates set out in the petition do not indicate the month for which they have been taken. This has greatly inhibited the ability of NALCO to respond to the case allegedly set up against it. Further, it is respectfully submitted that as the NALCO tender is the sole triggering event for the present investigation, the most appropriate period for the determination of a normal value would be the rates prevailing in the market when the tender was finalized. This would also be advisable on account of the price volatility in the Caustic Soda and Chlorine markets. Further, the high cost of production on Caustic Soda is on account of the high cost of electricity, a fundamental input required for producing Caustic Soda.

VIEWS OF DOMESTIC INDUSTRY:

78. Petitioner has argued that nowhere in the petition it is mentioned that the investigation is NALCO centric and duty should be imposed on imports made by NALCO only. So far as loss of tender floated by NALCO is concerned, it is a fact that the domestic industry has lost a significant part of the tender to dumped imports. In addition, there are other importers/consumers consumed significant quantities of imported Caustic Soda from subject countries. Therefore it is mis-leading to say that the whole investigation is NALCO centric. It is nowhere mentioned in the petition filed by the domestic industry that the investigation is NALCO centric investigation and duty should be imposed on imports made by NALCO only. This argument of NALCO is its own creation.

79. So far as loss of tender floated by NALCO is concerned, this is a fact that the domestic industry has lost significant part of the tender to dumped imports. In addition to NALCO, there are other importers/consumers, who consumed significant quantities of imported Caustic Soda from the subject countries. Therefore, it is misleading to say that the whole investigation is NALCO centric.

80. It would be worthy to mention here that the domestic industry itself has preferred anti dumping in variable form so that no anti dumping duty is charged in case the export price is just and fair.

81. NALCO is not the sole producer of Aluminum in India. Internationally also, argument of NALCO lacks appreciation of even the basic definition of dumping. Dumping would occur only when the export price to India is lower than domestic price. Such being the case, it is a fallacy on the part of NALCO to believe that the world consumers of Aluminum would be getting the material at equally dumped prices.

82. The fact is that NALCO has tried all possible means to resort to imports of Caustic Soda, with complete disregard to its impact on the Indian producers. In fact, these very exporters of Caustic Soda to NALCO have backtracked on their commitment to NALCO and it is the Indian Producers who had come to the rescue of the company.

83. Cris Infac has worked out variable margin by reducing salt and power cost from gross realization from Caustic Soda and Chlorine. Thus, NALCO has assumed that the whole cost incurred by the Caustic Soda producers are only on account of salt and power and there are no other costs incurred in production and sale of Caustic Soda. It is unbelievable that NALCO has concluded that there are no other costs involved in production and sale of Caustic Soda (except for salt and power). NALCO has conveniently chosen to ignore the costs on account of other raw materials, salary and wages, repairs and maintenance, consumables, other manufacturing overheads, depreciation, finance, administration, selling & general, etc. incurred by any producer of Caustic Soda world over. The fact is that costs on these accounts represent a significant chunk of cost of production.

84. Cris Infac report at best can be considered as referring to the contribution earned by the producers to meet their other costs. However, even this report suggests that variable margins for the industry declined significantly over the years. Cris Infac report, thus, at best establishes that the margins for the domestic industry have declined and the domestic industry has suffered material injury. It should also be noted that Cris Infac determines these variable margins after considering realizations from Caustic Soda and Chlorine. Thus, even on combined realization basis, the margins of the domestic industry have declined.

85. It is undisputed fact that part of tender was allotted to the domestic producers also. However, the domestic industry has capacity and capability to meet full and complete requirement of NALCO as well as Indian demand. Argument of NALCO that the domestic industry is making profits is without knowledge and appreciation of facts. Petitioners have represented their actual data to the Designated Authority and the same is relied upon.

86. The domestic industry has suffered material injury from the dumped imports. It is evident that:

- a. Imports from subject countries have increased in absolute term. Imports, which were negligible earlier, reached to a high level in very short period, which clearly shows that the exporters are trying to take benefit of imposition of anti dumping duty against other countries by resorting to dumping. In fact, the volume of imports in the current investigation period crossed all historical levels since 1980.
- b. Imports from subject countries have increased in relation to production in India.
- c. Market share of imports from subject countries in relation to total imports in India has increased.
- d. Market share of imports from subject countries in demand of the product in India has increased.
- e. Production of the domestic industry has increased, resulting in increase in capacity utilization. The increase in production is a result of imposition of anti dumping duty on a number of countries one after another.
- f. Sales volumes of the domestic industry have increased marginally in the period of investigation.
- g. The domestic industry has lost significant sales volume due to dumped imports due to lost orders of NALCO tenders.
- h. Though the sales of the domestic industry increased, the domestic industry has not been able to increase its profitability.
- i. Export price from subject countries have declined significantly resulting in decline in landed value. This has caused severe price undercutting and price suppression/depression in the Indian market.
- j. The market for Caustic Soda is highly price sensitive, where a difference of small amount would result in substantial loss of sales. In fact, the price increases/reductions affected by the industry sometimes are very low. Therefore, the consumers find any difference between landed price of imports and selling prices of the industry quite lucrative.
- k. The landed price of imports is below the cost of production and non-injurious price of the domestic industry. Thus, the imports are having significant suppressing/depressing effect on the prices in the domestic market.
- l. Caustic Soda industry has provided very large-scale employment in the country. Any sickness in the industry would have crippling effect not only on the direct employment but also very large-scale indirect employment in the country. While the companies have policy to retain its employees even in tough conditions, due to continued losses, the employees are demoralized and not sure of their future.
- m. The domestic industry is making financial losses from each unit of sale of Caustic Soda in the Indian market. The financial losses are in spite of imposition of anti dumping duty on a number of countries, due to shifting of imports to newer dumped sources.

- n. Inventories of the domestic industry, which were increasing earlier, declined in the period of investigation.
- o. Productivity of the domestic industry increased due to increase in production.
- p. Return on capital employed of the domestic industry remains negative.
- q. Wages of the employees with the domestic industry have increased. Even in situation of losses, the domestic industry has no option but to increase wages due to prevailing laws. Furthermore, any decline in wages would have crippling effect on the production.
- r. As submitted earlier, the domestic industry is making losses. Continuous losses to the domestic industry have resulted in negative effect on cash flow of the companies.
- s. Apart from the injury being suffered by the domestic industry, there is a threat of further injury being caused to them on account of dumped imports.

87. During the period of investigation imports from subject countries have increased at a significant rate, which is causing further threat of material injury to the domestic industry;

88. Manufacturers and exporters from the subject countries are holding substantial surplus capacities and stocks.

89. Serious concern of domestic industry is on the price at which the product is being imported. The price at which the material is being exported is a dumped price. Further, the material is entering the market at prices much below the selling prices of the domestic industry.

EXAMINATION BY THE AUTHORITY:

90. The Authority has taken into account all indices regarding injury while doing the final determination. This would involve all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. While determining the non-injurious price for the like article for the domestic industry, the Authority considered the optimum cost of production for the domestic industry which would take into account the normated best consumption norms and would also take into account the actual price of the raw materials during the period of investigation which go into the production of the product under consideration.

91. It is observed from the facts available on record that the margins of dumping from each of the subject countries are more than the 2% limit expressed as % of export price. Also the volumes of imports from each of the country are more than de minimus. Cumulative assessment of the effects of imports would be appropriate

since the exports from the subject countries directly compete with each other and with the goods offered by the domestic industry in the Indian market. The Authority, therefore, proposes to assess injury to the domestic industry from the subject countries cumulatively.

92. For the examination of the impact of the dumped imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

93. Following parameters establish that material injury has been caused to the domestic industry from dumped imports from the subject countries;

Particulars	Unit	1999-00	2000-01	2001-02	Jan-Sept' 02	Annualized
Sales	Indexed	100.00	99.37	100.58	100.71	100.71
Cost of Production	Indexed	100.00	93.05	98.47	86.83	86.83
Selling Price	Indexed	100.00	116.61	130.40	99.26	99.26
Profit/Loss	Indexed	-100	-47.29	-36.47	-62.69	-62.69
Capacity		809800	809800	822300	822300	822300
Trend (Indexed)		100	100	101.54	101.54	101.54
Capacity Utilization	b	89.96%	91.57%	90.01%	70.29%	93.72%
Production	MT	728526	741555	740192	578000	770667
Trend	Indexed	100.00	101.79	101.60	105.78	105.78
Market Share (Imports)						
European Union	MT	298	19964	173	12746	19119
Taiwan	MT	0	19033	327	85000	127500
Indonesia	MT	14860	0	4972	26031	39047
Subject Countries	MT	15158	38997	5472	123777	185666
Trend	Indexed	100.00	257.27	36.10	816.58	1224.87
Other Countries	MT	81921	40434	38781	74588	99450
Total Imports	MT	97079	79431	44253	198365	285116
Market Share in Imports						
European Union	%	0.31	25.13	0.39	6.43	6.71
Taiwan	%	0.00	23.96	0.74	42.85	44.72
Indonesia	%	15.31	0.00	11.24	13.12	13.69
Subject countries	%	15.61	49.10	12.37	62.40	65.12
Other countries	%	84.39	50.90	87.63	37.60	34.88
In Demand						
Merchant Demand	MT	1391534	1409949	1406129	1161611	1548815
Trend	Indexed	100.00	101.32	101.05	111.30	111.30
Captive Consumption	MT	202260	233726	209728	172479	229972
Demand	MT	1593794	1643675	1615857	1334090	1778787
Trend	Indexed	100.00	103.13	101.38	111.61	111.61

Market Share in Demand						
Domestic industry Incl. Captive	%	45.27	45.62	45.30	42.33	42.33
Trend	Indexed	100.00	100.76	100.07	93.50	93.50
Domestic Industry Excl. Captive	%	32.58	31.40	32.32	29.40	29.40
Trend	Indexed	100.00	96.36	99.21	90.24	90.24
Other producers	%	48.64	49.55	51.96	42.80	41.64
Trend	Indexed	100.00	101.08	106.83	88.00	85.62
Subject Countries	%	0.95	2.37	0.34	9.28	10.44
Trend	Indexed	100.00	249.46	35.61	975.54	1097.48
Other Countries	%	5.14	2.46	2.40	5.59	5.59
Trend	Indexed	100.00	47.86	46.69	108.77	108.77
Particulars						
Productivity (Per Employees)						
Employees	Indexed	100.00	98.46	97.22	127.36	95.52
Productivity per employee	Indexed	100.00	103.38	104.51	110.74	110.74
Return on Investment						
Return on capital employed	%	-12.58	-5.88	-4.60	-7.81	-7.81
Inventories	MT	6511	8233	15080	21652	21652
Trend		100	126.44	231.60	332.53	332.53
Employees	Nos	4421	4353	4298	4223	4223
Trend	Indexed	100	98.46	97.22	127.36	95.52
Wages	lacs	5649.17	5684.45	6603.55	4827.75	6437.00
Trend	Indexed	100	100.62	116.89	113.95	113.95

Volume and Market share of dumped imports

94. Imports of Caustic soda from subject countries have increased significantly in (i) absolute terms; (ii) in relation to production; and (iii) in relation to the consumption in India. While the imports are primarily from many countries, but share of imports from EU (excluding France), Indonesia, and Taiwan have increased significantly during the period of investigation in relation to the demand in India. The share of imports from subject countries has increased from 12.37% in 2001-2002 to 62.40% during the POI (annualized). Imports are coming from many other sources but those imports are either di-minimus or attracting anti-dumping duty. It is evident from the above that the imports have increased in relation to production of the domestic industry.

95. The production and capacity utilization of the domestic industry has increased during the period of investigation. This increase in the production and capacity utilization is due to the fact that demand has also increased. The rate of growth of imports of subject goods is much more than the rate of growth of domestic production and demand of Caustic Soda.

96. The petitioner companies determine their prices based on prevailing market conditions. The market prices were driven by the lower prices of the dumped imports as the share of dumped imports has increased from 12.37% in 2001-02 to 62.40% during the POI(annualised).

97. Though domestic sales volumes of the domestic industry have marginally increased, the selling price of the subject goods has significantly declined. Further, domestic industry could not reduce its selling price to match dumped imports. The landed price of imports is so low compared to the cost of production and selling price of the domestic industry that the domestic industry is not in a position to reduce its price to match the price of imported subject goods. The Authority, therefore, notes that in this prevailing situation the domestic industry lost both the profit and the market to compete with the dumped imports.

Market share in demand

98. The share of domestic industry (Incl. Captive) in demand has decreased from 45.30 % in 2001-2002 to 42.33% in the POI (annualised) where as the share of domestic industry (Excl. Captive) in demand has decreased from 32.32 % in 2001-2002 to 29.40% in the same period. The other producers have also lost their share significantly in demand roughly around 10% which have been taken by the dumped imports from subject countries. The share of imports from other countries has also increased by 3% without affecting /injuring the domestic industry, since these imports are coming at undumped prices. The demand in general has increased from 101.38 in 2001-2002 to 111.61 in POI; however, this increase in demand has mostly been occupied by the dumped imports from China. Therefore, the Authority notes that the dumped imports have displaced the market share of domestic industry because of dumped imports of caustic soda from subject countries.

Inventory and evidence of loss of contract

99. The Authority notes that the inventory stocks have increased from 15080 MT in 2001-2002 to 121652 MT during the POI (annualised). The Authority holds that the increasing trend in stocks along with the displacement in the market in the POI (annualised) is due to the dumped imports from the subject countries.

100. It has been claimed that because of the decline in export price, the domestic industry is forced to match the selling price with the export price and keep the selling price at a level to compete; in this process the domestic industry is not able to recover the marginal cost. It is further claimed that the domestic industry is unable to sell Caustic Soda at such a low price resulting loss of contract. The Authority holds that

due to the dumped imports, the domestic industry is forced to sell the product at a loss.

Price undercutting and Price underselling

101. There are a number of parameters evidencing injury, should the imports be allowed at the present dumped prices. The rate of increase of imports during the period of investigation from subject countries and the corresponding fall in profits of the domestic industry are the parameters clearly showing the injury being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury. It has been observed that the dumping has had a significant impact on the net sales realisation of the domestic industry for the subject goods. To preserve its market share the petitioner had to compete with low priced and dumped imports of the subject goods from the subject countries. The landed price of the dumped imports indicates the evidence of severe price undercutting.

102. The Authority notes that the price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the fair selling price of the product under consideration and compared the same to the landed value to arrive at the extent of price underselling. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. The imports were having significant suppressing/depressing effect on the price of the domestic market, as the domestic industry is not able to raise its selling price in view of the dumped imports. Thus the examination of the available evidence shows that the domestic industry as a whole suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price undercutting and price underselling during the POI and holds that domestic industry has suffered significant price undercutting and price underselling during the POI due to dumped imports from the subject countries.

Employment

103. The employment level of domestic industry has consistently been declining from the last three years and the index has come down to 95.52 during the POI (annualised) from 100 in 1999-2000. The Authority notes that this change in employment is due to the significant loss to the domestic industry and a cost cutting measure to maximise the efficiency and productivity. The Authority, however, notes that this decline in level of employment cannot be ascertained that led to injury to the domestic industry.

104. The productivity of the domestic industry has not improved even after a reduction in the number of employees. However, it is also observed that the

production per employee has increased, whereas production per day declined significantly.

Profitability

105. The unit cost of production has declined from 100 in 1999-2000 to 86.83 in the annualised POI whereas unit selling price has also marginally declined respectively from 100 in 1999-2000 to 99.26 in the annualised POI. The unit selling price has not declined in proportion to the cost of production which led to the betterment in financial loss which still did not help much in improving the financial health of the domestic industry. The domestic industry is incurring the loss due to the fact that the domestic industry is forced to reduce the selling price below its cost of production, to hold on market, due to dumped imports from subject countries. The industry has suffered the material injury on account of depressed selling price resulting in non-recovery of cost of production thereby suffering financial losses.

106. While cost of sales, production value and sales value have also increased; the increase in the cost of sales is more than increase in the sales value. This has directly resulted in decline in the profits of the domestic industry. Production and sales volumes of the domestic industry has increased, however, it is found that in spite of increase in production and sales volumes, the profitability of the domestic industry has significantly deteriorated. Thus, increase in production and sales volumes have not helped the domestic industry in improving its profits.

Growth and return in investment

107. The demand for the product has increased however, the growth of the domestic industry has declined significantly. The imports are retarding the growth of the domestic industry in spite of significant increase in demand in the country. It is claimed that due to dumped imports from subject countries the domestic industry is doubtful to achieve the target or even to raise capital from the market unless remedial measures is taken to prevent dumped imports from subject countries. The Authority notes that it would be difficult for the domestic industry to plan fresh investments.

108. Cash Profit of the domestic industry declined during the period of investigation, thus adversely affecting the cash flow situation of the domestic industry.

109. Further, the increase in the wages has resulted in further increase in the cost of sales, whereas the domestic industry could not maintain its profits. The Authority notes that the domestic industry has no option but to increase wages as per prevailing regulations in the country. However, the wage increases are further adversely

affecting the profitability, as the domestic industry is not able to proportionately increase the prices.

Cumulative Assessment

110. It is observed from the facts available on record that the margins of dumping from each of the subject countries are more than the 2% limit expressed as % of export price. Also the volumes of imports from each of the country are more than de minimus. Cumulative assessment of the effects of imports would be appropriate since the exports from the subject countries directly compete with each other and with the goods offered by the domestic industry in the Indian market. The circumstances of the present case fully meet conditions of cumulative assessment given in the Annexure II of the Rules, as (1) margin of dumping from each of subject countries is more than the de minimus limits; (2) share of imports from each of the subject countries is more than the limits prescribed; and (3) the imported material is directly competing with the domestic material. The Authority, therefore, notes that all relevant factors cumulatively and collectively establish that the domestic industry has suffered the material injury during the period of investigation due to dumped imports.

111. As regards the threat of injury, the Authority notes that the Anti-Dumping Rules states as follows:

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

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

112. Regarding the threat of material injury the Authority has noted that there is a significant increase of dumped imports during the POI i.e. 123777 MT compared to 5472 MT during 2001-2002. The Authority further notes that these imports from

subject countries significantly undercut the prices of the domestic product forcing the domestic industry to sell at unremunerative prices. Further the material is coming at a price much below the selling price of domestic industry and if the domestic industry starts selling at this price, the same would result in huge financial loss to the domestic industry. The order placed by M/s. NALCO in favour of supplies from the subject countries would also result in a loss of significant volume to the domestic industry.

113. There is also likelihood of substantially increased imports from these sources in view of huge production in these countries. It is further noted that there is surplus capacity available in the subject countries, which could be a matter of concern to the financial performance of the domestic Industry if the same is utilized for exports to India at dumped prices. Further, existence of significant price undercutting would result in significant increased importation, if the imports continue in the same pace at dumped prices.

114. Performance of the domestic industry in the present investigation period and injury to the domestic industry from the dumped imports originating in subject countries is required to be seen in the context of anti dumping duties earlier imposed. The domestic industry has earlier suffered material injury from Saudi Arabia, USA, Japan, Iran, France, Qatar, Korea RP, and China for which the anti dumping duties are in force.

115. With the imposition of anti dumping duty on some sources, vast Indian market is obviously quite lucrative to those who are holding surplus capacities or are not having sufficient domestic demand. Under the present circumstances, the threat of injury is not a remote possibility or conjecture, but real and imminent in Indian market.

116. The Authority notes that the rate of increase of imports during the period of investigation from subject countries and the corresponding fall in the sales realization and profits of the domestic industry are the parameters clearly showing the injury being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury and is suffering further threat of injury during the period of investigation. Therefore the Authority notes that the domestic industry is facing a threat of material injury due to dumped imports from subject countries.

117. The Authority further notes that the non-injurious price has been evaluated for the various domestic producers by appropriately considering the sales realisation from the related products. Also in order to eliminate inefficiencies, the Authority has normated and benchmarked the best practices on utilisation of raw materials, utilities etc.

118. As regards the injury, which could happen on account of higher cost of production in India, the Authority notes that under the Indian Anti Dumping Rules it is the lesser duty rule which is applied. Further in any event the anti dumping duties cannot exceed the dumping margin.

119. The Authority is led to conclusion that all relevant factors, cumulatively and collectively establish that the domestic industry has suffered the material injury during the period of investigation. The imports are further causing threat of material injury.

I. CAUSAL LINK:

120. In determining whether injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts: -

121. Substantial imports of subject goods from subject countries at dumped prices forced the domestic industry to reduce its selling prices to un-remunerative level, which has resulted in a situation of price undercutting in the Indian market.

122. The imports from subject countries suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

123. The imports from subject countries have forced the Domestic Industry to reduce the selling price, which has adversely affected its profitability.

124. The Authority, therefore, notes from the above that the imports from the subject countries have been arrived at a price below the selling price of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the Domestic Industry. As a consequence, there of, the Domestic Industry has not been able to earn a reasonable return on their investment. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports and further causing threat of material injury.

125. The share of volume of dumped imports in total consumption has increased from 0.34% in 2000-01 to 9.28% during POI. The market share of the domestic industry fell from 45.30% in 2000-01 to 42.33% during POI. The dumped imports were coming into India at price that significantly undercut the prices of the like domestic product. The prices of dumped import have caused both price depression and price suppression on the prices of the like domestic products. Thus both volume and price effect is established.

126. There is no contraction in demand (demand has rather increased). Further, there is no other factor such as trade restrictive practice or development in technology, which could have material injury to the domestic industry. Increase in imports in absolute terms as also relative to the production and consumption in India have directly resulted increase in the sales, which further resulting in decline in the share of the domestic industry in the demand of the product in the country. Further, the low prices of imports have prevented the domestic industry from optimizing their profitability.

INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

127. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

128. The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers.

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

130. The Authority has not merely relied upon the submissions of the petitioners regarding fair selling price, rather the Authority deputed a team for on-the-spot investigation and verification of costing and manufacturing process of various forms of caustic soda, and worked out in detail the fair selling price of caustic soda in India for the Domestic Industry separately.

131. Consumers have raised their arguments that the imposition of anti dumping measures would result in less competition and higher prices for consumers of caustic soda and may harm the user industry. The Authority notes that price advantages based on unfair practices are unjustifiable and may in the longer term are harmful even to the interest of consumer.

1	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	Chinese Taipei	Any Country	Any Producer	Any Exporter	US \$271.46	Metric Tonne	
2	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	Any country except Indonesia and Eu(excluding France)	Chinese Taipei	Any Producer	Any Exporter	US \$271.46	Metric Tonne	USD
3	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	Indonesia	Any Country	Any Producer	Any Exporter	US \$271.46	Metric Tonne	USD
4	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	Any country except Chinese Taipei and Eu(excluding France)	Indonesia	Any Producer	Any Exporter	US \$271.46	Metric Tonne	USD
5	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	EU(excluding France)	Any Country	Any Producer	Any Exporter	US \$258.46	Metric Tonne	USD
6	2815.11 & 2815.12	Caustic Soda	Sodium Hydroxide commonly known as Caustic Soda	Any country except Chinese Taipei and Indonesia	EU (Excluding France)	Any Producer	Any Exporter	US \$258.46	Metric Tonne	USD

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

137. Subject to the above, the Authority confirms the Preliminary Findings dated 8th January, 2003.

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

(L.V. SAPTHARISHI)
DESIGNATED AUTHORITY