

No.-15/19/2010-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti-Dumping & Allied Duties)  
Udyog Bhawan, New Delhi

## **NOTIFICATION**

(Final Findings)

Dated the 17<sup>th</sup> January, 2012

**Subject:- Sunset Review investigation concerning import of Aniline originating in or exported from the USA and Japan.**

No. 15/19/2010-DGAD:- Having regard to the Customs Tariff Act, 1975 as amended from time to time, and the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, (hereinafter referred as the Rules or the AD Rules) thereof:

### **BACKGROUND**

1. Whereas, having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as "the Act") and the Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as "the Rules"), the Designated Authority (hereinafter referred to as "the Authority") initiated a Sunset Review antidumping investigation vide Notification No. 15/19/2010-DGAD dated on 20<sup>th</sup> December, 2010 into alleged dumping of Aniline originating in or exported from the USA and Japan (hereinafter referred to as "the subject countries"). Definitive antidumping duty in the original investigation was recommended by the Authority on the imports of Aniline from the USA and Japan vide Notification No. 33/1/99-DGAD dated 31.8.2000, and definitive antidumping duty was imposed by the Central Government vide Customs Notification No. 128/2000-Customs dated 6th October, 2000.
2. And whereas, the Authority considered that the sunset review of the anti-dumping duty recommended would be appropriate to review as to whether cessation of anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury under the provision of Section 9A (5) of the Customs Tariff (Amendment) Act, 1995 as amended, and after conducting the review, the Authority issued the Final Findings vide Notification No.

15/2/2005-DGAD dated 5th April, 2006. The Department of Revenue imposed definitive antidumping duty on the subject goods from the subject countries vide Notification No. 58/2006-CUS dated 9th June, 2006.

3. And whereas, the Rules require the Authority to review, from time to time, the need for continued imposition of anti-dumping duty and if it is satisfied, on the basis of information received by it, that there is no justification for continued imposition of such duty, the Authority may recommend to the Central Government for its withdrawal.
  
4. In terms of the above provision, Designated Authority, received an application filed by the Domestic Industry substantiating the need for second sunset review of the anti dumping duty imposed on the subject goods originating in or exported from the USA and Japan and requesting for enhancement / revision of the anti dumping duty imposed on the subject goods.

### **PROCEDURE**

5. The procedure described below has been followed with regard to the investigation:
  - i. The Designated Authority, in line with the order passed by the Hon'ble High Court of Delhi in WP No. 16893 of 2006, initiated Sun-Set Review in accordance with Section 9A (5) of the Act, read with Rule 23 of the Anti Dumping Rules to examine whether cessation of duty would lead to continuation or recurrence of dumping and injury. The Authority issued a public notice dated 20th December, 2010 published in the Gazette of India, Extraordinary, and initiated antidumping sunset review investigation concerning the imports of Aniline originating in or exported from the USA and Japan.
  - ii. The Authority received an application filed by M/s. Gujarat Narmada Valley Fertilizers Company Limited requesting the initiation of the investigation for continuation of antidumping duties in force concerning the imports of Aniline originating in or exported from the USA and Japan.
  - iii. The Authority forwarded a copy of the public notice to the following known producers and/or exporters in the subject countries and provided them opportunity to provide relevant information and make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2).

<b>S.N.</b>	<b>Name of Company</b>	<b>Country</b>
1.	M/s. Sumitomo Chemical Company Limited	Japan

2.	M/s. Mitsui & Co. Ltd.	Japan
3.	M/s. Bayer Corporation	USA
4.	M/s. BASF Corporation	USA
5.	M/s. DUPONT	USA

- iv. None of these exporters/producers from the subject countries filed any response to questionnaire in the form and manner prescribed.
- v. The Embassies of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 5(5), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.
- vii. The Authority forwarded a copy of the Initiation Notification to the following known importers, consumers, industrial users of the subject goods in India and advised them to provide relevant information in the form and manner prescribed and make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).

<b>S.N.</b>	<b>Name of Company</b>	<b>S.N.</b>	<b>Name of Company</b>
1.	Aarti Industries Ltd., Mumbai	2.	Abir Chemicals Ltd., Ahmedabad
3.	Alginates Allied Chemicals P Ltd, Badlapur	4.	Alpha Dyes & Chemicals, Ahmedabad
5.	Anirox Pigments Ltd., Kolkata	6.	Asiatic Color Chem Industries, Ahmedabad
7.	Atul Ltd., Hyderabad	8.	Bayer India Ltd., Mumbai
9.	Beck (India) Ltd., Pune	10.	Bhageria Dyechem Ltd., Mumbai
11.	Diamond Dyechem, Mumbai	12.	Ganesh Chemicals Industries, Mumbai
13.	Hindustan Inks & Resins Ltd., Vapi	14.	Industrial Solvents & Chemicals Ltd., Mumbai
15.	International Dyestuff Industries, Vadodara	16.	Jay Chemical Industries Ltd., Ahmedabad
17.	Mangalam Drugs & Organics Mumbai	18.	Meghmani Dyes & Intermediates, Ahmedabad
19.	Metrochem Industries Ltd., Ahmedabad	20.	M/s National Organic Chemical Industries Ltd., Mumbai
21.	Nutan Dyechem, Surat	22.	Pandasara Industries Ltd., Pandasara
23.	Ravi Dyeware Co. Ltd., Mumbai	24.	Roop Dyes & Intermediates, Surendranagar
25.	Sonkamal Enterprises P Ltd., Mumbai	26.	Vipul Dyechem Ltd., Mumbai
27.	Schenectady Beck (India) Ltd., Mumbai		

- viii. The following importers/users/user associations filed the response to the questionnaire in the form and manner prescribed.

<b>S.N.</b>	<b>Name of Company</b>
1.	M/s NOCIL Ltd.
2.	Ravi Dyeware Co. Ltd.
3.	Kutch Chemicals Industries Ltd.
4.	Industrial Solvents & Chemicals Pvt. Ltd.
5.	M/s Dye Stuffing Manufacturing Association of India

- ix. Request was made to the Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata, to provide details of imports of the subject goods in India for the period of investigation and preceding three years. Information was received from the DGCI&S.
- x. The Authority provided the copies of the non-confidential version of the application to the known producers and/or exporters and the Embassies of the subject countries in India in accordance with Rules 6(3) supra. A copy of the non-confidential application was also made available for other interested parties, whenever requested.
- xii. Investigation was carried out for the period of investigation (POI) starting from October, 2009 to September, 2010. However, injury examination was conducted for a period from 2007-08, 2008-09, 2009-10 and the POI.
- xiii. The Authority held an oral hearing on 4<sup>th</sup> August, 2011 to provide an opportunity to the interested parties to present relevant information orally in accordance with Rule 6(6). The parties who attended the oral hearing were advised to file written submissions of the information presented orally. The interested parties were allowed to present rebuttal arguments/rejoinders on the views/information presented by other interested parties. The Designated Authority has considered submissions received from various interested parties appropriately.
- xiv. Arguments raised and information/evidence provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority.
- xv. The Authority during the course of investigation satisfied itself as to the adequacy and accuracy of the information supplied. For that purpose, the Authority conducted on-the-spot verification of the domestic industry to the extent considered relevant and necessary.
- xvi. The Authority made available non-confidential version of the evidence presented by various interested parties through a public file maintained

by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

- xvii. In accordance with Rule 16 of the Rules supra, the essential facts/basis under consideration of the Authority are being disclosed to the known interested parties and comments received on the same shall be considered in the final findings.
- xviii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.
- xix. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xx. \*\*\* in the Final Findings represents the information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

## **PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **Views of the Domestic Industry**

- 6. Following submissions have been made by the domestic industry with regard to the product under consideration and like article:
  - i. The present review investigation is a sunset review investigation. The product involved in the original investigation, the first sunset review investigation and in the present sunset review investigation is Aniline. The product under consideration in the present sunset review is the same as has been held by the Designated Authority in the original investigation.
  - ii. Aniline is a transparent, oily liquid and a primary amine compound. Its color transforms to light pale yellow liquid when freshly distilled. Its color darkens when exposed to light or air. Aniline is a basic organic chemical essential for vital industries such as drugs, pharmaceuticals, dyes and dye intermediates. Aniline is also used in some other industries such as rubber chemicals, explosives, resins etc.
  - iii. The subject good is classified under Chapter 29 of the Customs Tariff Act, 1975, under customs sub-heading no. 2921.41. However, customs classification is indicative only and in no way binding on the scope of the

present investigation. This information has been correlated with the information provided by responding foreign producers.

- iv. There is no difference in the product produced by the domestic industry and that imported from the subject countries. Aniline produced by the domestic industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology (followed by most of the producers' world over), functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used the two interchangeably. Aniline produced by the petitioners and imported from the subject countries are like article.
- v. Present investigation is a review investigation. The Designated Authority has examined the issue of product under consideration and like article in the previous investigations, which is relied upon.

#### **Views of the Importers, Consumers, Exporters and Other Interested Parties**

7. None of the importers, consumers, producers/exporters and any other interested party has filed any comments or submissions with regard to the product under consideration, and like articles.

#### **Examination by The Authority**

8. Rule 2(d) of the Anti-Dumping Rules specifies that like article means an article, which is identical and alike in all respects to the product under investigation or in the absence of such an article, another article having characteristics closely resembling those of the article under examination.
9. Product under consideration is Aniline, which is a transparent, oily liquid and is a primary amine compound which finds application in such industries as drugs, pharmaceuticals, dyes and dye intermediates. Aniline is also used in some other industries such as rubber chemicals, explosives, resins etc. Aniline is classified under Chapter 29 of the Customs Tariff Act, 1975, under customs sub-heading no. 2921.41. However, customs classification is indicative only and in no way binding on the scope of the present investigation.
10. The petitioner claimed that the goods produced by them are like articles to the goods originating in or exported from the subject countries. The Authority notes that Aniline produced by the domestic industry has characteristics, which are similar to those of Aniline imported from the subject countries. In view of the above, the Authority holds that Aniline produced by the domestic industry and that being imported from the subject countries are like articles within the meaning of the Rules. The Authority also holds that Aniline is

classified under Chapter 29 of the Customs Tariff Act, 1975, under customs sub-heading no. 2921.41 and that the customs classification is indicative only and in no way binding on the scope of the present investigation.

## **DOMESTIC INDUSTRY**

### **Views of the Domestic Industry**

11. The following submissions have been made by the domestic industry with regard to initiation and standing of the domestic industry:
  - i. The present investigation has been undertaken by the Designated Authority on the request filed by Gujarat Narmada Valley Fertilizers Company Limited (GNFC). The other major producer, Hindustan Organic Chemicals Limited (HOCL), has also submitted the relevant information to the Designated Authority. The non-confidential version of the same was also made available for the interested parties.
  - ii. The petition has been filed by Gujarat Narmada Valley Fertilizer Co Limited. Subsequent to the initiation of the investigation, the Authority has sent communication to all interested parties including HOCL, and HOCL, accordingly, filed the costing and injury information. Therefore, it is incorrect to state that it is an effort to change the constituents of the domestic industry. HOCL was part of the domestic industry in the earlier investigations also.
  - iii. The Designated Authority is required to consider “domestic industry as a whole” for assessment of injury.
  - iv. It is only when information with regard to domestic producers as a whole is not available and when domestic producers as a whole are not before the Designated Authority that the Designated Authority is permitted under the law to consider those domestic producers whose collective output constitute a major proportion in eligible Indian production. Thus, in a situation where information has been made available by HOCL, its data cannot be rejected.
  - v. None of the companies has preferred non-cooperation or is withholding any information required by the Authority. Under the circumstances, the Authority should determine the scope of domestic industry as GNFC and HOCL.
  - vi. With respect to insufficient data in the petition and consideration of different period of investigation by the Authority, petitioner submits that the petition was filed with data for certain period whereas the Designated Authority initiated the investigation with a different period, over which the domestic industry had no control. There is no legal basis shown establishing that the data in the petition and the period considered by the Authority should be the same. Neither does it imply that the investigating authorities should have a petition for that period before initiating the investigations.
  - vii. Period in the petition and the period of investigation taken by the Authority for detailed investigations are two different parameters and are being mixed by the interested parties without any legal and factual basis. None of the

contesting parties justified the prejudice caused to them by the initiation of the present investigation. As far as updated petition is concerned, the same is not required to be filed as the petition is required to be filed for initiation of the investigation prior to initiation.

- viii. The quality of information and evidences at the level of initiation and final determination are absolutely different as has been held by the WTO in the matter concerning Guatemala. Domestic industry submits that quality of evidence increases as the investigation progresses. Domestic industry cannot be expected to provide any information more than what is reasonably available.
- ix. NOCIL has not filed any questionnaire response and the submissions of others do not provide any proper and meaningful non confidential summary of the information contained in the response.
- x. The interested parties themselves have not followed the prescribed requirements under the AD Rules. NOCIL has not filed importer questionnaire response. Dye Stuff Manufacturer's Association has not furnished any information establishing the interest and the impact on its members. Further, no detail has been made available about its members and other quantitative details concerning the imports made by its members, purchases, prices etc.

#### **Views of the Exporter/producer, Importers, Consumers And Other Interested Parties**

- 12. None of the exporters has responded in the present investigation. However, the importers, consumers, and other interested parties have filed the following comments with regard to the standing of the domestic industry:
  - i. There is a difference in the POI and injury period in the petition and the initiation notification. Designated Authority did not provide the data based on which it changed the period of investigation.
  - ii. The application in the public file was for a different POI (April 2009 to June 2010) and injury analysis was taken from 2006-07 whereas the POI as per initiation notification is Oct. 09 to Sept. 2010 and injury analysis is taken from 2007-08 onwards.
  - iii. Designated Authority being a quasi-judicial Authority, any decision taken on changing the period of investigation from that of the petition has to be reasonably exercised especially when a parallel investigation is being undertaken initiated on the same day as that of the current case.
  - iv. Non-confidential version of the application was filed on 30th December, 2010. However, even on the repeated request, the copy of the application was provided to the importer on 19th May, 2011. The information with respect to POI fixed by the Authority was not made available in the application. The updated information was received by the importer on 27th July only.
  - v. In fact, filing the non-confidential version of the application subsequent to the initiation is not permitted under the law. This shows that the applicant has not filed completed and updated petition in the form and manner mandated by the AD Rules.

- vi. The non-confidential version of the petition is wholly deficient and has seriously hampered our right to comment upon the same.
- vii. Petition was filed by Gujarat Narmada Valley Fertilizer Company Ltd alone. Subsequently, it gave consolidated injury information for the domestic industry as a whole without naming the participating companies. No authorization is there in the public file. Thus, HOCL as petitioner is done without fulfilling the requirement of law, and therefore, HOCL data should not be considered by the Authority.
- viii. In the hearing it was clarified on behalf of the DA that HOCL has not filed any authorisation letter in the name of any consultant for data submission or to attend the public hearing. The reply by the consultant that it is a minor issue is unheard of, as if it is open for the participants to decide the magnitude of any such matter which requires strict compliance. This was all deliberately web netted by the consultant to evade an ADD Rule in relation to whether a company data can be considered as a part of domestic industry.
- ix. It is unjustifiable attempt to change the constituents of the domestic industry after the initiation. The same has been prohibited in the caustic Soda from Thailand, Chinese Taipei and Norway and mid-term review of Caustic Soda from Saudi Arabia, Korea RP and USA. The same has been held in Mexico-anti-dumping duties on steel pipes and tubes from Guatemala.
- x. The continuous recasting and re-constitution of the domestic industry subsequent to the initiation is not permitted.
- xi. The petitioner's argument in the public hearing that domestic industry should be taken as a whole so as to include the remaining domestic producers is misplaced, as the court held that the NIP must be calculated for the domestic industry as a whole for the PUC. Further, EC Bed Linen referred by the domestic industry, has held that the investigating Authorities cannot consider only a sample of domestic industry while assessing injury. The DA deviated from this practice in the matter of caustic soda.
- xii. Since, HOCL was shut down for a period of 5-6 months, the data for the same should not be considered.
- xiii. The petitioner has not updated the reasoning on injury, threat of injury and dumping in the revised petition.

### **Examination By the Authority**

- 13. The Authority notes that the petition has been filed by Gujarat Narmada Valley Fertilizers Company Limited. Subsequent to the initiation of the investigation, communication was sent to all interested parties including other producers of product concern in India. HOCL responded to the initiation of the investigation as a producer and provided costing and injury information, which has been verified by the Authority.
- 14. The Authority notes that it is claimed by interested parties that HOCL was shut down for 5-6 months and there are other factors of injury to HOCL and, therefore, HOCL should be excluded from the purview of the domestic industry. The Authority notes that HOCL was not actually shut down but it had only suspended its production due to significant inventories. There is no

- technical constraint or reason for suspension of production by HOCL. At the time of suspension of production, the company had sufficient inventory to meet the sales at that point of time. The Authority concludes that the interested parties failed to put cogent reason as to why the company should be excluded from the scope of the domestic industry.
15. The Authority further notes that Rules provide exclusion of a producer from the scope of domestic industry only in case of imports or relationship with importers/exporters. The Authority holds that GNFC and HOCL account for a major proportion of the total Indian production and constitute domestic industry as a whole within the meaning of the Rules.
  16. The investigation period considered in the petition and in the notice of initiation is different, which has been disputed by the interested parties. The Authority notes that there is no legal requirement that the investigation period in the petition filed before the Designated Authority and the investigation period chosen by the Designated Authority for detailed investigations should be the same. The Authority considered a period for the purpose of detailed investigation. Accordingly, the domestic industry filed revised data after initiation of investigation, which has been made available to interested parties through public file.
  17. It has also been argued that there is another investigation initiated by the Authority wherein the investigation period is different. The Authority notes that there is no legal requirement that the investigation period in different investigations should be the same.
  18. It is clarified by the Authority that the data made available for the investigation period by the petitioner was made available to the interested parties through public file and they have been given sufficient opportunity to comment on the same.
  19. As regards filing of information by HOCL or authorization for filing the information of HOCL, the Authority notes that the information was filed by HOCL through its counsel, who was duly authorized. Further, the Authority holds that HOCL data should be included within the scope of domestic industry for the purpose of injury analysis. The mere fact that HOCL's performance might have been impacted due to other factors does not imply that the company should be excluded from the scope of domestic industry. In fact, a situation where the performance of the domestic industry has been impacted by other factors is clearly addressed under the law itself, which requires the Authority to segregate injury caused to the domestic industry by such other factors. Thus, if HOCL has suffered injury because of other factors as well, it would be inappropriate to exclude the company on this account. Instead, the Authority is required to adjust HOCL's performance for such other factors. The investigation has shown, as opposed to claim made by interested parties, that HOCL does not have any technical constraint in operating the plant. In fact, HOCL had achieved a production of 24128 MT in the year 1997-98. The Authority further notes that a comparison of hydrogen or aniline cost of production of HOCL with GNFC would not be appropriate for the reason that GNFC does not have stand alone hydrogen production. Cost of GNFC on account of hydrogen is not reflective of the cost of production of hydrogen. GNFC produces hydrogen from waste gas and charges only opportunity cost to hydrogen cost. The cost of production on stand-alone basis claimed by GNFC based on quantified and verified data shows that its actual cost of

production of hydrogen would have been much higher than the amount charged at present. The domestic industry in fact argued that GNFC's cost of production should be appropriately revised upward by considering reasonable cost of production of hydrogen instead of the actual expenses reported by the company on this account. The Authority also notes that the Rules require assessment of injury to the domestic industry and, therefore, individual assessment of constituents of the domestic industry would not be appropriate. The Authority, however, notes that the trends in performance, particularly with regard to price parameters, for both GNFC and HOCL, are the same, i.e., their profitability and consequently cash profits and return on investment deteriorated significantly over the period.

20. It has been argued that the constituents of the domestic industry should not be changed after initiation of investigations. The Authority holds that there is no legal basis for such a claim. On the contrary, the Authority is required to determine scope of the domestic industry at each stage of the proceedings. In fact, one of the purposes of initiation of investigation is to call relevant information from all relevant parties; and if one or more other domestic producers files information before the Authority after initiation of investigations, the Authority is required to include such information for the purpose of assessment of injury. As regards reference to caustic soda case made in this regard, the Authority notes that it has not been established that the facts of the two cases are the same and exclusion of HOCL is justified on this account. On the contrary, there are cases where information for more producers was added during the course of the investigations. The Authority further notes that anti-dumping investigation is a process where quality and quantity of evidence improves as the investigation progresses. Mere closure of HOCL for some period due to significant inventories does not imply that its data should be excluded for the purpose of assessing injury.

## **CONFIDENTIALITY**

### **Views of the Domestic Industry**

21. Following submissions have been made by the domestic industry:
- i. Reasons claiming various adjustments made from the export price, has not been kept confidential, it is clearly stated in the petition that the adjustments on these accounts are based on market information of petitioner and the conservative estimates.
  - ii. Domestic Industry submits that the costing information is by nature confidential and the confidentiality for such information is allowed even by the Authority. Prescribed format also permits confidentiality on this account.
  - iii. Selling price given in the annual report of the Company is not net sales realization. There are various adjustments and discounts in gross price.

### **View of Exporters/Importers and Other Interested Parties**

22. Following submissions have been made by the exporters/importers and other interested parties:
- i. The applicability of Rules and law with respect to the Confidentiality should be made applicable to the petitioner as well. Petitioner has claimed confidentiality regarding the information ought to have been disclosed like, source of freight and other overhead expenses.
  - ii. It seems that the petitioner has applied inflated rates. Price undercutting has been disclosed with respect to only one country the USA, which is negative. Price underselling has not been provided. Costing information in formats A, B, C-1, C-II and D has been kept as blank.
  - iii. The sales price information which is available in public domain is also claimed confidential.

### **Examination by the Authority**

23. The Authority examined the confidentiality claims of the interested parties and on being satisfied with regard to claim on confidentiality, the same has been allowed. The Authority notes that the claim of confidentiality in the application in the present case is consistent with the practice being followed by the Authority. The interested parties have not established any specific instances of incorrect claim of confidentiality. The Authority has allowed claims of confidentiality with regard to information which is by nature confidential, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information. The Authority has required interested parties providing confidential information to furnish non-confidential summaries.

### **ASSESSMENT OF DUMPING– Methodology and Parameters:-**

#### **Normal Value, Export Price and Dumping Margin**

#### **Views of the Domestic Industry**

24. Domestic industry has made the following submissions with regard to dumping:
- i. In the original investigation, the Designated Authority has constructed the normal value for exporters/producers from the subject countries based on facts available as per Rule 6(8) of the AD Rules. In the first sunset review investigation, the Authority has considered the information provided by the domestic industry in the application for determination of normal value for the subject countries based on facts available as per Rule 6 (8) and constructed the normal value.
  - ii. In the present investigation, in spite of all reasonable efforts made by the Petitioners to procure the necessary information/evidence regarding the price of the subject goods in the domestic market of USA and

- Japan when no evidence/information could be procured for the prevailing price of subject goods in the domestic market of the subject countries. In view of the same, Petitioners have determined the Normal Value in subject countries considering the constructed value approach.
- iii. The export price is calculated at the CIF level by comparing of normal value and export price at the same level of trade. Therefore, the export price has been adjusted for the various expenses that may have been incurred by the exporter for exporting the material to India.
  - iv. The dumping margins for the subject countries in respect of subject goods as assessed are above the de-minimus limits and significant. Therefore, there is a strong likelihood of further exports coming at dumped prices in future.
  - v. The domestic industry submits that the opposing party is not privy to the information relevant to determination of normal value and dumping margin and cannot be allowed to even argue the normal value and its determination.
  - vi. The dumping of Aniline from the subject countries (especially USA) continued even after the imposition of anti-dumping duty. The continued dumping from the subject countries and the presence of such dumped materials in the market restrained the domestic industry to recover from the ill impact of the dumped imports from the subject countries.
  - vii. During the post recession period there has been considerable increase in the volume of imports from European Union and there were low imports from USA, which is due to the fact that the major producers/exporters from the USA have their production facilities in European Union also. If the present duties be revoked, the imports would once again shift to USA. The only differential cost that would be involved is the incremental freight cost, which is negligible.
  - viii. Further, merely because there is no dumping and so in a situation where there is no response from any of the producers/exporters from the subject countries, does not imply that there is no likelihood of recurrence and continuation of dumping in case of revocation of duty.

### **View of Exporters/Importers and Other Interested Parties**

25. None of the exporters has responded in the present investigation. However, the importers have raised the following issues with regard to dumping:
  - i. Normal value calculated by the domestic industry is highly inflated and is not based on any facts and principles. Some details of raw material as given by the petitioner are wrong. The petitioner has resorted to fiddling with information available even in public domain to mislead the Authority.
  - ii. Exorbitant amounts towards freight, insurance and other charges to inflate the dumping margin.
  - iii. There have been negligible imports from USA and no imports from Japan during the POI. In the matter of Flexible Slabstock Polyol from China PR, Korea RP, Chinese Taipei and Brazil, duties were struck down due to no imports from the subject countries.

- iv. There is no evidence produced by the petitioner in support of its claim of the dumping in the present matter. Petitioner has merely made assumptions.
- v. Normal value has been calculated on the basis of the cost of benzene and power as well as other adjustments based on prices and costs in the USA for both Japan and USA. The rates of benzene relied upon by the petitioner for the calculation of normal value is incorrect as the domestic market conditions and prices of these countries are not known.
- vi. No source has been provided for calculation of cost for other utilities than power, depreciation, and manufacturing expenses. There is no reliable source for the determination of normal value for Japan. Also, the cost so calculated based on the cost of US is untenable.
- vii. As from UNCOMTRADE it can be seen that there are no exports from Japan. Constructing the export price for Japan is against the law. Export price calculated for Japan by taking a weighted average price of all imports into India are erroneous and unjustified.
- viii. Methodology adopted for constructing export price of the PUC for Japan is baseless as the weighted average of all imports of the product under consideration into India cannot be relied upon for determining export price from Japan. Further, no source for the adjustments claimed for the export price has been provided.

### **Examination By The Authority**

26. Under section 9A (1) (c), normal value in relation to an article means:
- i. The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or
  - ii. When there are no sales of the like article in the ordinary course of trade in 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);
27. With regard to the arguments raised by the interested parties on normal value and dumping margin determined in the application, the Authority holds that the claim of normal value in the petition is only one of the information at the

disposal of the Authority for determination of normal value. The Authority sought information from concerned foreign producers who have not responded in the form and manner prescribed. It is also noted that none of the responding importers, consumers or other interested parties have provided any information whatsoever for assessment of normal value, export price, dumping margin or any elements thereof. Under the circumstance, when exporters have preferred non-cooperation, the Authority is required to determine normal value on the basis of best available information. The Authority clarifies that the Authority has not merely followed the claims made by the petitioner and the Authority has made its own determination with regard to normal value, export price and dumping margin.

### **Dumping Margin:**

#### **Normal Value**

28. The Authority notes that none of the exporters from the subject countries has responded to the initiation of the investigation and filed any information/response. As information about the actual domestic sales price, information on exports to third countries or cost of production in the subject countries and other information as per the questionnaire have not been furnished by any of the producers/exporters from the subject countries, the Authority determined normal value as per the best available information. The Authority notes that benzene is the major raw material for production of the product concerned. Normal value is determined considering prices of benzene in US region as per ICISLOR and consumption norms of the domestic industry. Petitioner has claimed that there has been very significant variation in the price of product concerned and material exported from the subject countries has not been exported in all the months of the period of investigation. Therefore, the Authority concludes that comparison of normal value and export price should be done on month to month basis. The Authority has, accordingly, determined separate normal value for each month in which material has been exported to India. Accordingly, weighted average normal value is determined as USD \*\*\* per KG.

#### **Export Price**

29. As stated above, none of the exporters and producers has responded and furnished any information. Export price is, therefore, determined based on the imports information furnished by the DGCIS. The Authority notes that material has been exported from the USA in May 2010, June 2010 and Sept 2010. The Authority has determined separate export price month wise. Adjustments are made on account of ocean freight, marine insurance, commission, port expenses, bank commission and inland freight and have been allowed. Accordingly, weighted average net export price of the three months comes to USD \*\*\* per KG.

30. With regard to Japan, the Authority had sent questionnaires to all the known exporters/producers for the purpose of determination of dumping margin. None of the exporters / producers from Japan filed submissions and response to the questionnaire in the form and manner prescribed. Article 6.8 of the Agreement provides that in case an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary or final determinations, affirmative or negative, may be made on the basis of the facts available. Since there were no exports of the subject goods from Japan during the POI, the current dumping margin could not be determined.

### **Dumping Margin Calculations**

USD per KG	USA
Normal value (US\$)	***
Export price (US\$)	***
Dumping margin (US\$)	***
Dumping Margin %	5-10 %

### **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

31. In order to determine whether the continued imposition of the duty is necessary to offset dumping, the Authority considered the following parameters:-
- Dumping margin determined in the original investigation.
  - Dumping margin determined in the present investigation – wherever exports to India existed during the investigation period, the same were considered and dumping margin determined. Wherever there were no exports to India during the investigation period, the dumping margins assessed in the original investigation is considered.
  - Freely disposable present and potential capacities, considering known expansions undertaken by the foreign producers, prices prevailing in India, actual and potential volume of exports, export price from these countries to other countries.
32. On examination of these factors, the Authority concludes that:
- (a) Dumping margins are positive in case of exports from the USA;

- (b) Export price from the USA is below the normal value;
  - (c) Landed value of USA exports is well above the net sales realization and the non-injurious price determined in the POI;
  - (d) The Authority also compared the landed values for exports from USA to other countries and notes that the same is not only higher than the NSR and NIP of the domestic industry but also higher as compared to landed value in India.
  - (e) The Authority notes that the likelihood test is required to be taken into account while determining revocation of anti dumping duty. In this regard, the Authority concludes that just because there is no response from the exporters from USA, it cannot be determined that withdrawal of anti-dumping duty would lead to continuation or recurrence of dumping from the USA. Further, no credible evidence was provided by the Domestic Industry in this respect.
33. As regards Japan, the Authority concludes that the domestic industry has not provided positive evidence that there is likelihood of dumping and consequent injury in case of cessation of anti-dumping duties. Available information with the Authority with regard to exports from Japan to third countries also does not suggest any likelihood of dumping and injury in case of cessation of anti-dumping duties. In this regard, as per the available information before the Authority, the capacity in Japan is 3,98,000 MT and actual production is 2,79,000 MT. But despite the surplus, there is no export or import of the subject goods from Japan to third countries in 2010, thus, showing no real possibility of diversion in case of revocation of duties.

## **ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK**

### **Views of the Domestic Industry**

34. The following are the views of the domestic industry with respect to the Injury and Causal Link:-
- i. Imports of the product under consideration have continued from the subject countries. In fact, the volumes have remained significant and are undercutting the prices of the domestic industry in the market;
  - ii. Landed price of imports are below the non injurious price of the product under consideration;
  - iii. The domestic industry has not been able to improve its market share to the extent it could in the absence of dumped imports.

- iv. Production, domestic sales and capacity utilization of the domestic industry has remained low, despite the increase in demand due to presence of dumped imports in the Country. The sales of the domestic industry have declined in comparison to the base year due to the continued dumping of the subject product. Despite rising demand of the subject goods in India, the Domestic Industry was not able to optimize and improve its production and sales and utilize its capacity to its fullest extent.
- v. Even when the performance of the domestic industry has improved in terms of profitability and return on investment, the same is due to imposition of anti dumping duties. However, profits before tax, profit before interest and profit before interest & depreciation remained low over the injury period when compared with the performance of the domestic industry in the year 2006-07. Further, performance of the domestic industry could improve further, but for the dumped imports in the market. The performance of the domestic industry continued to be adverse and was thus fragile. The volume of dumped imports from the subject countries has remained significant even after the applicable anti-dumping duty.
- vi. In spite of substantial increase in indigenous demand in comparison to the base year, the sales of the domestic industry could not reach to a satisfactory level rather declined in the period of investigation.
- vii. The volume of imports and consequently the market share of the subject countries have remained significant over the injury period. The possible decline in imports and consequent market share from the subject countries is due to the applicable anti-dumping measures.
- viii. Aniline is a 'commodity product'. In order to maintain their market, producers in USA or Japan will have to maintain the prices at the levels matching with that of Europe, which is significantly undercutting the prices of the domestic industry.
- ix. If injury information is segregated for HOCL and GNFC, it will show that Profitability of GNFC alone was much higher in 2006-07 and lower in period of investigation. Further, the volumes produced by GNFC were higher in 2006-07 as compared to period of investigation. If injury to domestic industry was on account of other factors, GNFC volumes would not have declined and its profits would not have deteriorated. Efficiency of HOCL has remained the same throughout the period. Such being the case, the issue unaddressed by the interested parties is why production of HOCL declined from above 7000 MT to about 2600 MT and why its losses have almost doubled over the years.
- x. HOCL production and sales volumes declined substantially and its losses increased significantly. Efficiency of HOCL has remained the same throughout the period. Such being the case, the issue unaddressed by the interested parties is why production of HOCL declined from above 7000 MT to about 2600 MT and why its losses have almost doubled over the years.
- xi. Allegation of including HOCL to inflate injury is baseless as the Designated Authority is required to examine injury to the "domestic industry" and not injury to individual constituents of the domestic industry.
- xii. The argument of the interested parties is baseless that there is increase in interest cost of the petitioner. Interest cost is adjusted by the Authority while determining the non injurious price.

- xiii. With regard to the allegation that the movement in benzene price has affected the aniline performance, Domestic Industry submits that there has been movement in benzene price not only in India but also in international market.
- xiv. Authorization letter for representing HOCL by TPM has been filed with the Authorities and is on record of the Authority. Merely because authorization is not in the public file, does not mean that the company is being represented without any proper authorization. Further, there is no confirmation by the representative of the Authority during the oral hearing, statement made by and on behalf of the Authority are misunderstood by the opposing parties.
- xv. It is alleged that HOCL stay away from production due to higher cost of captive raw material, higher labour cost and fixed cost. In this regard, domestic industry submits that the comparison of higher or lower is being done with reference to other producer of Aniline, which itself is incorrect.
- xvi. The Designated Authority should consider the domestic industry as it exists and not under ideal conditions. Notwithstanding, as informed at the time of spot verification, the company had been making efforts in reducing cost of production of hydrogen. The company has since been able to start producing hydrogen from natural gas, as was seen at the time of verification visit. With the production of hydrogen through natural gas, the cost of production of hydrogen for the company has substantially declined.
- xvii. GNFC is getting its major input captively from other plant of the company. The transfer price of this captive input is neither market price nor full cost. As opposed to this, HOCL is buying all the inputs, barring Hydrogen. Therefore, the injury to the domestic industry is distorted because of incorrect valuation of captive inputs. Since the captive input in case of GNFC is a very low value product otherwise to the company, its transfer price is totally unrealistic compared to market price. Resultantly, cost data of GNFC does not reasonably reflect the costs associated with production and sale of the product under consideration.
- xviii. The present case clearly establishes that consideration of captive input at value other than market value can significantly distort the injury analysis and lead to discrimination between integrated and non integrated producers to the peril of those producers who are not backward integrated. It will lead to a situation where stand alone producer of Aniline in this case and other products in general shall not survive in the market. It shall also imply that no company would be able to produce (and make profits) Aniline and other products in the country until and unless it has its own captive input at a price much less than market value of such captive input.
- xix. Higher cost of captive inputs, higher labour and fixed cost is due to lower production, which is due to dumping of Aniline in India. There has been consistent increase in imports volume which forced the domestic industry to curtail production to avoid high inventories.
- xx. Intentionally, opposing parties have ignored vital facts that there has been very significant variation in Benzene price, which has consequent impact upon the cost and price of product. Such being the case, this would be misleading to compare one single cost and price for the whole year. If the same is compared on month to month basis, the undercutting and underselling would be positive.
- xxi. Even when the present investigation is in respect of USA and Japan, the Domestic Industry is suffering from dumping from other source i.e. EU and the

investigation is in progress. Imports from EU are at dumping prices and causing injury. The Designated Authority should cumulatively assess injury to the domestic industry. AD Rules specify for cumulative assessment when Designated Authority finds that the conditions precedent are met. Petitioners therefore submit that cumulative assessment of injury to the domestic industry from dumped sources under simultaneous and separate investigations is not only desirable but also must.

35. The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury.

### **Views of the Exporters, Importers and Other Interested Parties**

36. The following are the views of the exporters, importers and other interested parties with regard to the injury to the domestic industry:

- i. HOCL has lost the opportunity to participate after the expiry of 40 days of the initiation. It is an inefficient component of the domestic industry which has shown inflated damage to the domestic industry, which is not shown by data of GNFC. Petitioner has tried to inflate injury by changing the injury figures substantially.
- ii. Over the entire injury period, the market share of HOCL remained as low as 10%, which cannot be attributed to imports.
- iii. The comparison of trends of both the participating companies is opposite. The GNFC has 107% capacity utilization whereas HOCL had 22% -27% of capacity utilization.
- iv. HOCL is not a regular producer due to internal reasons. HOCL produced PUC very sporadically during the year and such significant production was made at an irregular quantity and period of time scattered over a very few months in a year.
- v. The profitability of HOCL is negative whereas that of the GNFC is positive. Sales volume of HOCL is just 13% of the total domestic sales. The inclusion of HOCL has absorbed the entire profits of GNFC. This shows that the cost for the production of PUC to HOCL is highly abnormal.
- vi. The capacity utilization of HOCL has never risen more than 35-40% over the recent years, inclusion of HOCL would show inaccurate depiction of injury. The minor drop is due to economic slowdown and high stock by the petitioner.
- vii. HOCL was not operating on continuous basis due to its own internal problems. HOCL has not increased the market share in the domestic market, in spite of the fact that the landed price of imports was much above the domestic selling price. This clearly established that the injury to HOCL is self inflicted.
- viii. If dumping is the only reason for affecting the domestic performance, then the trends for performance for the participating companies must be same. The heavy losses of HOCL are on account of factors other than dumping.
- ix. Petitioner has tried to inflate injury by taking 2006-07 as the base year for injury analysis, thereby changing the indexed figures substantially.
- x. The information available in public domain, like annual reports, directors report etc clearly lacks reference to the issues concerning the dumping which has affected the aniline operations.

- xi. While determining the volume effect, the surge in imports is required to be seen and in the instant case there are no imports from Japan and there is no abnormal surge of imports from USA. There is no co-relation between injury and dumped imports.
- xii. In spite of no imports in the year 2009-10, there is a downward trend in the domestic selling price. Therefore, it is cost of sales and not landed value of imports from subject industries which are the influencing factor on domestic selling prices of Domestic Industry.
- xiii. No price undercutting and no underselling are present there.
- xiv. No NIP is provided by the petitioner.
- xv. Imports have declined considerably in spite of increase in demand. There is no decline in the market share of the domestic industry.
- xvi. Higher cost of captive production of inputs, higher labour costs, higher fixed cost due to low capacity utilization, and high incidence of cost on plant closures made it not to produce the PUC.
- xvii. Sales quantities have increased except for 2008-09 which was due to fall in capacity utilization caused by plant shutdown and economic slowdown.
- xviii. The losses to the domestic industry are due to the decline in export sales. The decline in sales is only due to the lower production value. The sales production ratio has been consistent over the injury period.
- xix. The annual report of 2008-09 of the petitioner mentions that production was adjusted to maximize profit and have not attributed any losses to dumping.
- xx. The GNFC operated through traders and therefore, the actual price to be considered is much higher than the price of GNFC whereby injury (if any) is further reduced. No information has been provided with respect to the traders.
- xxi. It is observed that the operating profit, return on capital (NFA) of the petitioner has risen dramatically over the period of investigation. Thereby concluding no injury to the domestic industry.
- xxii. The petitioner has claimed injury even in the year 2009-10, without any imports from the subject countries. Therefore injury suffered then is not on account of the alleged imports, rather attributable to other factors.
- xxiii. There has been sudden rise in the interest rates of the domestic industry since 2007-2008. There has been no expansion by the domestic industry. Therefore the source of interest expense ought to be verified. PBIT, selling price and sales value have increased over past years, price undercutting has been negative for all four years, which shows that the rise in interest rate is one of the chief causes for the perceived losses suffered by the domestic industry.
- xxiv. The losses are due to the poor off take of the downstream products as has been stated in the annual report of 2008-09, which has led to an unstable market situation for Aniline.
- xxv. The prices of benzene have affected the prices of aniline more than the imports. Prices of benzene have remained unstable for the period of injury.
- xxvi. No causal link between injuries suffered by Domestic Industry, if any, and alleged dumped imports. The absence of any significant volume of imports from subject countries for such prolonged period along with negative price undercutting and huge profits of the domestic industry rules out any causal link and also likelihood of recurrence of dumping in the event of revocation of duties.

- xxvii. There has to be an existence of reasonable identical circumstances and period to cumulate countries and it cannot be done solely for the reason of having related parties to request for such cumulation which also is an erroneous fact. There are certain factors which are distinct in the parallel investigations such as (a) the nature of investigation (b) conditions of competition between both the markets per between both the markets per between both the subject countries (c) POI though overlapping have different periods.

### **Examination by the Authority**

37. With regard to submissions on injury by opposing interested parties, the Authority has critically examined the submissions made by the interested parties and has made the present determination. Further, the Authority notes as follows:
- a) With regard to the inclusion of HOCL for the purpose of determination of injury, the position has been examined. The Authority concludes that it is factually incorrect that capacity utilization of HOCL has remained all along quite low. In fact, HOCL had achieved almost 100% capacity utilization in 1997-98. Despite the same, operational and technical situation being faced by the company at that time and at present, its capacity utilization has significantly declined. The Authority concludes that it is incorrect that HOCL is not a regular producer of Aniline. The company has suspended production of Aniline whenever faced with significantly high inventories.
  - b) The Authority further notes that the injury information of GNFC shows that the performance of the company has improved. However, the profitability of the company is below reasonable level.
  - c) The Authority notes that with regard to the arguments of injury in 2009-10 despite no imports, the domestic industry claimed that there are significant imports of the product from European Union in this period, which are allegedly at dumped prices and the investigations are being conducted at present. The domestic industry also argued that merely because the present Sunset Review investigation is in respect of Japan and the USA, it does not imply that the impact of dumped imports from European Union should be completely ignored, particularly while assessing performance of the domestic industry. The domestic industry also argued in this regard that the Rules provide for assessing consequent impact of "dumped imports" on the domestic industry. The Domestic Industry also argued that since imports from European Union are allegedly at dumped price, the consequent impact of dumped imports on domestic industry shall imply injury to the domestic industry from all the dumped imports. The Authority also notes that the present investigations are sunset review investigations and the Authority is required to determine continuation or likelihood of dumping and injury. The Authority has examined the contention of the domestic industry that the exports from European Union may be diverted from USA and come to India in case the duties are

withdrawn. The Authority examined these submissions and finds that the same are mere apprehensions. The fact that some of the producers have their plants in EU and USA does not establish their case that the imports from EU would be diverted to USA as the incidence of freight would be higher in case of USA and the price of subject goods from USA would in all circumstances remain higher. The domestic industry also failed to provide cogent evidence on record in support of their claim. Therefore, in the absence of any material evidence from the domestic industry and based on the facts available, the Authority does not find any merit in this submissions of the domestic industry.

- d) With regard to the arguments that petition does not contain information on non injurious price or price underselling, the Authority notes that there is no such legal obligation on the domestic industry. In fact, the non injurious price or price underselling is required to be determined by the Designated Authority. The interested parties are being given opportunity to comment on the same through the present disclosure statement.
  - e) With regard to higher cost of production of HOCL due to a number of factors identified by the interested parties, the Authority notes that actual cost of production of HOCL has not been adopted for present purpose. In fact, the non injurious price of the domestic industry has been determined by considering 100% capacity utilization of HOCL to remove injury, if any, due to other factors. Thus, it cannot be argued that cost of production of HOCL could be higher because of loss of production and higher incidence of various costs. Comparison of consumption norms of HOCL and GNFC shows that the raw materials consumption norms of HOCL are quite comparable to GNFC.
  - f) It is clarified that the Authority has not adopted the claim of cost of production and various expenses charged to the cost of production by HOCL. The Authority has scrutinized the cost of production of domestic industry in detail and has adopted expenses only after sufficient scrutiny.
38. The Authority notes that it has been argued that HOCL is not producing regularly and the company should be excluded from the scope of the domestic industry. The Authority has verified the premises of the company and its records. It has been noted that there is no technical constraints for production of Aniline. The company claimed that the only constraint is sales as the customers demand matching prices of dumped material. Whenever the company suspended production, the Authority notes that inventory levels were high. It is noted that in April 2011, inventories reached to 1227 MT. Still company produced the product concerned in May 2011 and maintained inventory. However, the company claimed that the company cannot produce just to create inventory in a situation of unremunerative prices. The Authority further examined whether operation of the HOCL can be viable. In this regard, the Authority notes that dumping of Aniline has caused injury to HOCL and company is trying to recover from dumping. Company has claimed that even in the period of investigation, contribution of the company has been positive, and at 80% capacity utilization levels, there would be significant positive contribution. The Authority further notes that cost of GNFC on account of hydrogen is not reflective of the cost of production of hydrogen. GNFC

produces hydrogen from waste gas and charges only opportunity cost to hydrogen cost. GNFC claimed that if correct cost is charged to hydrogen, cost of hydrogen would be significantly higher.

### **Volume Effect of Dumped Imports**

39. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the anti dumping Rules provides as under:

*“While examining the volume of dumped imports, the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”*

### **Assessment of demand and market share**

40. The Authority has determined demand or apparent consumption of the product under consideration in India as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed can also be seen in the table mentioned below:

Particulars	Unit	2007-08	2008-09	2009-10	POI
Demand	MT	65,082	47,636	63,233	72,275
Sales of Domestic industry	MT	43,388	33,562	39,045	41,053
Sales of Other Indian Producers	MT	3000	5200	5200	5200
Imports – all sources	MT	18,694	8,874	18,987	26,022
<b>Market Share in Demand</b>					
Domestic industry	%	66.67%	70.46%	61.75%	56.80%
Other Indian Producers	%	4.61%	10.92%	8.22%	7.19%
Subject Countries	%	9.33%	0.00%	0.00%	5.33%
Imports from European Union	%	2.80%	18.63%	29.99%	30.58%
Other Countries	%	16.59%	0.00%	0.04%	0.09%

41. The Authority notes the following from the above-mentioned table:

- i. It would be seen that there has been an overall increase in demand of the product in the country over the injury period including the period of investigation.
- ii. The volume of imports from the subject countries which stopped after base year started again in the period of investigation and reached to a significant level.
- iii. Sales of the domestic industry have declined in 2008-09, which increased in 2009-10 and period of investigation, however, still remained lower than base year.
- iv. Further, market share of domestic industry increased in 2008-09, declined in 2009-10 and further declined in period of investigation.

### **Import volumes and market share**

42. The actual volume of imports during the period of investigation has been as under:

Particulars	Unit	2007-08	2008-09	2009-10	POI
Imports from USA	MT	5,978	-	-	3,852
Imports from Japan	MT	96	-	-	-
Imports from Subject Countries	MT	6074	-	-	3,852
Imports from European Union	MT	1,821	8,874	18,964	22,104
Imports from Other Countries	MT	10,799	-	23	65
<b>Total Imports</b>	<b>MT</b>	<b>18,694</b>	<b>8,874</b>	<b>18,987</b>	<b>26,022</b>
<b>Market Share in Imports</b>					
USA	%	31.98%	0.00%	0.00%	14.80%
Japan	%	0.51%	0.00%	0.00%	0.00%
Subject Countries	%	32.49	-	-	14.80
European Union	%	9.74%	100.00%	99.88%	84.95%
Other Countries	%	57.77%	0.00%	0.12%	0.25%
<b>Market share in Demand</b>					
Domestic industry	%	66.67%	70.46%	61.75%	56.80%
Other Indian Producers	%	4.61%	10.92%	8.22%	7.19%
Subject Countries	%	9.33%	0.00%	0.00%	5.33%
Imports from European Union	%	2.80%	18.63%	29.99%	30.58%

Other Countries	%	16.59%	0.00%	0.04%	0.09%
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43. The Authority notes the following from the above table:
- i. The demand for the subject goods has shown a positive trend and increased.
  - ii. The volume of imports and consequently the market share of the USA have declined, though remained significant. Though, nil imports were reported from USA in the year 2008-09 and 2009-10, the volume of imports increased significantly in the period of investigation.
  - iii. The volume of imports recorded from Japan is minimal in base year and stopped subsequently.
  - iv. Considering that the present investigations are sunset review investigations, the Authority hold that imports from USA continue to hold significant share in the Indian demand.

### **Price Effect**

44. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows“

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

45. The Authority notes that in a review investigation, it is required to examine whether there has been a significant price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of recurrence of price effect after cessation of duty. The Authority further determined whether the domestic industry is likely to face price underselling in the event of expiry of anti-dumping duty.
46. The Authority notes that the landed price of imports is higher than the selling price of the domestic industry as is evident from the table below:

Particulars	Unit	May 2010	June 2010	Sept 2010	AVG
Landed Price	Rs./MT	***	***	***	***
Selling Price of Domestic industry	Rs./MT	***	***	***	***

Indexed	Rs./MT	100	97	92	96
Price Undercutting	Rs./MT	***	***	***	***
Indexed	Range%	0-10	(0-10)	(0-10)	(0-10)

47. The Authority further notes that difference in landed price of imports and selling price of domestic industry is very insignificant, which shows that the dumped material is competing with the domestic industry. The Authority further notes that out of the 3 months in which material are imported, price undercutting is positive in one month. However, in average the price undercutting is Negative.

### **Price suppression and depression**

48. Price depression exists when the prices of the domestic industry decline over the injury period with the import prices remaining lower than the domestic industry's prices. Price suppression occurs when the dumping prevents price increases that would otherwise take place due to increase in costs.
49. The Authority has examined whether there was a significant adverse price effect by the dumped imports as compared with the price of the like product in India.

Particulars	Unit	2007-08	2008-09	2009-10	Oct.09-Sept.10
Cost of production	Rs./MT	***	***	***	***
Trend		100	112	107	102
Net sales realization	Rs./MT	***	***	***	***
Trend		100	106	99	109

50. The Authority notes that the cost of production of the domestic industry increased in 2008-09 and declined thereafter. At the same time, the selling price increased in 2008-09; declined in 2009-10; and again increased in the period of investigation. The Authority further notes that till 2009-10, domestic industry incurred financial losses and made profits in the period of investigation. In view of the above, the Authority concludes that there is no price depression and suppression in the period of investigation.

### **Other Economic Parameters relating to the Domestic Industry**

51. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on

domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows“

*"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."*

### **Production, Capacity and Capacity Utilization, Sales**

52. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2007-08	2008-09	2009-10	P O I
Capacity	MT	60,100	60,100	60,100	60,100
Production	MT	44,981	33,900	39,386	40,040
Sales	MT	43,388	33,562	39,045	41,053
Capacity Utilization	%	75%	56%	66%	67%
Demand	MT	65,082	47,636	63,233	72,275
Market Share of Domestic industry	%	66.67%	70.46%	61.75%	56.80%

53. The Authority notes the following:

- i. The production and capacity utilization of the domestic industry declined in comparison with the base year in spite of significant increase in demand over the injury period.
- ii. Production increased in period of investigation. However, it remained at a lower level compared to the base year.
- iii. Sales also show the same trend as of production.
- iv. At the same time, demand shows positive trend all along, and resultantly, domestic industry lost market share.

### **Profits, return on investment and cash flow**

54. Profits, return on investment and cash flow of the domestic industry has been examined as under:

Particulars	Unit	2007-08	2008-09	2009-10	P O I
Profit before interest and tax	Rs./Lacs	***	***	***	***
Indexed		(100)	(204)	(286)	81

Return on capital employed	%	***	***	***	***
Indexed		(100)	(220)	(460)	120
Cash profit	Rs./MT	***	***	***	***
Indexed		(100)	(355)	(484)	215

55. The Authority notes that the profitability of domestic industry which deteriorated till 2009-10, improved in the period of investigation. Similar trend is observed with respect to cash profit and return on investment as well. It has been claimed by the interested parties that HOCL should be excluded from the scope and there are other factors of injury to the domestic industry. Though, authority does not find any merits in the argument, however, the Authority examined the performance of GNFC separately and noted that performance of GNFC is better than that of HOCL. At the same time, it is noted that GNFC is not charging Hydrogen cost to Aniline on cost basis and the same is being charged on opportunity cost basis, which is significantly lower than the normal cost of production. If Hydrogen is charged to Aniline on cost, return on capital employed of the company would decline significantly compared to the present levels. However, the Authority has determined injury to the domestic industry as it exists and profitability is determined as per records maintained by each constituents of the domestic industry.

### **Employment and wages**

56. The Authority notes that the constituents of the domestic industry are multi-product companies and, therefore, there may not be direct effect of dumping on employment levels of the domestic industry. Status of employment levels and wages of the domestic industry has been as under:

Particulars	Unit	2007-08	2008-09	2009-10	P O I
Employee	NO	***	***	***	***
Wages	Rs./Lacs	***	***	***	***
Indexed		100	113	145	142

57. The Authority notes from the above that there is a slight decline in the level of employment over the injury period. Wages paid have shown normal wage growth.

### **Actual and potential decline in Productivity**

58. The productivity of the domestic industry is given in the following table:

Particulars	Unit	2007-08	2008-09	2009-10	P O I
Productivity per day	MT/day	***	***	***	***
Indexed		100	76	88	89
Productivity per employee	MT/No	***	***	***	***

59. The Authority notes from above table that productivity per employee of the domestic industry has shown slight improvement in the POI as compared to the previous year. However, the same declined compared to the base year.

### **Inventories**

60. The Authority has examined the inventory level of the domestic industry, which is given in the following table:

Particulars	Unit	2007-08	2008-09	2009-10	P O I
Average Stock	MT	***	***	***	***
Average Stock sufficient for no of days sales	Days	***	***	***	***

61. Based on the above, the Authority notes that the inventory levels of the domestic industry have significantly increased over the injury period including the POI and that despite increase in demand, inventory which was just equal to 5 days sales in the base year, increased significantly to 20 days sales.

### **Growth**

62. On examination of various economic parameters of the domestic industry, the Authority notes that the production and sales declined compared to base year, domestic industry lost market share, profitability of the domestic industry improved, but still remained below the legitimate levels, and the inventory increased significantly. Overall, growth of the domestic industry remained negative. The Authority further notes that the adverse effect on growth, if any is due to the increase in imports from European Union but not from the imports from subject countries as the imports from them are well above the net sales realization and non-injurious price of the domestic industry.

### **Ability to raise capital**

63. The domestic industry is a multi product company. Their ability to raise further investment is not a significant factor in this case. However, should the dumping from the present sources persist, ability of the domestic industry to raise capital would suffer severely.

### **Magnitude of Dumping**

64. It is noted that the dumping margin from the USA is positive. However, in view of no imports of subject goods from Japan during the period of investigation; dumping margin could not be calculated for Japan.

### **Factors affecting Domestic Prices**

65. Change in the cost structure, if any, and competition in the domestic industry, have been examined for analyzing the factors other than the dumped imports that might be affecting the prices in the domestic market. The Authority notes that with the anti-dumping duty in place, there are no external factors affecting the prices of the domestic industry during the injury period of this review investigation.

### **Other Known Factors:**

### **Volume and Prices of imports from Other Sources**

66. The Authority notes that during the POI, imports have taken place from the subject countries in the present investigation, and from other countries against which investigation is in progress. Imports from countries other than the subject countries are insignificant, and therefore, could not have caused injury to the domestic industry.

### **Contraction in demand and / or change in pattern of consumption**

67. The Authority notes that the demand of the subject goods has registered a positive growth. Thus, contraction in demand is not a possible reason which could have contributed to injury to the domestic industry.

### **Trade restrictive practices of and competition between the foreign and domestic producers**

68. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. The domestic industry competes among one another and at the same time competes with the landed price of the subject goods. The price of the domestic industry is determined by the landed price of subject goods. Moreover, imports from other sources have sizable presence in the Indian market.

### **Development of technology and export performance**

69. The Authority notes that technology or technology related issues have not been raised by any interested party as a cause of injury to the domestic industry. Further, the technology as also production process for producing subject goods is fairly stabilized with little technical or technological developments. There is no known difference between the technology employed by the petitioner and producers in subject countries.

### **Exports by the domestic industry**

70. The Authority notes that the exports of the domestic industry have declined. However, domestic industry furnished all information segregated for domestic operations. Therefore, the above grave injury is caused only by dumping.

### **Likelihood of Continuation / Recurrence of Dumping**

71. Following submissions are made by the domestic industry with respect to the likelihood of continuation/recurrence of dumping:

- i. The likelihood determination is a prospective determination and the Authority must undertake a forward-looking analysis and seek to resolve the issue of what would be likely to occur if the duty is terminated.
- ii. Improvement in the present performance is due to anti dumping duty in force and in such a case, the Designated Authority is required to examine the likelihood of recurrence of injury to the domestic industry. In case, the Designated Authority holds that there is no continued injury to the Domestic Industry, the likelihood of injury to the domestic industry is required to be seen in the event of expiry of the anti dumping duty in force.
- iii. The exporters and producers from the subject countries continued to export the material at dumped prices even after the imposition of the dumping duty. The market share of the imports from the subject countries was low but significant because the very same foreign producers were able to sell the product from EU. Situation of the domestic industry deteriorated in terms of production, sales, capacity utilization, and market share. The domestic industry is thus suffering adverse volume effect and continued injury.
- iv. If the domestic industry has not suffered injury from Japan in the event of no imports from Japan, it is required to examine whether the cessation of the anti dumping duty in force would result in the recurrence of dumping. Since, producers and exporters from the subject countries are quite aggressive in exporting the subject good to the Indian market, the examination of recurrence of injury is very important.
- v. The level of current dumping is very significant. This alone establishes the need for continuation of anti-dumping duty.
- vi. USA is exporting the subject goods to third countries at significant dumped prices, and if the applicable anti-dumping duty is allowed to cease, USA would surely intensify dumping of subject goods into India.
- vii. The prices prevailing in Indian market are quite attractive for the foreign producers. USA is exporting the subject goods to third countries at the prices far below than the selling price offered by the Domestic Industry. It is due to the applicable duty on USA and no anti dumping duty on Europe, that the US producers are not exporting significant volumes.
- viii. If current duties are allowed to cease in the present case, USA will not only increase the dumping of subject goods but will also maintain the prices matching with that of Europe.

- ix. Subject countries hold excessive capacities when compared with demand. Thus, exporters/producers from the subject countries have the potential to raise dumped exports to India.
- x. The production, domestic sales, capacity utilization and market share of the domestic industry declined. In view of significant unutilized capacities with the subject exporters and significant demand of the product in the Indian market should the current duty not be continued further, the imports shall increase substantially and sales of the domestic industry would further decline. Considering the price sensitivity of the concerned product, subject imports would increase substantially in the event of cessation of anti-dumping duties.
- xi. The situation of the domestic industry continues to be fragile. Cessation of current anti dumping duties is likely to lead to injury to the domestic industry in respect of the product under consideration.
- xii. Tribunal has held in a number of cases that the dumping would cause injury if the price undercutting without prevailing anti dumping duties is positive; if the price undercutting from a particular country is negative, if the imports are likely to suppress or depress the prices of the domestic industry and if the landed price of imports is below not only selling price of the domestic industry but also non injurious price of the domestic industry.

### **View of Exporters/Importers and Other Interested Parties**

72. The following are the views of the exporters, importers and any other interested parties with regard to likelihood of continuation or recurrence of injury:

- i. Claim of likelihood and recurrence of injury is based on mere conjectures. Excess capacity and price attractiveness of Indian Industry without any evidence.
- ii. Imports from Japan were almost none during last 10 years, which clearly shows the paradigm shift in the nature of imports from Japan that of a long lasting nature ruling out any likelihood of recurrence of dumping.
- iii. Third country exports from Japan is also either nil or of insignificant quantity. Japan has become a net importer of Aniline and the demand in the country has led to more and more exports being curtailed.
- iv. The claim of the petitioner that USA has been exporting the subject goods to third countries at significant dumped prices, is unsupported by any real evidence.
- v. Assuming the subject goods from USA to land in India at prices at which it exports to world and China, the price undercutting will be negative. To match DI's NSR, USA has to offer a very low price which is beyond possibility when they are exporting the material at a very high price to third countries. Therefore Indian market is not attractive to for USA.
- vi. Out of 77000 MT exported by USA only 2000 Mt (less than 3% of total exports) has been exported to India and that too at a price higher than the NSR. 60000 MT has been exported to China, being a more attractive market.
- vii. The statements that the exports from USA are shifted to EU and that might again switch to US are far from reality. These are merely to mislead the Authorities.

- viii. No evidence has been provided to show the existence of relationship of producers of Europe and USA/Japan. There is only one producer who has a plant in both the jurisdiction.
- ix. No mention of the source of information claiming surplus global capacities leading one to doubt the authenticity of the figures in the table.

**Examination by the Authority**

73. The Authority, with regard to the post Disclosure Statement submissions relating to likelihood of dumping and injury, notes that as regards USA, there are imports of the product under consideration in the POI. Petitioners claimed that there is freely disposable capacity of 1,90,000 MT in USA which is sufficient to eat up the entire Indian demand. The Authority has considered the report by Merchant Research & Consulting Ltd. relating to surplus capacity in USA. The surplus capacity in USA in 2010 is determined by taking total capacity reduced by the demand in USA and the exports by USA to all countries including India. The surplus capacity calculated as per the said report is 97,037 MT. However the domestic industry has not established as to how the same would find way into the Indian market at a lower price when they are already getting a higher price than the NSR and NIP of the domestic industry. Further, USA is realizing even higher price in foreign markets other than the Indian market. The objective of a business is to earn and maximize profits but not to incur or increase losses. The fact of mere availability of surplus capacity does not in itself sufficient to conclude a finding that the dumping from a subject country, USA in the present case, would recur or continue and cause injury to the domestic industry in case of withdrawal of duties. Further, there is no rationale in the submissions of the domestic industry that when European Union is significantly undercutting the prices of the domestic industry, USA would also export at the same level of prices causing undercutting compelling the domestic industry to reduce its prices.
74. Further, the injury to the domestic industry, if any, is there because of imports from European Union as the imports from European Union have increased significantly in POI. There is no injury from the imports from subject countries nor there is any likelihood of injury from import from the subject countries.

**Magnitude of Injury and injury margin**

75. The non-injurious price for the subject good has been compared with the landed value of the exports from the subject countries for the same description for determination of injury margin. The analysis is done on month to month basis. The Authority notes that landed price of imports is more than the non injurious price of domestic industry, which is as follows. However, the Authority notes that present investigation is a sunset review investigation and it is the consistent practice of the Authority to hold that NIP – NSR comparison has not much of relevance.

NIP (Rs. per kg)	***
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Landed Price (Rs per kg)	***
Injury Margin (Rs per Kg)	***
Injury Margin as % age of Landed Price	(5-15)%

**Post Disclosure Statement submissions of the domestic industry and the trader, importers, consumers and other interested parties**

76. The Authority has examined the post Disclosure Statement submissions of the domestic industry and the trader, importers, consumers and other interested parties. The Authority has dealt with them to the extent they are relevant to the present investigation, in the appropriate headings in the Final Findings. Some main issues raised by the importers/other interested parties are as under:
- a. It has already been established that HOCL should be excluded as injury to HOCL is due to other factors. Injury to HOCL has distorted the whole injury analysis.
  - b. RTI reply given by HOCL shows that there was no piling of stocks.
  - c. There is no likelihood of continuation or recurrence of dumping and injury. Landed price of imports is higher than selling price and non injurious price of domestic industry. The US producers enjoy a better market in China. Therefore, there is no likelihood that they would dump the product to India.
  - d. Petitioner has claimed surplus capacity based on 2006 figures in subject countries as well as the world by ignoring the facts relating to growth in demand.
  - e. Petitioner is trying to give a bogus interpretation of global surplus situation and misleading the Authority by saying that such surplus will be diverted to Indian market in the event of revocation of duties. When there were no significant imports during the past 10 years from subject countries, chance of these countries preserving their capacity to fill the Indian market at dumped prices is nothing but a wild imagination.
  - f. Anti Dumping investigations are country specific. Therefore, contention of domestic industry that the US producers would export to India at price levels of European Union is without any legal basis.
  - g. Landed price is much higher than the selling price of the domestic industry.
  - h. Post POI data in terms of volume should be analyzed.
  - i. Price undercutting is negative. Landed price of imports is much higher than the selling price of the domestic industry and there is no price suppression and depression.
  - j. Incorrect import data has been considered in the disclosure statement.
  - k. Non participation alone is not sufficient to establish likelihood of recurrence of dumping and injury.
  - l. Profits of domestic industry are above reasonable levels.
  - m. The Indian importers have provided dumping margin calculation which shows that the dumping margin determined is negative.
  - n. It is stated in the annual report of HOCL that Rasayani plant was under technical and maintenance shutdown in 2006-07.
  - o. There is no proper non-attribution analysis, examining the injury due to other factors causing injury to HOCL.

- p. Statement relating to costing of Hydrogen in paragraph 19 is a generalized statements without any data to support or corroborate the claims made by the Authority and, therefore, leaving NOCIL deprived of sufficient information to make any comments on this issue.
- q. 13 years old production has been relied upon for examination of technical constraints of HOCL. This is clearly illegal, unprecedented and without the authority of law.
- r. Inclusion of HOCL into the domestic industry at this stage of the investigation is inconsistent with precedents and without the authority of law. There can be no justification for changing the constituents of the Domestic Industry at the whim and convenience of the petitioner.
- s. There is no requirement or justification to keep dumping margin calculation confidential. The information relied upon by the Authority to arrive at normal value and export price at ex-factory levels is not business proprietary information. Rather, it is the information from the public domain that ought to be disclosed. For instance, there is no justification to conceal export prices as per DGCI&S data under the garb of confidentiality.
- t. The inefficiency of HOCL with regard to production cost cannot be adjusted to increase NIP by taking capacity utilization at 100%. If anything, HOCL's inefficiency should be taken into account considering that the inefficiency has existed for several years now, irrespective of dumping and injury. Further, Annexure-III, post the recent amendment, is now clear on the calculation of NIP. All factors are to be taken at best utilization rates over the injury period and the period of investigation. At no point in the injury period or the period of investigation was the capacity utilization of HOCL anywhere near 100%.

77. The issues raised by the domestic industry are as under:

- a. Since the constructed normal value is based on information of the domestic industry, the same cannot be confidential from the domestic industry.
- b. There is calculation error in calculation of working capital, further certain debtors are disallowed which is incorrect, further while bad debts is not allowed as part of cost, provision of bad debts is not removed from working capital.
- c. Determination of normal value as per lowest NIP is inconsistent with the Rules and against the interest of domestic industry. While determination, abnormal cost of domestic industry is removed at the same time, abnormal benefit is not removed, providing undue benefit to exporter for their non cooperation.
- d. Domestic industry has collected data of exports from USA to world countries including India, China, EU etc. It may be seen that exports to China increased till 2010 declined significantly in 2011 – upto Oct period. Same data shows that exports to EU also increased and exports to India are lower price compared to other world markets.
- e. Down time report of HOCL for the injury period shows that production of Aniline plant of the company was suspended due to low off take, uneconomic market conditions and other factors as well. Analysis of which shows that even if effect of other factors is removed, production of HOCL declined significantly.

### **Examination by the Authority**

78. The issues raised by the Domestic Industry and the interested parties have been examined by the Authority hereunder:
- a. The issue relating to exclusion of HOCL has already been dealt with above in the appropriate head and the Authority does not find any new submissions from the interested parties and the same are repetitive in nature.
  - b. The Authority notes that RTI reply given by HOCL was only in respect of one Aniline plant whereas the company has three Aniline plants. Thus, RTI reply for one plant cannot provide any meaningful guidance.
  - c. With regard to use of import data, it is stated that the same has been obtained from DGCI&S and correctly used. Further, there is no anomaly in determining the dumping margin.
  - d. The Authority does not find merit in the submissions of the interested parties with regard to disclosure of normal value and dumping margin as the same is based on confidential information provided by an interested party which cannot be disclosed to other interested parties.
  - e. The Authority has determined the non-injurious price of HOCL in accordance with the provisions of Annexure III to the Anti-dumping Rules and as per the established practices. Further, the NIP of HOCL has been determined at 100% of capacity utilization to remove injury, if any, due to other factors.
  - f. With regard to calculation error in NIP, the Authority has reviewed the calculation and calculation errors have been rectified wherever found necessary. With regard to disallowing certain current assets, the Authority has followed consistent practice, based on which certain assets are disallowed.
  - g. With regard to down time report of HOCL, the same has been analysed by the Authority and the Authority notes that it is not going to change any injury analysis. Down time report filed by the opposing parties as well as the domestic industry clearly shows that HOCL plant has been under shutdown due to low off take and uneconomic market conditions in addition to other factors. The Authority has made detailed analysis of the same and noted that after even excluding effect of other factors, production, sales and capacity utilization of domestic industry shows decline trend.

### **Likelihood of dumping and injury:**

79. The Authority notes that the dumping margin is positive for USA in the POI. However, the landed value for USA is more than the net sales realization and

the non-injurious price of the domestic industry in the POI. The Authority has also computed the landed value for exports from USA to third countries and found that the same is even higher compared to the landed value for Indian market. It implies that the exports from other countries would not find their way into the Indian market. Further, imports from USA are made at a price significantly above the NSR and NIP of the domestic industry.

80. The Authority further examines the claims of the domestic industry that there is freely available disposable capacity of 1,90,000 MT in USA which is sufficient to eat up the entire Indian demand. As stated above, the Authority has considered the report by Merchant Research & Consulting Ltd. relating to surplus capacity in USA. The surplus capacity in USA in 2010 is determined by taking total capacity reduced by the demand in USA and the exports by USA to all countries including India. The surplus capacity as per the said report is 97,037 MT. However the domestic industry has not established as to how the same would find way into the Indian market at a lower price when they are already getting a higher price than the NSR and NIP of the domestic industry. Further, as stated above, USA is realizing even higher price in other markets than the Indian market. The objective of a business is to earn and maximize profits but not to incur or increase losses. The fact of mere availability of surplus capacity does not in itself sufficient to conclude a finding that the dumping from a subject country, USA in the present case, would recur or continue and cause injury to the domestic industry in case of withdrawal of duties. Further, there is no rationale in the submissions of the domestic industry that when European Union is significantly undercutting the prices of the domestic industry, USA would also export at the same level of prices causing undercutting compelling the domestic industry to reduce its prices.
  
81. The Authority also examined the contention of the domestic industry that the exports from European Union may be diverted from USA and come to India in case the duties are withdrawn. The Authority examined the submissions of the domestic industry and finds that the same are mere apprehensions. The fact that some of the producers have their plants in EU and USA does not establish their case that the imports from EU would be diverted to USA as the incidence of freight would be higher in case of USA and the price of subject goods from USA would in all circumstances remain higher. The domestic industry also failed to provide cogent evidence on record in support of their claim. Therefore, in the absence of any material evidence from the domestic industry and based on the facts available, the Authority does not find any merit in this submissions of the domestic industry.

82. In view of the above, it is concluded by the Authority that the imports from USA in all likelihood would not come at a price which would cause injury to the domestic industry in case of withdrawal of duties.
83. With respect to Japan, as noted above, there are no imports from Japan over the injury investigation period except negligible imports in 2007-08. Further, as per the available information before the Authority, the capacity in Japan is 3,98,000 MT and actual production is 2,79,000 MT. However, despite the surplus capacity in Japan, there are no exports by them to India and as well as to other countries. It indicates that the Indian market is not important for them and does not, show any real possibility of diversion in case of revocation of duties. Under such a situation, the Authority finds that there is no likelihood of recurrence of dumping from Japan and consequent injury to the domestic industry.

### **Indian industry's interest and other issues**

84. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product under consideration in India. However, fair competition in 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, 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 anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.
85. The Authority recognizes 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.

### **Conclusions**

86. Having regard to the contentions raised, information provided and submissions made by the domestic industry and other interested parties and the facts available before the Authority as recorded in these Final Findings and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

- (a) Aniline has been exported to India by the United States of America below its normal value resulting in positive dumping margin during the POI;
- (b) There are no imports from Japan in the injury investigation period except negligible imports in the base year 2007-08;
- (c) The domestic industry has not suffered any injury from the imports from the subject countries; and
- (d) There is no likelihood of continuation or recurrence of dumping and injury in case the anti-dumping duty imposed on imports of Aniline from the subject countries is withdrawn.

### **Recommendations**

- 87. Having concluded on the basis of information available on record that there is no likelihood of continuation and recurrence of dumping and injury on account of imports of the subject goods from the subject countries based on the information on record if the duties are revoked, the Authority recommends for withdrawal of duties imposed on the subject countries vide Notification No 58/2006-Cus dated 9.6.2006.
  
- 88. An appeal against order of the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Sd/-

(Smt Vijaylaxmi Joshi)  
Designated Authority