

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

NOTIFICATION

NEW DELHI, the 7th October, 2002

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Caustic Soda from Qatar.

No.55/1/2001-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

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

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Alkali Manufacturers Association of India (AMAI) (hereinafter referred to as petitioner) on behalf of M/s Grasim Industries, M/s Gujarat Alkalies and Chemicals Ltd., M/s Search Chem Industries Ltd. M/s DCW and M/s Indian Rayon and Industries Ltd. who represented the domestic industry, alleging dumping of Sodium Hydroxide commonly known as Caustic Soda (hereinafter also referred to as subject goods) originating in or exported from Qatar (hereinafter referred to as subject country). The petition was supported by M/s Siel Chemicals Complex, Patiala, Punjab, M/s Bihar Caustic & Chemicals Ltd.. Bihar , M/s Jayshree Chemicals Ltd, Orissa and M/s Andhra Sugars Ltd., Saggonda unit subsequent to initiation.
- ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from Qatar. The authority notified the Embassy of Qatar in New Delhi about the

receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.

- iv. The Authority issued a public notice dated 8.10.2001 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom Code 281511 and 281512 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from Qatar.
- v. The Authority notified preliminary findings dated 18.1.2002 and forwarded a copy of the preliminary findings to the following interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter:-

IMPORTERS/USER

1. M/s Abhey Chemicals Ltd., Baroda
2. M/s Albright Wilson Chemical Ltd., Mumbai
3. M/s Arvind Mills Ltd., Ahmedabad
4. M/s Birla Cellulose Ltd., Bharuch
5. M/s Central Pulp Mills Ltd., Delhi
6. M/s Deepak Nitrite Ltd., Nandesari
7. M/s Godrej Soaps Ltd., Mumbai
8. M/s Gujarat Electricity Board, Vadodara
9. M/s Gujara Narmada Fertilizers Co. Ltd., Bharuch
10. M/s Gujarat State Fertilizers & Chemicals Ltd., Vadodara
11. M/s Hindustan Lever Ltd., Mumbai
12. M/s ICI India Ltd., Valsad
13. M/s Indian Farmer Fertilizers Coop. Ltd., Gandhinagar
14. M/s Indian Oil Corporation Ltd., Vadodara
15. M/s Indian Petrochemicals Corporation Ltd., Vadodara
16. M/s Jaysynth Dyechem Ltd., Mumbai
17. M/s Link Pharma Ltd., Baroda
18. M/s Meghmani Organics Ltd., Ahmedabad
19. M/s Narmada Chematur Petrochemicals Ltd., Bharuch
20. M/s Nirma Ltd., Ahmedabad
21. M/s PAB Chemicals (P) Ltd., Baroda
22. M/s Rama News Prints & Papers Ltd., Surat
23. M/s Rubamin Ltd., Baroda
24. M/s Torrent Gujarat Bio-tech Ltd., Baroda
25. M/s Transpek Industries Ltd., Vadodara
26. M/s National Aluminium Ltd., Bhubaneswar, Orissa
27. M/s C.J. Shah and Company, Mumbai

EXPORTER

M/s Qatar Vinyl Company, Qatar

DOMESTIC INDUSTRY

M/s Alkali Manufacturers Association of India

- vi. The Authority also forwarded a copy of the preliminary findings to the Embassy of the subject country in New Delhi with a request that the exporters of subject goods and other interested parties may be advised to furnish their views on the preliminary findings within forty days of the date of the letter.
- vii. The Authority provided an opportunity to all interested parties to present their views orally on 29.4.2002. All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- viii. Submissions in response to the preliminary findings/public hearing were made by the following interested parties:-
 - i. M/s Alkali Manufacturers Association of India
 - ii. M/s NALCO
 - iii. M/s Economic Laws Practice, Mumbai on behalf of M/s Qatar Vinyl Company Ltd.
- ix. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- x. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation. Kandla Port Trust was also requested for details of shipment. Information on imports was received from Kandla Customs and Kandla Port Authorities.
- xi. 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 subsequently have been appropriately dealt in the preliminary findings and/or these findings;
- xii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on

20.9.2002 and comments received on the same have also been duly considered in these findings.

- xiii. Cost investigation was also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner. The cost data of the following domestic producers was provided and analysed:--
1. M/s DCW
 2. Gujarat Alkalies and Chemicals Ltd., Vadodara
 3. Search Chem Industries Ltd., Jagadhia
 4. Indian Rayon & Industries Ltd., Veraval, Gujarat
 5. M/s Grasim Industries
 6. Siel Chemicals Complex, Patiala, Punjab
 7. M/s Bihar Caustic & Chemicals Ltd.. Bihar
 8. M/s Jayshree Chemicals Ltd, Orissa
 9. M/s Andhra Sugars Ltd., Saggonda
- xiv. The Authority verified the information provided by the petitioners to the extent considered necessary and also conducted on spot verification of the data furnished by M/s Qatar Vinyl Company, Qatar on 10th and 11th September, 2002.
- xv. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xvi. Investigation was carried out for the period starting from 1st January, 2001 to 30th Sept., 2001 i.e. the period of investigation (POI).

B . VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

1. VIEWS OF M/S ALKALI MANUFACTURERS ASSOCIATION OF INDIA (AMAI)

a). STANDING OF THE PETITIONER, PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

(i) The petitioner have reiterated their submissions on product under consideration and like article as also indicated in the preliminary findings.

In response to the disclosure, the following submissions have been made:-

The domestic industry have reiterated their submissions made earlier and have mentioned that as there are no submissions to the contrary neither any objection on the issue of product under consideration, like article and standing of the Domestic Industry, they have requested to confirm the preliminary findings.

b) NORMAL VALUE, EXPORT PRICE AND DUMPING

DUMPING

- i. While the exporter from Qatar has responded, the importers have not responded which establishes our claim that importers/traders were well aware that the price at which material has been imported is a dumped price. This is a fit case for imposition of anti dumping duty on retrospective basis.
- ii. The exporter has not filed the non-confidential summary of the questionnaire response.
- iii. The argument of exporter regarding no imports of caustic soda in India during POI is misplaced since the relevant fact is that of fact of exports and not imports.
- iv. The product can be considered as having been exported in various conditions like a firm offer/order of purchase, invoices and offer of resale etc.
- v. In the instant case, during the POI an offer of supply was made by the exporter to the Indian trader.
- vi. With regard to the normal value of exporter, the cost of production of the exporter needs to be scrutinised in detail.
- vii. The petitioner strongly submits that under no circumstances the cost of production for the exporter can be lower since they have made a huge investment of 678 million USD. The company has not provided the actual cost of production. The company has not provided the balance sheet and profit and loss account and also the project report.
- viii. The petitioners have cited the Hon'ble Supreme Court judgement in the Catalyst case and have indicated that Rule 6(8) in view of the project report not having been provided be applied.
- ix. The petitioner has also requested that appropriate scrutiny pertaining to allocation and apportionment of common expenses, appropriate cost of services and interest cost etc. to be evaluated carefully.
- x. As per the EU guidelines the evidence of export price may be obtained from the individual invoice transactions or offers. Also in the US questionnaire with regard the dumping, all those sales for which the supplies have not been completed till the date of filing the response have to be included for the purpose of price determination.

- xi. The interested parties have confused regarding the jurisdiction to determine the dumping margin and the jurisdiction to collect the anti dumping duty. These two issues are absolutely different issues.
- xii. The argument regarding the imports is misplaced as the fact of dumping occurs upon exports and such duty is leviable in future upon imports.
- xiii. The Designated Authority has in the past considered offers made/orders places as sufficient to invoke anti dumping action in case of PIB and Seamless Tubes.
- xiv. The argument of NALCO regarding holding hearing prior to preliminary findings deserves to be ignored in light of the judgement of High Court of Delhi and Supreme Court in the matter of Newsprint.
- xv. The various rules do not contemplate hearing prior to the preliminary findings
- xvi. Even in case of Vitrified Tiles concluded recently, Ministry of Finance did not agree for any hearing to the concerned parties.
- xvii. NALCO being an importer cannot raise the issue of dumping and dumping margin and neither NALCO is privy to the factual information nor NALCO has any actual experience and knowledge about caustic soda production and sales.

In response to the disclosure, the following submissions have been made:-

- i. As regard dumping, the Domestic Industry has reiterated their submissions regarding the various forms of offers/documents pertaining to exports which could be introduced into the country and have further reiterated the fact that the shipments made during the investigation period is of little relevance.
- ii. The petitioners have also mentioned that since the Normal Value has now been determined by the Designated Authority after taking into account various submissions made by the petitioners and reassessment of the cost of production, the proposed determination should be confirmed.

c) INJURY, CAUSAL LINK AND OTHER ISSUES

- i. The capacity of the exporter has been created considering various markets as the potential markets which include India as well.
- ii. The threat of material injury to the Domestic Industry from Qatar is required to be seen in the context of the anti dumping duties already imposed from other countries.
- iii. The capacity installed by exporter is 290000 MT far in excess of their domestic demand.
- iv. The company also admits that it intends to focus on GCC countries, Australia, South East Asia and African markets. Indian market is lucrative to the exporter.
- v. The Indian producers understands that the exporter has exported the material at USD 115/MT after September, 2001 also.

- vi. The landed price on imports from Qatar is significant below the full cost of production and fair selling price of the Domestic Industry.
- vii. There has been price undercutting and price suppression and price depression on account of the dumped imports.
- viii. The Domestic Industry is making financial losses from the sale of caustic soda in the Indian market.
- ix. The petitioner companies have lost sales to a number of customers on account of imports from Qatar.
- x. In a short time of about 6 months, the exporter from Qatar has exported more than 10000 MT and that the anti dumping duties need to be levied from the retrospective effect.
- xi. The threat is not a conjecture but real and imminent since the exports are understood to have been made at USD 115 per MT. The anti dumping duties should be levied in the variable dollar form.
- xii. In response to the submissions made by NALCO, the Domestic Industry has indicated that the NALCO's demand is 100000 MT and that the Domestic Industry has catered to the requirement of NALCO in the past.
- xiii. As regards NALCO's argument on injury, it is mentioned that the claim of Domestic Industry is not based on material injury but is based on threat of material injury.
- xiv. The various parameters such as production, sales volume, capacity utilisation have shown decline in the investigation period as imports have started arriving towards the end of the investigation period.
- xv. The Indian producers have taken up fleet of road tankers for supply of material to NALCO as a longterm policy to sustain business with NALCO. Whenever import prices have remained high, NALCO have conveniently placed order on the Domestic Industry.
- xvi. NALCO has been conveniently trying avoid providing information on its imports and from the domestic sales for the past several years.
- xvii. With regard the the determination of injury both actual or potential imports should be considered as also indicated in Rule 14(d)

In response to the disclosure, the following submissions have been made:-

- i. The petitioners have reiterated that M/s QVC's entire production is meant for exports and that there is a threat of material injury since after September, 2001, the prices have come down to USD 115 PMT and that between October, 2001 and March, 2002 the exporter has exported 17000 MT of caustic soda as per DGCI&S data and as per their market intelligence about 30000 MT materials has been exported by the exporter.

- ii. It has been mentioned that that threat of material injury under these circumstances is real and imminent.
- iii. The petitioners have also reiterated that the rate of growth of exports from Qatar is too significant and that exporter from Qatar along constitutes 3% of the Indian demand in a short time less than one year.
- iv. Further the petitioners have mentioned that the threat has become imminent as per the information relating to production, sales and capacity utilization after the investigation period and upto June, 2002/
- v. It has also been mentioned that the goods have been imported at prices as low as USD 80-115 PMT.
- vi. The petitioners have requested for duty in the variable dollar basis on account of the low prices and drastic reduction in the export prices.

2. EXPORTER'S VIEWS

A) M/s Qatar Vinyl Company (QVC) Ltd.

a) NORMAL VALUE, EXPORT PRICE AND DUMPING

DUMPING

- i. No imports have been made during the POI i.e. 1.1.2001 to 30.9.2001 and that the imports were made after 18.10.2001. The exporters began production in June, 2001 and that the first transaction for imports into India were finally negotiated only around 12.10.2001. Sample copy of the invoice dated 12.10.2001 and bill of lading dated 12.10.2001 are enclosed as evidence.
- ii. Section 9A of the Customs Tariff Act, 1975 and Section 9B(b)(i) and (ii) mandates the levy upon importation of goods into India at less than their normal value.
- iii. The entire analysis of dumping, injury, causal link and de minimis thresholds has to be made within the period of investigation and in a situation where there are no imports, no analysis can be made and levy would automatically fail.
- iv. Under Rule 4(1)(a) of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and For Determination of Injury) Rules, 1995, the duty of Designated Authority is to investigate into the existence, degree and effect of an alleged dumping in relation to imports of any article and when there are no imports, this duty cannot be discharged and there can thus be no levy of anti dumping duty.
- v. Under Rule 14 of Anti Dumping Rules, Designated Authority is statutorily mandated terminate when there are no imports and hence no dumping. De-minimis criteria cannot be satisfied as per Rule 14© and 14(d).

- vi. The applicants have made contradictory and misleading statement on the issue of importation indicating that exports have started and the shipment is shortly expected and therefore under Rule 5 (3) (b) where the evidence is not accurate, the initiation of the investigation is itself bad.
- vii. In the preliminary findings, the levy has been recommended on the basis of the proforma invoice which under the Indian Contract Act cannot constitute an offer. The various judgements of the Hon'ble Courts have been cited.
- viii. The oblique reference to some WTO provisions are not the mandated agreements and rules.
- ix. Section 9 and Section 9A of the Customs Tariff Act and, Rule 4, Rule 5, Rule 12, Rule 17 of the Rules, all mandate an examination and findings of dumping, injury and causal link as regards imports. This examination is for imports during the period of investigation.
- x. Section 9A(8) adopts the provisions of the Customs Act, 1962 inter alia for levy issues. Section 2(23) of the Customs Act, 1962 defines "imports" as bringing into India from a place outside India.
- xi. Footnote 8 of the Anti Dumping Agreement provides 'date of sale' which is relevant to calculate the rate of exchange only.
- xii. The Hon'ble Supreme Court in Garden Silk Mills Limited & Anr. Vs. Union of India & Ors 1999(113) ELT 358(SC) have declared that imports commences when goods enter the territorial water and is completed when goods are cleared into the Indian land mass.
- xiii. It is submitted that just because the importers/traders have not responded to the Designated Authority, it cannot mean that they were well aware that the price at which material was imported in India was a dumped price'. On the contrary, the non-response by the importers/traders is appropriate since there were no imports during the POI.
- xiv. It is a complete misunderstanding of the anti dumping provisions and an abuse of the anti dumping jurisprudence to make a case on any alleged threat of exports.
- xv. Section 9A and Section 9B of the Customs Tariff Act clarify the levy of anti dumping duty on dumped articles and also clarify regarding no levy under Section 9 and Section 9A.
- xvi. The Designated Authority is bound by the dictum of Hon'ble Supreme Court and even the event of imports is clearly settled.
- xvii. M/s QVC wishes to take leave to file on record the balance sheet with the Designated Authority.
- xviii. The project report is confidential document privy to the exporter and is not required in the standard questionnaire of the Designated Authority and also the project report is little if any thing at all is to do with the fixing of the normal value.

- xix. The petitioner should be put to strict proof regarding the reference made to EU and US law.
- xx. As regards the normal value, the applicant proceeds on constructed cost based on Indian cost of production whereas as per Rule 9(A)(c)(ii)(b) mandates consideration of costs in the country of origin.
- xxi. 65% of the cost of production of caustic soda is on electricity which in India is 12 times more than that in Qatar.
- xxii. The preliminary findings also proceed on constructed cost in India.
- xxiii. The only reasons to reject cost of production furnished by QVC is (a) balance sheet not given as explained this was not possible as production begins in June, 2001 and no balance sheet was available in December/January when asked for and (b) some claimed difference in figures, which was minor and it was clarified that the figures of date should be looked at.

In response to the disclosure, the following submissions have been made:-

A. Dumping

- i. The fact that the importers have not responded has no bearing on the dumping, which remains the function of the export price and normal value from Qatar.
- ii. It is surprising to note that the domestic industry claims that no non-confidential summary was filed. Without a non-confidential summary on record, the Designated Authority could not have undertaken the verification visit.
- iii. With reference to the statement that what is relevant is the fact of exports and not imports. It is categorically stated that there were neither exports nor imports to India during the Period of Investigation.
- iv. It is vehemently denied that the product can be considered as having been exported in various conditions like " a firm offer/order of purchase invoices and offer of resale etc." This is completely contrary to the view taken by the Hon'ble Supreme Court. This position is all the more untenable given the fact that the exporter is the only manufacturer of the product under consideration in Qatar.
- v. It is a undisputed fact that the Designated Authority have visited Qatar for verifying the record which clearly proves that with reference to the details of the cost of production and other pertinent information, it is a matter of record that all the required information has been filed and verified in keeping with the law.
- vi. With reference to the EU and US provisions on supplies not yet made, the same cannot be used as the basis for imposing duties when no exports have been made at all. It might well be that as part of the overall investigation and the threat assessment, authorities may look at offers etc. as part of overall analysis.

To apply that same rationale to a stand alone offer is without any basis in law and facts.

- vii. With reference to the "confusion" on the jurisdiction to determine the dumping margin and the jurisdiction to collect anti dumping duty, the same are intimately linked as there can be no collection of any anti-dumping duties without the determination of a dumping margin. In fact, as the law is, the power to collect the anti dumping duties can only emanate from a determination of the dumping margin. Section 9A of the Customs Tariff Act is unequivocal in this regard.
- viii. As regards the fact that the anti dumping duty is leviable for future imports, the Domestic Industry itself admits that even for imposition of anti dumping duty in future, "the fact of dumping occurs upon exports.". Clearly there have been no exports or imports during the Period of Investigation on the facts of this case.

B. Normal Value

- i. With regard to normal value, it is submitted that while the domestic sales are inadequate for the purposes of establishing the normal value, the export price to third countries remains an option. While the Designated Authority has the discretion to decide which basis to use (i.e. cost of production or export price to third countries) the exercise of this discretion must bring with it a transparent exercise of this discretion.
- ii. The Designated Authority provides no reason for opting for the cost of production over the export price to third countries.
- iii. It is submitted that there are few steps in newly establish company when it goes from project stage to industrial production. For QVC, the following were the benchmarks-

Performance Test completed ***

Lenders Reliability Test completed ***

Engineering and Project completion ***

So therefore, the commercial production is slated to be commenced only in ***. The Designated Authority should consider all this fact when considering the commercial production.

- iv. Since QVC was able to run the plan at 72% capacity at initial stage does not mean commercial production. With reference to the capacity utilisation at 72% and the Designated Authority accepting the same as the basis for determining

the cost of production, the same is highly objectionable, as no plant, especially a new plant is set up to operate at a capacity utilisation of less than ***. This is sound business practice and by ignoring this the Designated Authority is disregarding commercial realities of the economies of plant operations. At 72% capacity utilisation, making of profits on a sustained basis is highly improbable.

B. Arguments pertaining to no Exports during the Period of Investigation

(i) The concept of "introduction into the commerce of the country" drawn upon from Article 2.1 of the WTO Agreement by the Designated Authority is without any basis. It is a matter of settled law that the Municipal law prevails over any Treaty provisions in India. The fact is that the relevant section calls for the Export of the products under consideration during period of investigation to India. Furthermore, the cases relied upon by the Designated Authority including the South Africa case may have considered tender prices as one of the constituents to determine the export price but certainly none of the cases referred to by the Designated Authority relied upon a tender price. Furthermore, within the factual matrix of the case in hand, there has been no tender during the period of investigation pursuant to which any supplies were made.

b. INJURY, CAUSAL LINK AND OTHER ISSUES

- I. All imports in October after the POI were under advance licence and cannot cause injury during the POI.
- II. The Application and the preliminary findings proceed on the basis of a threat of material injury. The provisions of Rule 11(2) with para (vii) of Annexure II have been relied upon.
 - i. i. The proceedings on the basis of a threat of material injury are entirely on conjecture and are entirely without jurisdiction. Even for threat of material injury, the essential requirements of satisfying the fundamental pre-conditions are essential and as such during period of investigation there are no imports.
 - ii. ii. Harmoniously construed under Para (vii) of Annexure II there must be dumped imports in the period of investigation and while there may be no injury in the period of investigation, material injury must be threatened and imminent beyond the period of investigation. Without dumping in the period of investigation, there can be no sustainable case for a threat of material injury.
 - iii. iii. The petitioners are mutli-product company and that the petitioners are making super profits in the manufacture of Chlorine and that the Designated Authority should examine the claim of losses that petitioners have claimed

In response to the disclosure, the following submissions have been made:-

On the issue of threat of material injury

- i. Under Section 9B(ii) read with Rule 11 and read with Para (vii) of Annexure II to the Rules are provisions which specify the threat of material injury all of which emphasize that there must be dumping (within the period of investigation) and this dumping must create an imminent threat of material injury. This is clearly brought forth from Para (viii) above which states`

"The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent".
- ii. The provision for threat of material injury does not water down or obviate the essential requirements of satisfying the fundamental pre-conditions of establishing
 1. Dumping
 2. Standing
 3. De minimis
- iii. During the analysis period (Period of Investigation) in a situation where there are no imports during the Period of investigation, the essential pre-condition for levy are not satisfied. These essential pre-conditions cannot be given a go by in a proceeding based on a threat of material injury. In the instant case, during the verification visit made, a list of long term contract for the product under investigation were submitted which covered ***% of the total production to other third countries were made available, which clearly should be considered by the Designated Authority.
- iv. Harmoniously constructed under Para (vii) of Annexure II there must be dumped imports in the Period of Investigation and while there may be no injury in the Period of Investigation, material injury must be threatened and imminent beyond the period of investigation. Without dumping in the period of investigation, they can be no sustainable case for a threat of material injury.
- v. (v) It is therefore submitted that the Designated Authority follows the judgement gives effect to the judgement delivered by the Panel report in the case of Mexico-Anti dumping investigation of High Fructose Corn Syrup (HCFS) from the United States, at Para 7.131, where before the panel USA claimed that a determination of threat of injury cannot be based only on examination of the factors set forth in Article 3.7 of the Anti Dumping Agreement. A determination of threat of injury also requires an assessment of the impact of imports on the Domestic Industry through a examination of the relevant economic factors set forth in Article 3.4. Article 3.7 requires a determination whether material injury would occur, Article 3.1 requires that a determination of injury, including threat of injury, involve an examination of

the impact of imports, and Article 3.4 sets out the factors that must be considered, among other relevant factors, in the examination of the impact of imports on the Domestic Industry. Thus, in our view, the text of the Anti Dumping Agreement requires consideration of the Articles 3.4 factors in a threat determination. Article 3.7 sets out additional factors that must be considered in a threat case, but does not eliminate the obligation to consider the impact of dumped imports on the Domestic Industry in accordance with the requirements of Article 3.4.

On the issue of injury

- i. It is mandated in Annexure II to the Rules, that for a determination of injury " an evaluation of all relevant economic factors and indices having a bearing on the state of the industry must be examined unless the circumstances are exceptional it is not possible to merely decide to determine the issue of injury on few economic negative indices while ignoring other positive indices".
- ii. In the case of European Commission – Anti Dumping Duties on imports of Cotton Type Bed Linen from India –Report of the Panel –WT/DS141/R at Para 6.154 that under Article 3.4, the ordinary meaning of the provision is that the examination of the impact of dumped imports must include an evaluation of all the listed factors .in Article 3.4 of the WTO Agreement on Anti Dumping. In the Bed Linen case, India asserted that all relevant injury factors must be evaluated. Therefore it was the conclusion of the panel that "use of the phrase" shall include" in Article 3.4 that the evaluation of the listed factors in that provision is properly interpreted as mandatory in all cases.
- iii. Therefore, since the above interpretation on all factors of injury to be evaluated was suggested by India and accepted by the Panel, obligates the Designated Authority to take into consideration all the injury parameters, through at the same time, it is an accepted position in the preliminary findings which cannot be ignored , that
 1. all indices such as sales, capital utilisation, production, net sales realisation and demand have gone up.
 2. Imports have gone down
 3. All injury parameters are positive
- iv. Thus, there is clearly no injury in the Period of Investigation. It is relevant that the Domestic Industry has already had an anti dumping duty for over a year, which has obviated any material injury to Domestic Industry. The aforementioned factors establish inter alia that there is no causal link.

B. EMBASSY OF STATE OF QATAR, NEW DELHI

- i. The Embassy of the State of Qatar has requested that the findings should be done in accordance with the principles and procedures agreed upon in the WTO.

3. IMPORTER'S VIEWS

VIEWS OF M/S NATINAL ALUMINIUM COMPANY LTD. (NALCO)

a) NORMAL VALUE, EXPORT PRICE AND DUMPING

DUMPING

- i. There have been no imports from M/s QVC during the POI. The billing of lading and other materials indicate exports in October, 2001. There could be no dumping when the actual imports of goods into India and that as per Section 9(A) (1) of the Customs Tariff Act, 1995 there could be no duty. Also as per Rules 4(1)(a) since there is no import, there could be no existence of dumping and therefore degree or effect of dumping cannot be investigated.
- ii. The word 'import' has been defined in the Customs Act and means the actual bringing into of goods at the customs frontiers.
- iii. Section 9(A)(1)(b) has defined the export price and it specifically means the price of the article exported from the exporting country.
- iv. Actual import of goods is a condition precedent for imposition of anti dumping duty.
- v. The offer or a proforma invoice is not a concluded contract and there are various judgements of courts on the same. Also proforma invoice is totally irrelevant since there could be high sea sales which could divert the goods to some other country so that it could not be termed as imports.
- vi. Designated Authority in the case of PSF did not accept that the invoice relating to the subsequent imports took place by M/s Reliance which was within the period of investigation and the actual import was outside the period of investigation.
- vii. There is non-disclosure of information pertaining to cost of production for both the domestic industry and the exporter and that this is denial of natural justice. While considering the cost of production for the petitioners, it should be borne in mind that the Electro Chemical Unit (ECU) realisation price is important.
- viii. In the preliminary findings most of the information pertaining to Normal Value and adjustments have been kept confidential and that NALCO submits that it should first be provided all the material for the purpose of natural justice and defence
- ix. While constructing the cost of production of Caustic Soda in a foreign country like Qatar, it is essential to consider the production of chlorine and the sales

realisation from chlorine also as has also been admitted by the petitioner during the oral hearing that in foreign countries chlorine is the main product and caustic soda is the bye-product.

- x. The Authority should consider the fact that the exporter is not selling at a price less than the Normal Value for the purpose of levy of anti dumping duty.

b) INJURY, CAUSAL LINK AND OTHER ISSUES

- i. Various judgements pertaining to interpretation of international law vis-à-vis municipal law as have been indicated by NALCO for appropriate consideration.
- ii. NALCO has also submitted that before the preliminary findings as per Section 12, a hearing for the purpose of defence should be granted and that it is the pre-decisional hearing prior to preliminary findings which is contemplated in the rules and not post-hearing decision.
- iii. Also the rules do not exclude a prior hearing before a preliminary findings.
- iv. The cost of production in Qatar because of the cost of electricity is much lower and that there could be no dumping.
- v. The Rules and Acts does not admit to any conjectures and surmise but there has to be sufficient evidence to show that dumping is taking place and secondly it has caused material injury to the Domestic Industry.
- vi. The price of caustic soda in India has been in accordance with the international price of goods and has nothing to do with the price of imported goods.
- vii. NALCO for its supply requirement had invited tenders for supply of caustic soda lye. With present requirement of 2 lakhs MT of caustic soda lye (1 lakh MT of caustic soda dry), the Indian manufacturers have offered quantities much lower than the amounts required by NALCO making it unnecessary expensive for NALCO.
- viii. The supplies are made by trucks carrying 10 MT only whereas normal shipment taken by NALCO in the range of 5000 MT. The supplies made by the domestic suppliers are of small quantities as compared to foreign suppliers and that the landed cost to NALCO is higher in case of Indian suppliers. This adversely affects NALCO exports and competitiveness in the Indian market.
- ix. There are fundamental errors in the preliminary findings. The analysis holds in favour of no injury. It has been show that domestic sales, capacity utilisation, production, net sales realisation have increased and that imports have decreased and there are no imports in POI and that the demand has increased. Therefore all these factors hold that there is no injury to the Domestic Industry. The Authority has been totally arbitrary in holding that the net sales realisation in the POI has been below the NIP. It is not clear as to how the NIP has been calculated.

- x. The net sales realisation have not taken into account the realisation from chlorine

C. EXAMINATION BY AUTHORITY

The foregoing submissions made by the exporter and the petitioner, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

1. STANDING OF THE PETITIONER, PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

The Authority notes that there are no submissions made regarding the product under consideration, like article and the standing of the Domestic Industry. The Authority, therefore, proposes to confirm the findings on these aspects as indicated in the preliminary findings dated 18.1.2002.

a) PRODUCT UNDER CONSIDERATION

The Authority recalls and reiterates Para C.1 on the product under consideration of the preliminary findings dated 18.1.2002 as under:-

The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature NaOH), commonly known as Caustic Soda originating in or exported from Qatar. Caustic soda is an inorganic, soapy, strongly alkaline and odourless chemical and finds application in various fields like manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminium, cotton, textiles, toilet and laundry soaps, detergent, dyestuffs, drugs and pharmaceuticals, petroleum refining etc.

Caustic soda is classified under chapter 28 of the customs Tariff Act, 1975 under Customs Head 2815.11 and 2815.12. As per ITC Eight Digit classification, the product is classified under the Custom Heading 2815.1101, 2815.1102 and 2815.1200. The classification, is however, indicative only and is in no way binding on the scope of the present investigation.

Caustic soda is produced in two forms, i.e. lye and solids by three technology processes, i.e mercury cell process, diaphragm process and membrane process.

Caustic Soda can be imported under OGL and attracts a basic customs duty of 35%. The present investigation covers all forms of caustic soda.

The Authority confirms the same in view of no submissions.

b) LIKE ARTICLE

The Authority recalls and reiterates Para C.2 on the Like Article of the preliminary findings dated 18.1.2002 as under:-

The Authority notes that the petitioner has claimed that the goods produced by them are like article to the goods produced, and exported from the subject country. Also both are technically and commercially substitutable and the consumers are using the domestically produced and imported goods interchangeably. It has been indicated that the Caustic soda is processed by three processes viz. Mercury cells process, diaphragm process and membrane process world over. The difference in these processes does not mean difference in product in terms of various characteristics. Also there is no significant difference in the cost of production for the three processes. The petitioner has claimed that the goods produced by them and those exported from Qatar are like article within the meaning of the Rules.

The Authority notes that the exporter from Qatar has submitted that the petitioners have made certain assumptions about the cost and the manufacturing processes. The exporter has indicated that as per their understanding there is a significant difference in the power consumption for each of the three manufacturing processes and thus the costs involved in each process. It has been submitted by the exporter that the Indian producers do not have many outlets for Chlorine and that they consider Chlorine as a non-tradable commodity and thus as a by-product while producing Caustic Soda. The exporter has indicated that in their case Chlorine is the main raw material and they do not consider it as a by-product. In fact Caustic is the by-product while producing Chlorine.

The Authority after noting the above submissions notes that while M/s QVC, the exporter from Qatar has indicated the difference in costs for the three processes, there has been no argument regarding any variation in the characteristics of the product exported by them and that produced by the Domestic Industry. It is also not a claim by the exporter that the goods exported by them and that produced by the Domestic Industry are not interchangeable. The customers in India of the goods exported by M/s QVC have used the exported goods and the goods produced by the Domestic Industry interchangeably being the common customers.

The Authority confirms the same in view of no submissions by any interested parties and holds that domestically produced goods and those exported by M/s QVC are like article as per Rule 2(d).

c) STANDING OF THE DOMESTIC INDUSTRY

The Authority recalls Para C.2 on the Standing of the Domestic Industry of the preliminary findings dated 18.1.2002 as under:-

The petition has been filed by M/s Alkali Manufacturers Association of India on behalf of the domestic industry. The petition has been supported by M/s DCW Limited Mumbai, M/s Gujarat Alkalies & Chemicals Ltd, Gujarat, M/s Search Chem. Industries Ltd, Mumbai, M/s Grasim Industries Ltd, Madhya Pradesh and M/s Indian Rayon & Industries Ltd., Gujarat. None of the domestic producers has opposed the petition. The Authority notes that the five domestic producers who have supported the petition constitute 32.6% of the total domestic production and therefore have the standing to file the petition on behalf of the domestic industry as per Rule 5(a) and (b) of the Anti-Dumping Rules. Subsequent to the initiation M/s Siel Chemicals Complex, Patiala, Punjab, M/s Bihar Caustic & Chemicals Ltd.. Bihar , M/s Jayshree Chemicals Ltd, Orissa and M/s Andhra Sugars Ltd., Saggonda unit have also supported the petition and furnished injury information.

The Authority notes that there is no opposition to the petition by any of the domestic producers and therefore confirms the standing of the Domestic Industry in view of no submissions, and holds that the petitioner satisfies the condition as per rule 5(3) (a) and (b) and represents Domestic Industry as per Rule 2(b).

2. **DUMPING MARGIN**

a) NORMAL VALUE

The Authority recalls its observations on the Normal Value in the disclosure statement that it has been indicated by M/s Qatar Vinyl Company (QVC) that there are no domestic sales of the subject goods in their country. Also it has been indicated that the constructed cost of production indicated for M/s QVC by the petitioner is not correct and that there is no relevance of project report as far as exporter's response to the questionnaire is concerned. The exporter has also indicated that there is a wide variation in the cost of power in India and Qatar which is one of the major constituents for the production of Caustic Soda.

The Authority after noting the above submissions by various interested parties had carried out on spot verification of the exporter on 10th and 11th September, 2002 and has appropriately considered the concerns of the interested parties while looking at the submissions and the data provided by the exporter. The Authority in view of the various submissions made by the Domestic Industry and the exporter on the determination of the Normal Value had proposed to reference the cost of production

of M/s QVC for Normal Value so verified during the on site verification of the records of the exporter conducted by the verification team on 10th and 11th September, 2002 at Doha, Qatar.

The Authority in disclosure had indicated that during the verification of M/s QVC at Doha also noticed that there was no domestic sales during the POI for the subject goods in Qatar. It was indicated by the exporter that there are certain sales of vary small quantities to their shareholding company i.e M/s QAPCO which however were not at the market price. The Authority in view of these submissions and data so verified had proposed to reference the cost of production of the subject goods during the POI for M/s QVC as ****\$/MT and with a reasonable profit margin has evaluated the Normal Value as ****\$/MT. The Authority notes that during the verification the exporter indicated that during the POI they were operating at a capacity utilisation of 72% which was a trial production stage and not commercial production. The Authority had observed in the disclosure that such a level of capacity utilisation cannot be termed as trial production and that the actual cost of production during the POI has to be considered for the determination of the Normal Value and had therefore indicated to consider the cost of production and the Normal Value on the basis of the actual production during the POI.

The Authority notes that it has been indicated by the exporter that 72% of the production during the POI was actually a trial production only and that the design of the plant was such that 72% could be termed only as trial production. It has also been indicated by the exporter that it is not clear as to why the Authority has not referenced the third country exports as the basis of the normal value. The Authority also notes that the Domestic Industry while reiterating its submissions on the Normal Value as made earlier has indicated that the Authority may confirm the findings in view of the verification so conducted. The Authority after noting the above submissions reiterates that during the period of investigation which has been so considered, it is the actual cost of production data which is of relevance and which has therefore been considered for the purpose of evaluating the normal value. The Authority also notes that during the on spot verification of the exporter, the data pertaining to exports made to various countries during the POI was also referenced. However for the purpose of referencing the third country exports, the Authority notes that the appropriate third country in terms of quantity of exports and being in the Asian region could be Malaysia. The representative , viable and in ordinary course of trade export price to Malaysia during the POI also correlates with the Normal Value so constituted for the exporter. Also the Authority notes that even if the so called projected capacity utilisation as per project report is referenced, then reasonable profit would be the profit envisaged in the project report, the Normal Value then evaluated on the projected profit mark up on the FOB sales would also co-relate with the Normal Value so constructed by the Authority.

Therefore the Authority notes that the Normal Value constructed on the basis of the actual cost of production during the POI is realistic as it correlates well with the data on the third country exports and even as indicated in the project report.

The Authority has therefore referenced the Normal Value as *****/MT.

b) EXPORT PRICE

The Authority recalls that in the disclosure it was indicated that the exporter has provided the CIF export price contracted during the POI and the supplies made in pursuance of this thereafter outside the POI as *****/MT. The exporter had provided evidence regarding various adjustments on CIF price on ocean freight, ocean insurance, marketing fee to M/s Atofina, credit cost and port expenses to an extent of ****, ****, ****, **** and **** respectively.

The ex-factory export price on the basis of the various adjustments was proposed to be considered as *****/MT. The Authority in view of no submission in this regard, proposes to confirm the ex-factory export price as *****/MT.

c) OTHER NON-COOPERATIVE EXPORTERS/PRODUCERS

As regards the other non-cooperative exporters/producers, the Authority had proposed to consider in the disclosure the Normal Value as determined for M/s QVC for these exporters/producers as well keeping in view the fact that there are no domestic sales and that the cost of production in Qatar for M/s QVC would also be relevant for the other exporters/producers.

As regards the ex-factory export price, the Authority had proposed to allow an adjustment on account of inland freight on the export price for the non-cooperative exporters/producers which led to an ex-factory export price of *****/MT. The Authority in view of no submissions confirms the ex-factory export price as *****/MT.

Based on the above, the dumping margin comes to *****/MT(47%).

3. Dumping-Comparison of Normal Value & Export Price

The Authority recalls that in disclosure statement it had indicated the views of the various interested parties pertaining to no exports by M/s QVC made during the POI. The Authority had indicated the submissions by the exporter regarding the definition of dumping, relevant provisions of the Customs Tariff Act, Hon'ble Supreme Court judgements cited, regarding the term 'imports' and contract and also the rule position

pertaining to duties of the Designated Authority to evaluate the incidence of dumping. It was also indicated by the exporter that that in view of the no imports/exports during the POI, there is no incidence of dumping and that the further tests pertaining to this cannot be applied. The Authority in this regard had noted the submissions made by the Domestic Industry regarding the practices of EU and US. The Authority also noted that in case of anti dumping investigation of Catalyst from Denmark, a judgement upheld by the Hon'ble Supreme Court, Authority had categorically held that the comparison for dumping margin has to be made for sales and not for imports.

The Authority also noted the submission that it had categorically been indicated in this case that it was the price contract which leads to price undercutting and that the supply being made outside the POI was of no direct significance. The Authority noted that it has also in the past in its various determinations which included Catalyst from Denmark, PIB from EU, Singapore, Thailand, Japan, Brazil and Korea RP and Seamless Tubes from Austria, Czech Republic, Russia and Ukraine has considered the aspect of tender prices for the purpose of evaluation of export price and thereafter even for the purpose of levy of anti dumping duty. The Authority also noted that South Africa in one of the cases of Antibiotics against India had also considered the tender prices for the purposes of determination of the export price. On perusal of the Article 2.1 of the WTO Agreement on Anti Dumping, the Authority notes that the basic tenet of dumping is indicated to be introduction of the goods into the commerce of the country. In view of the fact that the contracts/tender prices when quoted lead to price undercutting and these are actually translated into shipment leading to injury even though the dumped goods may be sent outside the period of investigation. The Authority therefore notes that in case of M/s QVC, a letter of credit (LC) was opened with one of the importers during the month of September, 2001 i.e. with the POI and the correspondence which had led to a conclusion of this LC was even much prior to the date of letter of credit. The process of negotiation of the dumped goods had therefore started well within the period of investigation and therefore the impact of these offers on the prices prevailing in the domestic market is what is relevant. The Authority notes that the argument of the exporter regarding the proforma invoice not being a contract is negated by the fact that there also exists a letter of credit during the period of investigation. The Authority notes that as regards the judgements pertaining to imports being cited by the exporter, the Authority considers it appropriate to reference the judgement in case of imports of Catalyst from Denmark which was upheld by the Hon'ble Supreme Court and is of direct relevance being an anti dumping investigation case judgement .

The Authority notes that in response to the disclosure while Domestic Industry have again reiterated their submissions, the exporter has mentioned that the confusion on the jurisdiction to determine the dumping margin and the jurisdiction to levy the anti

dumping duty is misplaced since the two issues are intimately linked as there can be no collection of any anti dumping duty without determination of a dumping margin. In fact the Section 9A of the Customs Tariff Act has indicated as unequivocal in this regard. The Authority after noting the above submissions holds that in case of Catalyst which has been upheld by the Hon'ble Supreme Court the Authority had referenced the tender prices for determination of the export price. It was clearly indicated in the determination that " the Authority has observed that the majority of catalysts are sold through tenders. There is a considerable time lag between the price contract and the date of actual delivery. The rules provides that comparison is required to be made in respect of the "sales" and not imports. The rules further provide that due allowance shall be made in each case, on its merits, for differences which affect price comparability. The Authority observes that it is the price contract which leads to price undercutting or underselling causing injury to the Domestic Industry, the fact that the deliveries may be made outside the investigation period is of not direct consequence". In view of the same, comparisons have been made between the Normal Value and the export prices contracted during the investigation period without reference to the period of actual import/deliveries.

The Authority also notes that in the past in the determinations of PIB from EU, Singapore, Thailand, Japan, Brazil and Korea RP and Seamless Tubes from Austria, Czech Republic, Russia and Ukraine the Authority has referenced the tender prices which were the tender (quoted) prices and not the export prices of physical exports made during the POI. Further the Authority also notes that during the verification of the exporter, a letter of credit was identified which were opened with an Indian buyer for supply of the goods to India. The Authority also notes that as per Annexure 1 of the Anti Dumping Rules in Sub-Rule (6), the Authority has to determine the margin of dumping by making a fair comparison between the export price and the Normal Value. The Authority therefore holds that in this the export price is well established by the proforma invoice or the letter of credit whichever is available in respect of the sales transactions to India. The Authority has therefore appropriately determined the dumping margin as indicated above.

The rules relating to comparison provides as follows:

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

The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price for the goods contracted for exports in Period of Investigation, for evaluation of the dumping margin for all the exporter/producers of the subject country.

The dumping margin for exporter/producers comes as under:

Exporter	Normal value(NV) \$/MT	Export Price(EP) \$/MT	Dumping margin as % of EP
QATAR			
M/s Qatar Vinyl Company (QVC) Ltd.	*****	*****	42
All other exporters/ producers in Qatar	*****	*****	47

4. INJURY AND CAUSAL LINK

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 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 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.

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

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

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

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

The Authority has also reexamined the injury data as provided by the petitioner and observes the following economic parameters in the case of domestic producers who had supported the petition initially and other domestic producers who have subsequently supported and provided injury information after initiation:-

	1998-99	1999-2000	2000-01	POI (1.1.2001 to 30.9.2001)	Annualized POI
Capacity	723564	729100	729100	546825	729100
Production	528367	669488	675681	492653	656871
Capacity utilisation	73.02	91.82	92.67	90.09	90.09
Sales (MT)	450729	530357	536339	382758	510344
Net Sales Realisation	****	****	****	****	****
Cost of production (Rs/MT)	****	****	****	****	****
Profitability (Rs/MT)	****	****	****	****	****
Total imports	94452	86743	73621	29022	38696
Imports from Qatar	0	0	0	3202	4269
Market share of imports from Qatar	0	0	0	11.03	11.04
Demand (MT)	1509061	1461626	1496113	1111110.345	1481480
Market share in demand					
Imports as % of demand	6.26	5.93	4.92	2.61	2.61
Participating companies share as % of demand	29.87	36.29	35.85	34.45	34.45
Imports from Qatar as % of demand	0.00	0.00	0.00	0.29	0.29

- a. The domestic sales has increased from 450729 MT in 1998-99 to 530357 MT in 1999-2000 and further to 536339 MT in 2000-2001. In the POI, the annualised domestic sales has been 510344 MT.
- b. The capacity utilisation has increased from 73.02% in 1998-99 to 91.82% in 1999-2000 and to 92.67% in 2000-2001. In the POI, the capacity utilisation has been 90.09%.
- c. The production has increased from 528367 MT in 1998-99 to 669488 MT in 1999-2000 and further to 675681 MT in 2000-2001. In the POI, the annualised production has been 656871 MT.

- d. The Net Sales Realisation has been **** Rs/MT in 1998-99 which has increased to **** Rs/MT in 1999-2000 and to Rs. **** Rs/ MT in 2000-2001. In the POI, the Net Sales Realisation has been to **** Rs/ MT.
- e. The Net Sales Realisation in the POI has been below the Non-Injurious Price thus leading to financial losses.
- f. The imports of the subject goods have decreased from 94452 MT in 1998-99 to 86743 MT in 1999-2000 and to 73621 MT in 2000-2001. The imports of the subject goods have further decreased to 29022 MT in POI (Annualised 38696 MT).
- g. The imports from Qatar were Nil till 2000-2001. Exports of 3202 MT were quoted by the exporter in the POI which constitute 11.04% of the total imports of the subject goods in POI. These exports from Qatar which were indicated by proforma invoice are significant as compared to earlier periods and are above the de-minimus level of 3% .
- h. The Authority also notes that the exporter in Qatar has set up a plant primarily for the purposes of export as the demand in the home market of Qatar is not significant. Therefore with the present available capacity and the price undercutting phenomena by the recent dumped imports, the Authority holds that the exports from Qatar are an imminent threat to the domestic producers of the subject goods in India.
- i. The Authority notes that the capacity of the exporter M/s Qatar Vinyl Company from Qatar is of an order of ****\$/MT which was verified during the on site verification. The Authority also notes that this capacity is significant in view of the fact that there is no available demand in Qatar and that the exporter is primarily into international business and is exporting the subject goods to various countries including India. The Authority notes that as per Annexure II of the Anti Dumping rules one of the parameters pertaining to threat of material injury is to examine as to whether there is a significant rate of increase of dumped imports into India which indicate the likelihood of substantial increased importation. The Authority in this regard notes that during the on site verification, exporter M/s QVC had indicated that their long-term contract for supply to countries other than India. The Authority notes that the contracts which have been committed over a period of 3 to 5 years by M/s QVC are not for the entire capacity and that even after consideration of such long-term contracts, there is surplus disposable capacity which is available with the exporter for sales to other non-contracted countries. The Authority in this regard has also noted the submissions made by the Domestic Industry in response to the disclosure that as per DGCI&S between October, 2001 and March, 2002 there have been exports of an order of 17000 MT of subject goods to India from Qatar. Also it has been indicated that from the other secondary sources in 2002 about 30000 MT material has been exported by the exporter

and that the prices have been significantly lower. The Authority therefore notes that while only 3202 MT which were contracted during the POI, the exports subsequent to the POI from October, 2001 to March, 2002 have been to an order of 13633 MT which represents a significant increase. The Authority therefore holds that there being sufficient non-contracted quantity of subject goods for the next three years with M/s QVC and that there has been significant rate of increase of dumped goods beyond the POI thereby implying that the likelihood of substantial increased importation is imminent and to a great extent has also become real in view of the substantial post-POI imports. Also the average prices at which the imports have taken place during the post-POI period imply that these imports are significantly depressing and suppressing the domestic prices. Thus the authority holds that the dumped goods are a threat of material injury to the Domestic Industry

5. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

The Authority notes that M/s NALCO have indicated that their requirement is of much higher quantities and that the truck supplies made by the Domestic Industry are insufficient. It has also indicated that the landed cost to M/s NALCO is much higher in case of the Indian suppliers. It has also been further indicated by M/s NALCO that on account of the anti dumping duty, their export pricing and competitiveness would get affected in the international market. The Authority after noting the above submissions holds that the comparison for the purpose of injury is being done at the ex-factory level which does not include the element of freight. The aspect of dumping is also to be evaluated at the ex-factory level. The Non-Injurious Price (NIP) considered for the Domestic Industry during the POI is done with the landed value as defined in Para 6 of this determination. Thus it is only the ex-factory level which the Authority considered for the purpose of determining the extent of injury as per its consistent practice.

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

The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products in export market as submitted by M/s NALCO, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and

help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers. The Authority also notes that there are specific schemes available under the Export-Import policy under which M/s NALCO could import for the purpose of export production.

6. LANDED VALUE

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

D. CONCLUSIONS:

It is seen, after considering the foregoing, that:

- a. The subject goods in all forms originating in or exported from the subject country have been exported to India below its normal value.
- b. The significant disposable capacity for export purposes available with the exporter since there is very low home consumption demand in Qatar and the recent dumped imports have caused price depression and is an imminent threat to the domestic producers of the subject goods in India in view of recent increased imports.
- c. The domestic industry has also suffered material injury by way of financial losses due to depressed Net Sales Realisation (NSR) on account of price depression caused by low landed prices of the dumped subject goods.
- d. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject country.
- e. The Authority recommends anti-dumping duty on imports of subject goods falling under Chapter 28 originating in or exported from the subject country.
- f. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping so as to remove the injury to the domestic industry accrued on account of dumping. Accordingly, it is proposed that anti dumping duty equal to the difference between the amount as indicated in Column 3 of the Table below and the landed value in \$/MT be imposed, by the Central Government, on all imports of subject goods originating in or exported from Qatar under Chapter 28 Customs sub-heading 2815.11 and 2815.12 of the Customs Tariff.

Sl. No.	Name of the exporter/producer	Amount (US\$/MT)
1.	Qatar M/s Qatar Vinyl Company (QVC) Ltd. All other exporters/producers in Qatar	267.82 271.10

- g. Subject to above, the Authority confirms the preliminary findings dated 18.1.2002
- h. An appeal against this order shall lie to the Customs, Excise, Gold (Control) Appellate Tribunal in accordance with the Act Supra.

(L V SAPTHARISHI)
Designated Authority