

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

New Delhi, the 21st November 2003

FINAL FINDINGS

Subject: - Anti-dumping investigation concerning imports of Borax Decahydrate originating in or exported from the Turkey and China PR

No. 14/40/2002-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 following procedure has been followed with regard to the subject investigation:
 - i. The Designated Authority (herein after referred to as Authority), under the Rules, received fully documented and revised petition from M/s Borax Morarji, Mumbai for and on behalf of domestic industry, alleging dumping of Borax Decahydrate originating in or exported from China PR and Turkey. The petitioner in their earlier petition alleged dumping from USA as well; however, the domestic industry could not substantiate import volume as well as dumping above de-minimus limits with regards to imports from USA.
 - ii. The Authority issued a public notice dated 25th November 2002 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of Borax Decahydrate originating in or exported from China and Turkey (hereinafter also referred to as subject countries) and classified it under heading 284019 of the Custom Tariff Act.
 - iii. The Authority forwarded copy of the initiation notification, non-confidential petition filed by the domestic industry and questionnaire proforma to known exporters, importers and embassy of subject country in India requesting them to advise the producers and exporters in their country to respond to the initiation notification in the prescribed proforma within the time limits prescribed.

- iv. M/s ETI Bor, along with their holding company M/s. ETI Holdings, Turkey along with their exporter M/s. Borochemie International and M/s. Dashiqiao Huaxinchemie Co., China PR with their exporter M/s. Dalian Chem Import & Export Company Limited, China PR have responded the Authority from amongst the exporters to whom Exporters Questionnaire have been sent. The Embassy of China PR and Turkey, in New Delhi were also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. None of the exporters and producers other than those mentioned above, has responded to the exporter's questionnaire and to the petition.
- v. The Authority issued a public notice (Preliminary Findings) dated 26th March 2003 published in the Gazette of India, Extraordinary, recommending imposition of Anti Dumping Duty – provisionally – pending further investigation.
- vi. The Authority forwarded a copy of the preliminary findings to the 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. None of the users/ importers has responded the importer questionnaire. However, some of the users/importers have submitted their views, which have been analysed in the appropriate headings.
- viii. The Authority also forwarded a copy of preliminary findings to the Embassies of China and Embassy of Turkey, New Delhi with a request that exporters and producers in their country may be advised to furnish their views on the preliminary findings.
- ix. The Authority provided an opportunity to all interested parties to present their views orally during 3rd July 2003. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- x. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties are being considered in Final Findings.
- xi. Domestic verification as well as exporters verification of the data submitted by them were undertaken by the Authority.
- xii. In accordance with Rule 16 of The Rule supra, the essential facts/ basis considered for these findings were disclosed to known interested parties on 31st October 2003 and comments received on the same are duly considered in Final Findings.

- xiii. 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 all interested parties.
- xiv. The Authority also conducted cost investigation and worked out optimum cost of production/ cost to make and sell in India on the basis of Generally Accepted Accounting Principles.
- xv. The investigation covered the period 1st January 2002 to 30th September 2002 (9 Months)
- xvi. Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

Product Under Consideration and Like Article

2. Submissions by the Domestic Industry

The Product under consideration in the present investigation is Borax Decahydrate also known as Borax or Di-Sodium Tetra Borate Decahydrate. It is an inorganic chemical. It is produced in Technical and IP grades. It is produced in various physical forms such as granules, crystal and powder. Borax Decahydrate is classified under Chapter 28 of the Customs Tariff Act. It is used in glass, textiles, leather, adhesives, detergents, polishes, ceramics etc. The information already on record shows that the subject goods are being cleared under other custom subheadings also. It is therefore, requested that the Anti Dumping duties may please be imposed on the subject goods irrespective of customs subheading. Further, the product is sold in the name of Sodium Borate also. Since Sodium Borate is nothing but Borax Decahydrate, it is requested that it may kindly be clarified in the final findings that anti dumping duty applies to Sodium Borate also. Further, since the product can be imported as Sodium Borate, Crude Sodium Borate or Borex Decahydrate, it is requested that anti dumping duty may kindly be recommended on "Crude Sodium Borate" "Borax Decahydrate" or "Sodium Borate" irrespective of its custom classification.

3. Borax Decahydrate can be produced using Borax Pentahydrate, Tincal, Kernite or Ulexite as the starting raw material. Whatever be the starting raw material used, the technology is largely similar. Manufacturing process is also more or less similar, except that the product falls through short manufacturing process in case the raw material used is Borax Pentahydrate, whereas the process is fairly longer in case the raw material used is Ulexite.

4. As regards like article there is no significant difference in Borax Decahydrate produced by the domestic industry and imported from 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.

5. The exporter from Turkey has raised issue of difference in the technology. They submit that the difference in the technology adopted or difference in starting raw materials does not render the two products different. The product still remains like article within the meaning of the Rules. This is established by the fact that the two products are being technically and commercially substituted by each other. As regards the argument of some cost advantage in the natural process, the same is relevant for the purpose of dumping and does not render the product as unlike product. Nor the issue is relevant for the purpose of injury and causal link.

It is also relevant to point out that the Hon'ble Designated Authority and CEGAT has already held in a number of investigations that the domestic industry must be seen as it exists. It can not be seen under ideal conditions. We request the Designated Authority to confirm the preliminary finding in this regard.

Submissions by M/s Dalian Chem, China

6. The Hon'ble DA has wrongly noted that the present Investigation is against the product under consideration irrespective of the classification under which it is imported. Dalian states that it is unable to concur with the Hon'ble DA's views as the same is not consistent with the concept of Like Article and by taking the aforesaid view, the Hon'ble DA is broadening the scope of the present Investigation to cover Unlike Articles also. Further the Hon'ble DA has grossly erred in coming to the conclusion that Customs classification is only indicative and in no way binding on the scope of the present Investigation. It is submitted that tariff classifications must ordinarily be considered as binding, in the absence of conclusive evidence to the contrary, in view of the clear statutory stipulation that only 'like articles' may be the subject of anti-dumping investigations. The Hon'ble DA was therefore, incorrect in observing that the present Investigation is against the product under consideration irrespective of the classification under which it is imported.

7. It is submitted that the Hon'ble DA has wrongly found that the imported products and products manufactured by the domestic industry and the products sold in the market of both the exporting countries, i.e. China and Turkey are similar in their essential physical and technical characteristics and in their use and thus the subject goods produced by the domestic industry and those being imported from the subject countries are Like Articles within the meaning of the said Rules. It is respectfully submitted that there are a number of differences between the subject goods produced

by the Petitioners and the subject goods exported by Dalian to India during the POI. In this regard, Rule 2 (d) of the said Rules framed in pursuance of the provisions of Section 9A (6) read with Section 9B (2) of the said Act inter alia, provides that:

" "like article" means an article closely resembling those of the articles under investigation;"

8. It is submitted that the subject goods exported to India during the POI by Dalian are of 2 grades, 95% and 99.5% and the like article would be only be the same grades if manufactured by the Petitioner. It is submitted that for the purpose of the present Investigation, the Hon'ble DA should exclude the grades that are not manufactured by the Petitioner. From the said Preliminary Findings, it is not clear as to which grade of the subject goods is manufactured by the Petitioner. It is further submitted that the said Initiation Notification defines the subject goods irrespective of raw materials, process, technical specifications and commercial applications. In view of the above, it is submitted that the Hon'ble DA has failed to appreciate that the subject goods produced by the domestic industry and those being imported from the subject countries are not LIKE ARTICLES within the meaning of the Rules. Following the disclosure statement the exporter has urged that in view of the verified low volume of exports of 95% grade borax decahydrate by Dalian and Dashiqiao to India during the period of investigation there can be no findings by the DA of volume effect or causal injury by the 95% grade. They have further represented that no anti-dumping duty should be imposed on 95% grade of borax decahydrate exported by M/s. Dalian/Dashiqiao from China PR and these should be excluded from the purview of anti dumping duty.

Examination of the Views

9. The product concerned is Borax Decahydrate, commonly known as Borax . The technical name of this product is Di-Sodium Tetra Borate Decahydrate. It falls under Chapter 28 of the Customs Tariff Act. This product is used in glass, textiles, leather, adhesives, detergents, polishes, ceramics etc. The domestic industry has represented that Borax decahydrate have been cleared under other customs sub-headings such as 284011, 284020 and 284019 and also under chapter 25. There are arguments from various interested parties that borax decahydrate exported from China PR in the grades of 95% and 99.9% are not the same and hence may not be treated as like article. It has also been represented that there are substantial imports after the imposition of anti dumping duties from China in the name of Sodium Borate, Natural Sodium Borate and Crude Sodium Borate. The domestic industry has further informed that sodium borate or natural sodium borate is nothing but borax decahydrate itself and have requested for imposition of duty on imports falling under Chapter 25 as well. After examining all records and submission made by various interested parties, the

Authority determines that product under consideration is Borax Decahydrate, also commonly known as Borax, technically known as Di-Sodium Tetra Borate Decahydrate or Sodium Borate Decahydrate classified under tariff sub head 284019 (herein after also referred to as subject goods). As regards the request of the domestic industry to extend the scope of this investigation to chapter 25 so to cover subject goods, which are being imported under other tariff heads not attracting anti dumping duty, the Authority notes that these issues pertain to misdeclaration which are beyond the scope of the present investigation.

10. The Authority notes that borax decahydrate is basically used in terms of its B203 content and so long as this content is the same despite the different percentages of borax decahydrate, it can be used interchangeably. The exporter from China PR has not denied that borax decahydrate of grade 95% and 99% are not being used interchangeably and their end uses are different. The Authority notes after examining the transaction-wise data from DGCI&S and from secondary sources (IBIS, Mumbai) that this product is imported under various heads under the Chapters 25 and 28 into this country though this product is technically classifiable under the customs sub-heading 284019.

11. The Authority recognises that no single factor is conclusive in determining like goods. In determining like goods, the Authority generally considers physical characteristics, interchangeability, channel sub- distribution, common manufacturing facilities and production process, customer perceptions and price. However, it should be noted that this list relates to the horizontal approach to determine like goods (goods at the same stage of production cycle). Another approach to determine like goods is vertically approach (goods at different stage of the same production cycle, one is used to produce another). As goods in the investigation i.e. subject goods with 95% and 99% are at different stages of one production cycle, the vertical approach would appear more appropriate. In determining like goods in a vertical context, the following conditions are considered

- a. The necessity for and cost for further processing,
- b. The degree of inter-changeability of article at different stages of production,
- c. Whether there significant independent uses or markets for the finished or unfinished article, and
- d. Whether the subject goods at an earlier stage of production embodies or imparts to the finished subject goods and essential characteristics or function.

12. Based on the criteria above, the Authority considers all forms of borax decahydrate including 95% and 99% grades to be like products for the reasons that while there may be markets for each grade of the product, the market into which both the grades are sold involve sales to manufacturers who further process the product and

compete in the same market and also while there are minor physical and chemical differences between the two grades, the active ingredient of B203 (36.5%) imparts the essential characteristics or functions to the finished product .

13. As regards the claim of the domestic industry that the subject goods may be imported from tariff heads other than chapter under which it has been classified, the Authority notes that present investigation is against the product under consideration irrespective of the classification under which it is imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation.

Standing

Submissions by the Domestic Industry

14. The petition was filed by M/s. Borax Morarji Limited, Mumbai, for and on behalf of the domestic industry and supported by M/s Raj Industries and M/s. M. V. Steels. Petitioner is the major producer of the subject good in India and accounts for a major proportion of Indian production of the subject good. Petitioner, therefore, constitutes domestic industry within the meaning of the Rules.

Submissions by M/s Dalian

15. The standing claimed by the Petitioners is not accepted.

Examination by the Authority

16. The petition has been filed by M/s Borax Morarji Limited, Mumbai. The petitioner is the major producer of the subject goods in India and has accounted for 74.5% of the domestic production of the subject goods during the Period of Investigation. The Authority notes that M/s Northern Borates had supported the petitioner before the initiation of the investigations. However in a further communication, they have withdrawn their support. M/s M.V. Steels and M/s Raj Industries have given their support to the petitioner. The Authority notes the petitioner accounts for a major proportion of the total domestic production of the subject goods in India under Rule 2(b) of the Anti Dumping Rules. Accordingly, the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra.

Submissions by other producers/other importers/users.

M/s. M.V. Steels Private Limited, New Delhi.

17. The manufacturer of the subject goods has submitted that they produce borax decahydrate from Borax Penta-hydrate and sell it in the Northern part of India. They find that import of borax decahydrate is creating material injury to their production and sales in the market and have requested to keep their letter on record as their support to the petition for the subject investigations.

M/s. Northern Borates Private Limited, Kanpur

18. M/s. Northern Borates Private Limited had pledged their support to the petitioner before the Initiation of the subject investigation. They had informed that they have ceased to manufacture borax decahydrate because of low price imports from China. On December 4, 2002, they had informed that they support the current investigation concerning import of subject goods from China PR and Turkey. On another communication dated December 26, 2002 they had informed that they have withdrawn their support to the petition so far as anti dumping duty is to be imposed on Turkey.

M/s. Raj Industries, Valsad, Gujarat

19. The manufacturer of the subject goods has supported the petition filed by M/s. Borax Morarji Limited for anti dumping on import borax decahydrate from China PR & Turkey.

M/s. Indian Borax ,Baroda

20. M/s. Indian Borax has given a comprehensive submissions on the state of the borax industry in India. They have added that Borax Morarji Limited, Mumbai enjoyed the monopoly of borax decahydrate in India till 1989. Subsequent to 1989 the monopoly of the international supplier as well as Borax Morarji Limited were disturbed after the tariff concession was allowed to all crude sodium borate in place of Kernite and Resorite -46 in India. They have submitted that the petitioner who are already enjoying benefits of import duty concessions on raw material should not be given further protection of anti dumping duty.

M/s. Sun Borax Industry, Ahmedabad

21. M/s. Sun Borax Industries has represented that they have stopped their production in 1996-97 since it was management decision. They have asked the Authority to make a note that they had not stopped production because of the import of subject goods from Turkey

M/s. Bhansali Chemicals, (Madras) Ltd., Chennai, M/s. Akshay Industries, Pondicherry, M/s. Borax India Limited, Pondicherry, Krishna Associates, Kolkata, M/s. Indo-Borax & Chemicals Limited, Mumbai.

22. The above importers have represented that no anti dumping duty should be levied on borax decahydrate from Turkey.

De Minimus Limits:

23. After examination of the import data from the subject countries for the POI, the Authority notes that the import of the subject goods from the subject countries during the POI is above de minimus levels.

Other Submissions made by ETI Bor, Turkey

Reference Price at CIF Level

24. The exporter has represented that the fixation of the reference price at the landed level in the present case results in the levy of the anti dumping duty in excess of the margin determined for Turkey, as in the event of reduction of customs duty on Borax decahydrate in the year 2003-04, the consignment would still be subjected to anti dumping duty even if it has been exported at un-dumped price by the exporter. In view of this, the exporter submits that the Anti Dumping duty may be re-fixed at the CIF level in the Final Finding. The exporter has further represented following the disclosure statement by the Authority that reference price should be fixed at the CIF level specially so where the dumping margin is much lower than the injury margin and the said dumping margin is not at all a function of customs duty prevalent in India. In view of this, they have requested that to discard the arguments made by the domestic industry.

Submission made by the Domestic Industry

25. The domestic industry submits that submission by the exporter is ill conceived, misplaced and is an attempt to dilute the whole purpose for which the Designated Authority resorted to the imposition of Anti Dumping Duty on variable basis. The domestic industry has represented that in all three kinds of duties, - fixed amounts, ad-valorum and variable (or floor pricing or reference pricing), the actual anti-dumping duty collected (in the post investigation period phase) may exceed the dumping margin assessed by the Designated Authority in investigation period in all the three situations. In case the actual duty collected exceeds the amount of dumping margin at the time of export (to repeat, this can exceed only the dumping margin at the time of export), the same calls for a review, as there would be a change in the period and

hence the parameters.. In case the current export price has to be taken, then current normal value is also required to be taken, which is subject matter of review investigation. The current export price can not be compared with historical normal value. Annexure II – para 6 (i) of Indian Anti Dumping Rules states as under in this regard.

(b) "The comparison shall be made at the same level of trade, normally at the ex-factory level and in respect of sales made at as nearly as possible the same time".

Examination by the Authority

The Authority after examining the contention of various interested parties notes that comparison should be made between the dumping margin established for the POI and customs duty prevailing during the POI and therefore, does not agree with the submission of the exporter to fix the reference price at the CIF level.

Other Submissions by /s ETI Holdings- No need for residual duty for other exporters.

26 A. As there is only one producer of the subject goods in Turkey, it is not necessary to fix a dumping margin for all other exporters as the only producer has cooperated in the investigation.

Submission by the Domestic Industry

26B. M/s. ETI Holding at the outset, cannot lead that duty should not be recommended in respect of "other exporters". Not only that it is the consistent practice of the Designated Authority to recommend residual duty, but also possibility of exports by the other exporters, for goods produced by ETI Holdings or by other producers, are not ruled out. The benefit of lower dumping margin cannot be passed on prospective exporters. Such being the case, petitioner requests that residual duty at the highest rate may kindly be fixed.

Examination by the Authority

26C. The Authority has examined the contention of various interested parties and after careful examination, has agreed with the contention of the exporter with regards to fixation of separate dumping margin for other exporters from Turkey.

Submissions made by M/s ETI Bor - Insufficient data for Initiation of the Investigations

27. It has been brought to the notice of the authority that the application did not contain acceptable evidence, amongst other things, in respect of normal value. The petition contained allegedly information showing volume and value of Borax Decahydrate [BDH] exported from Turkey to European Union. The only data available in the public domain is Eurostat data. Eurostat data is based on the HSN classification system. Under the HSN system, BDH falls under tariff item 2840.19.00 covering products other than anhydrous borax. However, this tariff item covers both Borax Deca Hydrate (having 10 molecules of water) and Borax Penta Hydrate (having 5 molecules of water) [BPH]. The average prices shown in the Eurostat data under the tariff item 2840.19.00 covers both BDH and BPH. Thus, the prices submitted by the petitioners did not reflect the export price for the product under consideration i.e. BDH from Turkey to European Union. In fact, the Petitioner has misled the authority by claiming the price for both BDH and BPH as that of BDH to show *prima facie* dumping. Non-submission of accurate, authentic and reliable evidence with regard to normal value is a violation of the requirements of a valid application under Rule 5(2). In view of the above, the evidence in respect of normal value submitted along with the petition was not adequate and accurate enough to justify initiation of the investigation. Thus, the initiation is violative of rule 5(3). Therefore, the initiation is bad and the authority should have terminated the investigation immediately when it was pointed out.

Submissions made by Domestic Industry

28. HSN Classification of EC is enclosed with these submissions. It would be seen that there are three separate classifications, as reproduced below: It would thus be seen that there are separate custom classification for Borax Penta and Anhydrous Borax. As stated earlier the obligation of the petitioner is to provide information as is reasonably available with the petitioner. As stated earlier, no better evidence of normal value was available with the petitioner. Such being the case, the petitioner cannot be denied the right to investigations, given severe injury caused by exports from China and Turkey.

ETI has assumed that the nature of information available in India and in Europe is the same. ETI in fact, has considered 8 digit classification under EC and 6 digit classification under Indian Custom Tariff Act. A copy of relevant Customs Tariff, ITC Classification and EC Classification are enclosed with this submission and the difference in the nature of information available in Indian Statistics and Eurostat is evident. With regard to disclosure of Eurostat data, it is submitted that the information has been provided to us on confidential basis, with a clear understanding that the same shall not be made public. Such being the case, petitioner is not in a position to disclose the information. However, the difficulties of the exporter in procuring the information are not understood.

Examination by the Authority

29. The Authority notes that it had accepted the normal value at the time of initiation on the basis of EUROSTAT data for the partner country TURKEY for the tariff Head 28401990 which effectively defines subject goods as Di sodium tetraborate excluding Di sodium tetraborate pentahydrate (falling under 28401910 and anhydrous borates under tariff head 28401100). The Authority confirms that it had initiated the investigation after having sufficient evidence at its disposal with regards to Normal value and export price. However the Authority has accepted after on-site verification of the exporter's information, the normal value submitted by the exporter and the Authority proposes to confirm the normal value information determined for exporter for the purpose of final findings.

Submissions made by Turkish Government

The Turkish government has raised some points relating to cumulation, other importers plea regarding the exclusion of Turkey from the investigations, and imports from USA.

Examination by the Authority

The Authority has appropriately analyzed and examined all issues in the final findings at appropriate headings.

NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

30. Under Section 9A(1) (c) of the Customs Tariff Act 1975, Normal value in relation to an article means:

- i. (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. (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.

TURKEY AND CHINA PR:

Submissiona by M/s. Dalian Chem Import and Export Group Co, PR China.

31. The Hon'ble DA has wrongly concurred with the Petitioner's allegations that the exports of the subject goods in China are deemed to attract the provision of Paragraphs 7 and 8 of Annexure I to the said Rules with respect to Non Market Economy (hereinafter referred to as "NME"). However, it is submitted that in the said Preliminary Findings the Hon'ble DA has wrongly observed that Necessary information/Sufficient Evidence as required in Paragraph 8(3) of Annexure I to the said Rules has not been furnished i.e. necessary information/sufficient evidence to successfully refute the non-market economy contention has not been furnished. It is submitted that the Hon'ble DA has wrongly excluded Dalian and the Producer from being treated as companies operating under market conditions. It is submitted that it may be noted here that the borax business sector in China has not been found to be operating under non-market economy conditions in any anti-dumping investigation in any other jurisdiction

It has been submitted that list of industries as circulated in the treaty of accession to the WTO does not mention Borax as the industry identified under state control and therefore it is further respectfully submitted that, in the circumstances, there is, *prima facie*, no reasonable basis to assume that the borax business sector in China operates as a NME and thus Dalian and the Producer may be excluded from being deemed to be operating under NME conditions. In the light of the aforesaid, it is submitted with respect to the said criteria set out in sub-para (3) of paragraph 8 read with paragraph 7 of Annexure I to the said Rules, as follows:

- a. Dalian does not enjoy a monopoly on borax trade and that there is no State/Government control on pricing and costing of Dalian. The Producer

purchases the raw materials and sell the finished products at market driven prices that are not regulated by the State/Government. In turn, Dalian exports Borax Decahydrate (hereinafter referred to as "the subjects goods", inter alia, to India during the said POI at higher market driven prices not influenced by the Government. Further, there is no equity holding by any State/Government owned entities in the Producer and no Directors or managers are nominated by the State/Government owned entities and there is no State/Government management control of the Producer or its prices and costs. Sample of Dalian's High Voltage Electric Power Supply Contract. Further Dalian has provided information with respect to its Internal Rules on Expenses, Expenses Accounting, Export Refund, Fixed Asset, Tax payment, and Inventories.

- b. It is submitted that the accounting system used by Dalian and the Producer is consistent with international norms in a market economy. Dalian does not receive any subsidies other than VAT reimbursement (approximately 88% of the VAT paid) that are levied on domestic sales and purchases its foreign exchange through the authorized dealer bank as in a market economy like India and maintains its accounts consistently with international norms. Filed along with the said Comments on the Preliminary Findings as is a sample VAT Invoices of Purchasing Power of the Producer
- c. It is also submitted that the prices paid in India for the subject goods exported by Dalian during the POI include a reasonable profit margin. It is submitted that the decisions of Dalian and the Producer in China with respect to prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and the costs of the inputs reflect market values. Further, there is no distortion of production costs and financial situation as the Producer as is clear from the Confidential Response and accompanying confidential information and further as the Producer has not converted former State assets, or distorted depreciation thereof, or engaged in barter trade or debt forgiveness or debt/equity swaps, or received the benefit of any write-off. In turn, as is clear from the said Confidential Response Dalian has exported the subject goods to India during the POI consistent with the price at which the said subject goods were purchased from the private Producer and, in turn, at prices consistent with the domestic sales price and cost of production of the Producer. Thus, the Export Price of Dalian to India has been determined by market signals and commercial considerations and not by Government influence. The Producer and Dalian have also repaid any debt consistently as required.
- d. As in India the exchange rate is based on the market rate as determined the Central Bank as is reflected in the confidential data furnished along with the said Confidential Response. Further Dalian and the Producer have borrowed from the banks on market terms and repaid their respective loans as per

schedule as in a market economy Dalian and the Producer have acquired their respective land through market economy mechanisms. A copy of sample Short term loan agreement of Dalian has been furnished by them. Dalian and the Producer agree to verification of the same and the information furnished.

32. In view of the aforesaid, it is submitted that Dalian and the Producer fulfill the criteria to be treated as market economy firms/ companies. It is submitted that all domestic sales in China by the Producer during the POI were in the ordinary course of trade and the confidential data therefore has been filed along with the Confidential Response to the Questionnaire. It is submitted that in any case the said Export Price of Dalian is above the said domestic sales price in China of the Producer during the POI and is also at or above Dalian's third country export prices during the POI and also the cost of production of the Producer during the POI. From the same and what is stated in the said Non Confidential Response and in the Comments to the Preliminary Findings, it is submitted that there was no dumping of the subject goods in India by Dalian during the POI. Thus it is submitted that the Hon'ble DA has also wrongly taken the view that it is unable to apply the principles set out in Paragraph 1 to 6 of Annexure 1 to the said Rules and is constrained to proceed on the basis of the facts available, as per Rule 6(8) of the said Rules.

33. Dalian states that they have exported to India during the POI the subject goods manufactured in China by Dashiqiao and are the leading exporters of the subject goods to India from China and in a spirit of full co-operation with the present Investigation they have furnished confidential data for the POI, with respect to, respectively the domestic sales in China of the Producer and, of the export sales of the Exporter to India and third countries in the said Confidential Response to the Questionnaire. Further, it is submitted that the Hon'ble DA has compared the normal value and export price of 99.5% grade of the subject goods whereas Dalian only exports 95% and 99.5% grade of the subject goods. Thus it is submitted that unlike article should be excluded from the preview of the present Investigation.

Submissions made by ETI A.S. Turkey

34. As has already been intimated to the Hon'ble Designated Authority, there is only one producer of the subject goods in Turkey (ETI A.S.). The Borax Decahydrate produced by this producer is exported by ETI Holding. There is no other producer or exporter of the subject goods from Turkey. In view of this, it is not necessary to fix a separate dumping margin for "all other exporters", as the only producer has co-operated in the investigation. The Hon'ble Designated Authority is requested to delete the Dumping Margin and the dumping duty indicated against "all other exporters" in Turkey.

35. ETI Bor A.S has the mining rights for mining the mineral Tincal, which is the raw material for the manufacture of the product under consideration. The cost of mining this product becomes the starting point for the determination of the cost of production of BDH. This cost of production is subject to verification by the Designated Authority. Just because ETI Bor A.S is a Government company/State owned enterprise it does not alter the basic methodology. For, if that were so, all State owned enterprises (Public Sector Enterprises) in India would be required to prove that they are operating "in the ordinary course of business". Here, ETI Bor A.S is not getting the raw material Tincal from any affiliated party for the authority to determine the correctness of the Tincal's cost. ETI Bor A/S is mining the Tincal and hence its cost of production becomes the starting point. The allegation that the price at which the Company is getting Tincal is 'not in the ordinary course of trade' by reason of affiliation with the supplier of raw material is incorrect as the raw material is not being supplied by an affiliate. The raw material is being mined and used for the manufacture of different products including BDH. When a product is produced and used captively for the manufacture of another product, it is not required to value that raw material at the market value but only at its cost. Since there is no transfer of raw material, as has been misunderstood by the petitioner, the question of determining whether the transfer price represents the true market value of the inputs does not arise. There is no requirement that a product captively produced by a company should be priced at "fair market value" as has been sought to be made by the petitioner. Even if a portion of the Tincal is sold in Turkey or exported to any other country that price is not relevant.

Submissions by the Domestic Industry

36. With regards to normal value determination from China PR, the Domestic industry craves that all the above parameters are required to be examined by an exporter claiming normal value as per paragraphs 1 to 6 to Annexure I. Considering the above, the determination of dumping margin in respect of this Company as per the preliminary findings need be confirmed. With regards to imports from Turkey, they have represented that the major raw material for production of subject goods is Tincal. It is the claim of the exporter that the raw material is available in abundance and at very low price. At the same time, the Company is a State Owned Company. Such being the case, it is not clear how the petitioner has established that the price at which Tincal has been charged in the cost of production statement is just and fair. The prices at which the company is getting Tincal is not in the ordinary course of trade by reason for affiliation with the supplier of raw material and the petitioner wonders when the naturally occurring mined product has not been priced at its fair market value, how the company claims that it has transferred Tincal appropriately by considering the cost of production incurred by the company.

37. The domestic industry further states that in case of particular market situation, the normal value can not be based on domestic sales. In the instant case, the circumstances under which the exporter is operating (the key raw material is being sourced in-house and such key raw material is being produced using a naturally occurring mined product, which is accessible to the exporter without any cost for the mining rights given to the Company by its own Govt., which owns such naturally occurring mined products), is a particular market situation. Such particular market situation can only be rectified by determining fair market value of such input.

Following the Disclosure statement, the domestic industry has urged reversal of the MET treatment to the Chinese producer as they have still not submitted the required data and the producer has also not disclosed the complete costing in the information provided to the authority. As regards ETI Holdings, the domestic industry has urged the authority to consider the fair market value of the major raw material rather than the records kept by the exporter with regard to cost of production. They have also disputed some of the price adjustments claimed by the exporter in order to arrive at the ex-factory price for the determination of normal value.

Examination by the Authority- Normal value for M/s Dashiqiao, China PR

38. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section 9A(i)© . The Authority also communicated to the known exporters and to the Embassy of China in India that it proposes to examine the claim of the petitioner in the light of para 7 & 8 of the Annexure I of the Anti Dumping rules as amended. . Only one of the exporters from China PR i.e. M/s. Dalian Chem Import and Export Group Co, PR China and the producer M/s Dashiqiao have responded to the Authority. It has been observed that M/s. Dalian Chem Import and Export Group Co, PR, the exporter, China PR has obtained the data and support from M/s. Dashiqiao Huaxin Chemi Co. Liaoning. Province China PR ,who is a producer of the subject goods during the POI. M/s Dalian Chem has no domestic sales during the POI though the producer of the subject goods does have some domestic sales during the POI. The Chinese exporter M/s Dalian Chem and their producer M/s Dashiqiao which replied to the Authority's exporters questionnaire requested Market economy treatment on the basis of the submissions made in the above paras. In examining the merits of the claim, the Authority sought to verify whether the producer/exporter which cooperated in the proceedings enjoyed a degree of legal and factual independence from the state, comparable to that which would prevail in a market economy country and which would justify the authority in proceeding with determination of the normal value as per para 1-6 of the Anexure I of the Anti-Dumping Rules, thereby justifying itself in accepting the rebuttal in terms of paragraph 7 and 8 of the Annexure I of the Anti Dumping rules. To this end detailed

questions regarding the ownership, management control, determination of commercial and business policies were addressed to the exporter/producer and also to MOFCOM, Beijing. None of the producers with the sole exception of the M/s Dalian Chem/Dashiqiao and MOFCOM responded to the Authority, that their operations were sufficiently independent from the Chinese Authorities to qualify for the market economy treatment.

39. M/s Dashiqiao is a legal entity incorporated in the CHINA PR with no equity holdings from the state/government. The Authority carried out on the spot verification at the premises of the company in order to examine the circumstances under which it operated and its relations with the state and a meeting with MOFCOM was also arranged to ascertain state laws and market economy issues especially with regards to questionnaire it had sent to them earlier. In particular, the company was able to show, to satisfaction of the Authority that management and the control of the factory, both in terms of production, marketing and pricing was clearly in their hands and their operations were sufficiently independent from the state.

40. In view of the above, it was considered possible to grant market economy treatment to the cooperating exporter and consequently proceed to determine Normal value vide paragraphs I-6 of the Annexure I to the Anti Dumping Rules.

41. In order to establish normal value for only cooperating exporter/producer M/s. Dashiqiao, it was first determined that whether the total domestic sales of the subject goods by the producer 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 co-operating exporter was representative sales. In order to find whether these are under ordinary course of trade, the Authority analysed the cost of the production of the subject goods and compared with it to the transaction wise information submitted by the cooperating exporter with regard to the domestic sale prices of the subject goods. The Authority further verified the cost of production of the subject goods as per the records kept by the co-operating exporter in his book of accounts and discovered that various cost elements did not reflect the actual costs of various inputs and the utilities as laid down under Rule 1 of the Annexure I of the Anti Dumping rules and therefore the Authority proceeded to construct the cost of the production of the subject goods after apportioning the costs of the inputs and the utilities as per the normal accounting principles. The Authority discovers that all the domestic sales transactions of the cooperating exporter are not in the ordinary course of trade as per Rule 2 of the Annexure I to the Anti Dumping Rules. The Authority, therefore, proceeded to determine the Normal value as per the Section 9A(i)©(ii)(b) of the Customs Tariff Act.

42. In view of the above the Normal value determined by the Authority for M/s Dashiqiao/Dalian Chem Import & Export Group Co, PR China comes to US\$ *****/MT. The confidential copy of Normal value, export price and dumping margin determination is annexed (for cooperating exporter only).

EXPORT PRICE:

43. The export price for M/s. Dalian Chem Import & Export Group Co., PR China, 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 by the exporter 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 Authority has, after verification of the data, accepted various adjustments made by the exporter and the producer of the subject goods to arrive at export price at ex-factory level .The net export price at ex factory level comes to US \$****/MT.

44. The Authority notes that the Exporter has exported the subject goods under 95% and 99.9% grade. It is noted that the active ingredient in the subject goods are contents of B2O3, which are 36.5% for the subject goods. The Authority has compared the normal value and export price for 99.9% grade taking the active ingredient of B2O3 as 36.5%.

DUMPING MARGIN:

45. 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 normal value for China P.R. has been determined on the basis of cost of production of the subject goods of M/s Dashiqiao in China with the profit margin maintained by the exporter. The net ex-factory export price worked out after allowing adjustments works out to US\$ *****/MT. The dumping margin for exports of the subject goods from China PR is assessed by the Authority at US \$ *****/MT or ...% of the export Price.

Other Exporters from China PR

46. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of China in India also. However, no other exporters from China have responded to the

Authority's request for information. The claim made by the petitioner with the regard to the determination of normal value has also not been disputed by the other interested party(ies). In view of large non cooperation from the large number of producers and exporters from China PR, and in the absence of other reliable information from the independent sources, and in order to avoid rewarding non co-operation, it was considered appropriate to base the residual dumping margin on the highest margin of dumping alleged in the complaint after suitable normation. Thus, the dumping margin in case of Non-co-operative/other exporters of Borax Decahydrate from China PR is assessed by Authority at US\$ ****/MT orof Export price.

TURKEY:

M/s. ETI A.S. Turkey, and M/s. Borochemie International Pte. Limited, Singapore.

47. M/s 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 Holdings A.S. has submitted that its 100% subsidiary M/s. ETI Bor A.S. manufactures the subject goods and sells in the domestic market thorough its depots throughout the country. However, ETI Bor, A.S. does not export the product directly as its sells the product to its holding company ETI Holdings A.S. who 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 Bor in Turkey, it was first determined that whether the total domestic sales of the subject goods by the producer M/s. ETI Bor 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 Bor were representative sales and they are also under ordinary course of trade after the Authority examined the transaction wise information of the domestic sales of the exporter during the period of investigation. The domestic industry has represented that their principal raw material "tincal" should be valued at the cost at which it is sold in the domestic market in the country of export as well as to the other countries. They have requested the Authority to take into account a proforma offer of the input tincal where a price of US \$****has been quoted for its sale.

48. The exporter has represented that their principal raw material 'tincal' mined by M/s ETI Bor A.S is consumed by the said company itself for the manufacture of product under consideration and cost of mining 'tincal' is part of the cost of production of the subject goods. 'Tincal' is also not procured by ETI Bor A.S. from any other related company. They have clarified that 'tincal' produced and captively consumed in the manufacture of borax decahydrate has been valued at actual cost of

production. They have also added that it is only the actual cost of producing that input which has been included in the cost of production of the subject goods.

49. The authority has examined the contention of the domestic industry that the company is the state owned company and such being the case, it is not clear how the petitioner has established – price at which the principal raw material (tincal) had been charged in the cost of production statement and therefore, the prices at which the company is getting tincal is not in ordinary course of trade by reason of affiliation with the supplier of the raw material keeping in view that M/s. ETI Bor is the only entity who has the mining rights in the Turkey and it controls the whole operation from mining to production. The authority has verified the cost of production of the M/s. ETI Bor and after physical on-site verification has determined that raw material tincal is not being supplied by any affiliate but 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 and therefore the sale price of tincal may not be treated as a representative price. The rest of the tincal has been used in their plant for the production of other boron products. The Authority notes that total cost of production of tincal is only **** per tone while the transfer price was **** PMT, the higher cost representing inland freight for transportation from Chilka to Badirama. The Authority has also examined the inference made by the domestic industry with regards to Annexure II ,para (v) of the Anti Dumping rules and determines that this paragraph has nothing to do with the determination of the value of raw materials used captively. The Authority has 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 and thus determines that the domestic sales price of the subject goods in Turkey are above the cost of production under subrule 2 of the Annexure I of the Anti Dumping rules and therefore, domestic sales are under ordinary course of trade. It is further noted that M/s. ETI Bor A.S. has sold **** MT of the subject goods for a price of TL **** 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 Bor A.S. The weighted average normal value for ETI Bor A.S. 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.

EXPORT PRICE

50. The export price for M/s. ETI Holdings A.S 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:

51. 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 Turkey is assessed by the Authority for the cooperating exporter at US \$ ****/MT % of the export Price.

Other Exporters from Turkey

52. 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. Thus, the dumping margin in case of Non-co-operative/other exporters of Borax Decahydrate from Turkey is assessed by Authority at US\$ ****/MT or % of Export price.

Country/producer/exporter	Normal value	Export Price	Dumping Margin	Dumping Margin%
ETI Holdings, Turkey and M/s Borochemie international	****	****	****	12.44
Other producers in Turkey	****	****	****	12.44
Dashiqiao Huaxin Chemi Co , and M/s Dalain chem import and export group Co Ltd, China PR	****	****	****	26.58
Other Producers in China PR	****	****	****	96.5

Injury

Submissions made by the petitioner Cumulative Assessment

53. The exporters from China and Turkey are dumping Borax Decahydrate in the Indian market. Annexure II (iii) to the Anti Dumping Rules requires that in case imports of a product from more than one country are being simultaneously subjected

to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. 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 countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

The margins of dumping from each of the subject country are more than the limits prescribed above, as may be seen from the previous section. Quantum of imports from various countries is contained in the statement of imports enclosed with this petition. Whether the data published by the DGCI&S is considered or data provided by Secondary Sources is relied upon, it would be seen that the quantum of imports from each of the subject country is more than the prescribed limits. Cumulative assessment of the effects of imports is thus, appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market. The Authority is, therefore, requested to assess injury to the domestic industry cumulatively from the subject countries.

54. Petitioner submits that while DGCI&S data may not be appropriate, as other products have been cleared in this classification, data compiled by the secondary sources is not exhaustive, as all the ports are not covered by this source. The imports reported by the Secondary Sources should, therefore, be considered as minimum known imports. With regard to China, since information on exports from China has become available to the petitioner, the same has been relied upon. It is seen that the actual volume of imports from the two countries are in the region of 10,000 MT. Further, it is submitted that the imports are more in volume from China than Turkey. Import statistics show that the quantum of imports from subject countries have increased in a significant way. The petitioner has also submitted that the imports are more involving from China PR and import from Turkey.

M/s ETI A.S. Turkey – Views of Turkish Government

55. M/s. ETI Holdings has represented that a number of injury parameters have recorded positive developments and therefore the determination of injury is wrong and the finding is liable to be reversed. They have further stated that there is no price depression or price suppression for the domestic industry and they have also disputed

the factual data relied upon by the authority in the provisional findings. It has been further added that the authority has compared the figures for the POI with that of the year 1999-2000 as such a comparison is not correct as there was no allegation of dumping during the intervening period. They have also disputed the provisional determination made by the authority with regard to opening stock, production and closing stock periods. Imports are taking place from United States and are also undercutting the price of the domestic industry. However, there appears to be a deliberate attempt by the domestic industry to project as if there were no exports from the United States. The finding of the Designated Authority, on the basis of DGCIS data, is incorrect as the DGCIS data includes the prices for other products such as Borax Pentahydrate. Turkish Government and the exporters have also expressed concern as regards cumulation of imports from Turkey with imports from China PR. They have urged the Authority to consider if competition exists between imports from Turkey and China and volume of imports and price undercutting from two countries individually before deciding to make cumulative assessment. Following the disclosure statement released by the authority, the exporter has further represented that the authority has not evaluated the conditions of competition between the imported products i.e. between imports from Turkey and China PR. They further represent that if the authority evaluates this aspect, it will be clear that the causal link would be absent in so far as imports from Turkey is concerned.

Submissions by Dalian Chem, China

56. The exporter from China has represented that the marginal decline in the capacity utilization of the domestic industry may be temporary and could be as a result of teething problems in the change of technology by the petitioner producing the subject goods. They have requested the authority to analyse the export performance of the domestic industry in the injury analysis. With regard to sales volume, they have represented that there is a very insignificant decline in the domestic industry, average net sales price for the subject goods produced and sold in the domestic market. They have also pointed out the differences in the manufacturing efficiencies between India and China and have drawn the authority towards producers operations and economies of scale, raw materials, process, procurement costs, and logistics and better infrastructure in China PR and economic slow-down in India during the POI. They have further highlighted the cost of capital in India and specially debt services burden of the petitioner.

57. They have drawn the attention of the authority towards the DGCI&S data for the POI and have further claimed that imports of the subject goods from China PR compared with the exports made by Malaysia and USA also. They have further pointed out that there are substantial goods of subject goods at comparable prices during the POI from USA. They have disputed the authority's findings with regard to

price undercutting and price underselling of the domestic industry and has requested the authority to further examine the data of USA imports for better causal link analysis. They have further pointed out that the petitioner's losses are due to change in the raw material used for the production process of the borax decahydrate.

Submissions made by the Domestic Industry

58. The subject goods are being dumped in the Country for a long period. As would be seen from the petition earlier filed by the domestic industry, the imports have gradually shown an increase. Such an increase is due to consistent price undercutting of the domestic prices by the imports from the subject countries. Thus, it can be said that the domestic industry is being injured as a result of dumped imports for past some time. The fact that the Indian industry is being injured for past some time is established by gradual suspension of production by Indian Producers one after another. In fact, a number of producers of the subject goods have rather turned traders and have started importing the material, as these producers could not face the brunt of dumping from the subject countries. The domestic industry has requested injury to the domestic industry to be assessed cumulatively from China and Turkey.

1. The imports have increased significantly during the Period of Investigation as compared to previous years. The imports have increased (i) in absolute terms; (ii) relative to production; and (iii) relative to consumption in India. The Production of the domestic industry over the years has declined. Even though it has increased in the investigation period as compared to the immediate preceding year, the level of production was far lower than the production in the past. Decline in production has consequently resulted in decline in capacity utilization and Even though the sales volumes have increased over the years, the same has declined in the investigation period as compared to previous period. Closing stocks with the domestic industry have increased. Consequently, average number of days production is in stock has gone up.
2. While the cost of production of the domestic industry has increased, the domestic industry has been forced to reduce the selling price. Landed price of imports from the subject countries was significantly below the selling price of the domestic. The landed price of imports and selling prices of domestic industry were below the cost of production and non-injurious price of the domestic industry. The imports were thus preventing the domestic industry from effecting legitimate price increases and were suppressing/depressing the prices of the domestic industry in the market. The domestic industry has further drawn the attention of the authority towards adverse cash flow and continuous losses being suffered by the domestic industry.

Examination by the Authority

59. Under Rule 11 supra, Annexure –II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

60. 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"

61. There are two conditions prescribed for cumulation of injury in the case of imports from more than one country i.e. the dumping margin should be more than de minimus limits prescribed and cumulative assessment of the effect of imports should be appropriate in the light of conditions of competition between the imported article and the like domestic articles. The authority notes that imports from subject countries are more than de minimus limits prescribed under the rules. With regard to the second limb of the cumulative assessment conditions, the authority notes that it is appropriate to do so in view of the fact that

- i. imported products and domestic industry products are like articles
- ii. imports from both the countries are individually under cutting prices in the domestic market.
- iii. Imports from both the subject countries and the domestic industry are competing in the same market as the two products are being used interchangeably .

62. **The authority in this regard referred to**

- i. Customer wise sales made by the domestic industry, details of importers made known by the responding exporters and names of importers available in the secondary source data
- ii. The degree of fungibility between the imports from the different countries and domestic industry
- iii. Presence of sales in the same geographical market of imports from different countries and the domestic industry product
- iv. Existence of common or similar channel of distribution for imports from different countries and domestic industry; and
- v. Whether the imports are simultaneously present in the market.

63. The Authority has further examined the landed price of imports individually from the two countries with the selling price of the domestic industry. It is seen that the landed price of imports is significantly lower than the selling price of the domestic industry even though price under-cutting is higher in the case of China PR. The Authority has also compared the landed price of imports with the cost of production and selling price of the domestic industry. It is seen that the imports from both the countries are individually below the cost of production of the domestic industry and the selling price of the domestic industry are also below the cost of production of the domestic industry. Imports from the subject countries, thus, individually are resulting in price under-selling in the domestic market. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the effect of the imports from China P.R. and Turkey is appropriate since the export prices from these countries were directly competing with the prices offered by the Domestic Industry in the Indian market and displacing domestic producers here.

64. For the examination of the impact on the domestic industry in India, the Authority also considered such further indices having a bearing on the state of industry as capacity utilization, production, sales, net sales realization, profitability, etc.

Source of data and the methodology

65. For the determination of volume injury from imports from Turkey, the Authority has taken the data submitted by the sole producer and exporter from Turkey for determination of volume of imports from that country for the POI and the previous years. As the exporter has submitted data on calendar year basis, these have been suitably normated for financial year for the period 2000-2001. The data for 1999-2000 has been taken from the transaction wise information from secondary sources as DGCIS data from Turkey comprises of both Borax Decahydrate as well as Borax Pentahydrate. As regards China, the Authority has taken into account transaction wise data made available by DGCI&S for POI as well as previous years as all imports from

China PR consist of borax decahydrate only. For other countries import during the POI and previous years, the Authority has taken transaction wise data of the subject goods from secondary sources (IBIS). For the calculation of apparent consumption (demand) of the subject goods in India, the Authority has added the sales volume of the domestic industry and other producers to the total imports made into the country.

Volume and Market Share of Imports from subject countries and Domestic Industry

66. The volume of imports of the subject goods from subject countries has significantly increased during the Period of Investigation as compared to previous years. In fact, the imports have consistently increased from 1999-00 to the period of investigation. The volume of imports from other countries has declined significantly during the POI from 1999-00. The Authority notes that imports from the subject countries have increased in absolute terms as well as in relation to the production of the domestic industry and also in relation to the demand of the subject goods in India. The imports from subject countries have increased by 305% over the same period in the preceding year in absolute terms and their share to the total imports has gone up from 57.44% in 99-00 to 98.34% during the POI. The share of subject countries in the total demand has increased from 22.34% to 54.26% while that of the domestic industry has declined from 48.83% in 99-00 to 38.10%. In conclusion, the Authority is satisfied that the domestic industry has suffered loss of market share and imports from subject countries have significantly increased their market share.

Imports from the subject Countries

Country/Territory	99-00(MT)	00-01(MT)	Ap-Dec01(MT)	Jan-Sep02(MT)
Sub Count	842	2767	2517	7687.9
Others	624	0	20	130
Total	1466	2767	2537	7817.9

Share of Imports (%)				
Country	99-00	00-01	Apr-Dec01	Jan-Sep02
Imp from Subj. Count	57.44	100.00	99.21	98.34
Other countries	42.56	0	0.49	1.62
Total	100	100	100	100

Share of the imported subject goods in total demand (%)				
Country	99-00	00-01	Apr-Dec01	Jan-Sep02

Imp from Subj. Count	6.04	18.85	22.34	54.26
Other countries	4.48	0.00	0.18	0.92
Domestic Industry	48.83	54.10	56.91	38.10
Other producers	40.66	27.05	20.57	6.72
Total Demand	100	100	100	100

Imports in relation to the domestic Industry (MT)				
Country	99-00	00-01	Apr-Dec01	Jan-Sep02
Imports from Subject country	842	2767	2517	7687
Production Domestic Industry	7414	7522	6629	7112
Dumped Imports in relation to the Domestic Industry	11.36%	36.77%	37.96%	108.08%

Production and Capacity Utilisation

67. It is noted that the production of the domestic industry has increased during the POI as compared to previous years. It is also noted that their capacity utilization has declined only marginally during the period of investigation as compared to the previous nine months. The Authority notes that Annexure II to the Rules provides as under with regard to assessment of the effect of the dumped imports: - "The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the separate identification of that production on the basis of such criteria as the production process, producers sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.". In the instant case, the domestic industry has combined capacity for borax deca and penta. Such being the case, it would not be appropriate to assess injury to the domestic industry in isolation for borax deca. The Authority, has therefore, has taken into account injury to the domestic industry after combining information for penta and deca (in addition to separate information on deca) for the purpose of assessment of dumped imports in terms of production and capacity utilization (and hence figures in para 66 and 72 may not match). The Authority on the basis of examination of records is satisfied that the domestic industry has suffered significant underutilization of the capacity.

Sales Volume and Growth

68. It is noted that the sales volume of the domestic industry have declined in the investigation period as compared to previous years. While the demand of the subject goods have increased by 25% during the POI against previous year, the sales volume of the domestic Industry have declined by 15.79% during the POI as compared to

previous period. The Authority is satisfied that the domestic industry has suffered a decline in the sales volume.

Sales Prices

69. The domestic industry average net sales price for the subject goods produced and sold in domestic market declined by 1.82% between 99-00 and POI. The evolution in the prices should be seen in comparison with the unit cost of the production, which increased by 2.95% from 99-00 to the POI.

Stocks and Margin of Dumping:

70. The closing stocks of the domestic industry have increased significantly during the POI as compared to the previous years. The Authority is satisfied that the domestic industry has suffered injury because of increase of inventory of subject goods. Also the margin of dumping from both the countries are very significant.

PROFITABILITY:

71. Though the unit cost of production of the domestic industry has increased during the POI since 1999-2000, their unit-selling price has declined during the POI since 1999-2000.

RETURN ON CAPITAL & CASH PROFIT

72. The return on the capital of the domestic industry as well as the cash profit has deteriorated during the POI as compared to 1999-2000 though it has improved from 2000-2001.

Injury parameters					
		99-00	00-01	Ap-Dec01	Jan-Sep02
Parameters	Units				
Capacity	MT	17000	17000	12750	12750
Combined. Production	MT	9614	10541	7572	7553
Capacity Utilisation	%	56.55	62.01	59.39	59.24
Domestic sales (Act)	MT	6806	7940	6412	5399
Domestic sales (Ann)	Index	100	116.66	125.61	105.77
Opening stock	MT	866	1259	481	342
Closing stock	MT	1259	481	342	1523
Unit Cost of production	Index	100	100.77	102.63	102.95
Selling price	Index	100	91.35	95.03	98.18
Unit profit/loss	Index	-100	-320.16	-279.84	-214.11
Total profit	Index	(-100)	-373.51	-351.51	-226.47

ROC	Index	-100	-260.57	-149.06	-68.571
Employment	Index	100	94.12	96.08	90.2
salary Wages	Index	100	83.33	114	109.88
Productivity	Index	100	107.8	93.06	106.35
Cash Profit	Index	-100	-418.41	-378.22	-212.49
Growth	%		16.66	7.67	-19.98

PRODUCTIVITY & EMPLOYMENT:

73. The productivity of the domestic industry has increased during the POI from 1999-2000. However, the Authority also notes that the same could be on account of the decline in the level of employment.

74. Price Undercutting, Price Underselling and Price Depression

Price Under Cutting from M/s ETI A.S/Borochmie		
	Ap-Dec 01	Jan-Sep02
Net Selling price	****	****
Landed Value	****	****
Price Undercutting%	****	****
Price Under Cutting from M/s Dalian/Dashiquiao		
	Ap-Dec 01	Jan-Sep02
Net Selling price	****	****
Landed Value	****	****
Price Undercutting %	****	****

Price Underselling during POI				
Country	Non Injurious Price of petitioner	Landed Price from Subject country	Price Underselling	Pr Underselling %
ETI Holdings	****	****	****	****
Dalian	****	****	****	****

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports from subject country/territory.

75. The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the losses. The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant incidence of price underselling. The Authority notes that price depression occurs when domestic industry, for some reason, reduces its prices of the subject goods. The Authority has verified the records of the domestic industry with regards to average selling prices to support its claim of the price depression. However, the Authority could not find any significant price depression during the POI.

Selling Price / Profitability

76. The authority notes that selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of its cost of production and earn a reasonable return. Though the losses from this product have come down during the POI as compared to previous years, these could be seen in the backdrop of other producers of the subject goods closing down and increase in the productivity of the domestic industry.

CAUSAL LINK:

77.a. Introduction

In order to reach its conclusions on the cause of the injury suffered by the domestic industry and in accordance with rule V of the Annexure II of the Anti Dumping Rules, the Authority examined the impact of all known factors and their consequences on situation in that industry. Known factors others than the dumped imports, which could, at the same time, have injured the domestic industry, were also examined to ensure that the possible injury caused by these other factors was not attributable to the dumped imports.

b. Effect of the dumped imports

Between 1999-2000 and POI, dumped imports from the subject countries as a proportion to total imports increased significantly in volume (57.44% to 98.34%) and in market share 6.04% in 1999-00 to 54.26% in the POI. As regards the export prices, they decreased during the whole period and undercut the domestic industry prices during POI on average by ****% and ****% (from ETI Holdings A.S and M/s Dalian Chem Import and Export Co respectively).

Effect of other factors

(i) Performance of other producers

One domestic producer M/s. Northern Borates Private Limited, Kanpur who had supported the petition closed its production facility before the POI. The petitioner has claimed that there were more than a dozen manufacturers of the subject goods in India. However, these small producers have now stopped their production and few of them are working as traders.

ii. Self inflicted injury due to change in process or technology

It has been submitted by the exporter that injury to the domestic industry has been caused by its changing the raw material to Ulexite. The exporter has further represented that manufacturer of the subject goods from this raw material is a lengthy and costly process since other materials are also consumed which further raise its manufacturing costs. The domestic industry has represented that Ulexite route is cheaper in the sense that raw material costs are less and the overall cost of manufacturer from this route is less despite the fact that other raw materials are also used in the process. The Authority notes from submissions made before it (various literature and journals) that manufacture of subject goods from Ulexite may be a viable route.

(iii) Imports from USA

Non-Inclusion of USA

Submissions by ETI & Turkish Government

- a. The exporter from Turkey has represented that data in the aggregate form in the preliminary findings should not have been used as it includes information relating to products other than the product under consideration also. It has been submitted by them that the petitioners have imported BPH from USA at a price of US\$ 345 PMT. Another producer M/s. Raj Industries has imported BPH from USA at a price of US\$290 – US\$ 365 PMT. M/s.Rishi Enterprises – a related company of Raj Industries has imported BPH from USA at US\$ 290 PMT and BDH from USA at US\$245 PMT. They aver that the finding by the DA that BDH prices from USA are higher is incorrect as it includes prices of BPH also. The FOB price of US \$ 245 from USA is comparable to the FOB price from Turkey. It has been submitted that the information relating to imports from USA is authentic and they have submitted some bills of entries also in support of their claim.

b. Even while justifying his action for not including USA in the investigation, the authority has only examined the import prices on an aggregate basis. He should have examined the export prices in the disaggregate form, i.e., the prices of Borax Decahydrate alone should have been examined by the authority instead of considering all goods falling within the concerned customs classification head. In the absence of any focused examination, the determination by the authority that the import prices of BDH from USA were higher than that from China and Turkey is factually incorrect and without any basis. The authority shall properly evaluate this aspect while determining causal link.

Submissions made by the Domestic Industry

c. Petitioner had, in fact, requested extension of investigation to cover USA also. The Designated Authority decided not to initiate investigations against USA in view of insufficient evidence with regard to imports beyond de minimus limits. USA had been exporting their subject product to India in the past. Import statistics since 1999 for this product are enclosed. Evidently, exports from USA declined over the years, which could be a result of aggressive selling by Chinese producers. In fact, this further substantiates the dumping practices of Turkish producers also, when Turkish producer maintains its exports to India, while USA exports declined. Imports of BPH by petitioner is irrelevant to the issue as BPH is not the product under consideration. While ETI has reported imports of BDH by Raj Industries, the volumes have not been reported. It is thus not known whether these imports are beyond de-minimus limits. As stated earlier, while petitioner has also been able to show imports of BDH, the real issue is such imports are below deminimus limits.

Examination by the Authority

d. Some interested parties have argued that the petitioner has not included the investigation from USA deliberately and imports from USA are above de-minimus. The Authority notes that the petition was filed for imports coming from Turkey, China PR and USA. After careful examination of the import data from IBIS, Mumbai, the Authority noted that there are no imports from that country and hence the investigation was initiated against Turkey and China PR. After the initiation of the investigation, the Authority has examined the data from DGCIS for imports from USA (in the aggregate form) and found that these imports are priced much higher than imports from the subject countries. After the preliminary findings, the Authority wrote to the Commissioner of Customs, Mumbai (with a remainder later) requesting data for imports from USA. The Authority has now received a letter from the Commissioner of Customs (letter placed in the public file) , Nhava Shiva stating that almost all of

the imports from Nhava Shiva belonged to Borax Pentahydrate and imports of subject goods comprised minuscule amounts which are de minimus in the volume terms.

In the case of imports from USA, the authority further notes that

- i. imports from USA are within de minimus limits
- ii. there is no evidence that dumping margin is more than de minimus
- iii. there is no evidence that imports from USA are competing with the supplies from the domestic industry or imports from other countries.

e) Contraction of demand and other factors

The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is noted that developments in technology has not been a cause for injury to the domestic industry. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports from subject countries.

78. For the purpose of determining injury, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation.

INDIAN INDUSTRY'S INTEREST:

79. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from China PR in any way, and therefore, would not affect the availability of the product to the consumers.

80. Conclusions

The Authority has, after considering the foregoing, comes to the conclusion that:

- a. The subject goods have been exported to India from subject countries below its normal value;
- b. The Domestic industry has suffered material injury;
- c. the material injury to the domestic industry has been caused cumulatively by the dumped imports of subject goods from subject countries.

81. The Authority considers it necessary to impose a definitive anti dumping duty on all imports of Borax Decahydrate in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation. The Authority, therefore, recommends imposition of definitive anti dumping duty on the goods, the description of which is specified in column (3) of the Table below, falling under heading of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4) of the said Table, originating in the country as specified in the corresponding entry in column (5), and produced by the producer as specified in the corresponding entry in column (7), when exported from the country as specified in the corresponding entry in column (6), by the exporter as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at a rate which is equivalent to the difference between, the amount as specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10), of the said Table, and the landed value of such imported goods in like currency per like unit of measurement.

Table

S. No .	Headin g	Descriptio n of goods	Specificatio n	Countr y of origin	Countr y of Export	Produce r	Exporte r	Amoun t	Unit of measuremen t	Currenc y
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	2840	Borax decahydrate	Any specification	Turkey	Any	Any Producer	Any Exporter	423.1	Metric Tonne	US Dollar
2.	2840	Borax decahydrate	Any specification	Any country other than People's Republic of China	Turkey	Any producer	Any exporter	423.1	Metric Tonne	US Dollar

3..	2840	Borax decahydrate	Any specification	China PR	Any	Dashiqiao Huaxin Chemicals Ltd	Dalian Chem import and Export Group Co Ltd	410.86	Metric Tonne	US Dollar
4.	2840	Borax decahydrate	Any specification	China PR	Any country	Any producer except Dashiqiao Huaxin Chemicals Ltd	Any	484.1	Metric Tonne	US Dollar
5.	2840	Borax decahydrate	Any specification	Any country except Turkey	China PR	Any	Any	484.1	Metric Tonne	US Dollar

In case the concentration of the imported product is reported 95%, the quantum of anti-dumping duty shall be 95% of the amount mentioned in Column No.9 of the table above.

82. 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.

83. Subject to the above, the Authority confirms the preliminary findings dated 26th March 2003.

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

(ABHIJIT SENGUPTA)
DESIGNATED AUTHORITY