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

Udyog Bhawan, New Delhi - 110011  
Dated the 24<sup>th</sup> May, 2011

**Final Findings**

**Notification**

**Subject:** - Mid-term anti-dumping review investigation concerning imports of Hydrofluoric Acid originating in or exported from China PR.

**No. 15/12/2010--DGAD.** – Whereas having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules), the Designated Authority (hereinafter referred to as Authority) initiated a midterm review antidumping investigation on 25<sup>th</sup> May, 2010 into alleged dumping of Hydrofluoric Acid (HF Acid) originating in or exported from China PR. The original investigations were initiated on 11<sup>th</sup> December, 2001 against dumped imports of Hydrofluoric Acid originating in and exported from China PR. The provisional antidumping duty was imposed on imports of Hydrofluoric Acid from China PR vide customs notification no. 35/2002-CUS dated 28<sup>th</sup> March, 2002 on the basis of the preliminary findings of the Authority dated 15<sup>th</sup> February, 2002. The final findings were notified vide notification dated 26<sup>th</sup> November, 2002 and the Department of Revenue imposed definitive anti dumping duties on the Hydrofluoric Acid from China PR vide notification no. 10/2003-CUS dated 15<sup>th</sup> January, 2003. The Designated Authority initiated sunset review investigations after the expiry of five years on 17<sup>th</sup> March 2007. The sunset review final findings were notified vide notification dated 25<sup>th</sup> March 2008 and the Department of Revenue extended definitive anti dumping duties on the subject goods from the subject country vide notification no. 54/2008-CUS dated 28<sup>th</sup> April, 2008.

2. And whereas the Rule 23 of Anti-dumping Rules require the Authority to review, from time to time, the need for continued imposition of Anti-Dumping Duty and if it is satisfied, on

the basis of positive information received by it that there is no justification for continued imposition of such duty, the authority may recommend to the Central Government for its withdrawal. Notwithstanding, the above provision, the Authority is required to review, on the basis of positive information submitted by any interested party substantiating the need for a review, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, whether continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. In terms of the above provision, Designated Authority received an application filed by M/s Navin Fluorine International Limited. substantiating the need for midterm review of the anti dumping duty imposed on the subject goods originating in or exported from China PR and have requested for enhancement / revision of the anti dumping duty imposed on subject goods. Having decided to review the final findings notified vide Notification No. 4/13/2006-DGAD dated 25<sup>th</sup> March 2008, the Authority initiated the investigations in terms of the Rule 23.

**A. Procedure**

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

- i) The Authority received a duly substantiated application from M/s Navin Fluorine International Limited for review, modification of the form of duty and enhancement in the quantum of anti dumping duty in force, *inter alia*, based on the grounds that the existing duty is not sufficient to address the injury to the domestic industry. The petitioner submitted prima facie evidence in this regard, requesting for review and enhancement of the anti dumping duty in force.
- ii) Having satisfied itself that the petitioner has produced sufficient positive information substantiating the need for a review, the Authority initiated the mid-term review investigation of anti-dumping duty imposed on imports of subject goods originating in or exported from China vide Notification No. 15/12/2010-DGAD -DGAD dated 25<sup>th</sup> May 2010 under Rule 23 of the AD Rules. The scope of the present review covers all aspects of the previous notification.
- iii) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2) with a request to advise the exporters/producers in their country to respond to the questionnaire within the prescribed time.
- iv) The Authority provided copies of the non-confidential version of the application to the known exporters and the Embassy of subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.

- v) The Authority forwarded a copy of the public notice of initiation of investigation to all known producers of the subject goods in India besides the petitioner, as shown below:

Sr. No.	Name of the Company
1.	M/s Tanfac Industries Ltd.
2.	M/s SRF Ltd.
3.	M/s Gujarat Flourochemicals Ltd..

M/s Tanfac Industries Ltd. provided costing and injury information after the public hearing.

- vi) The Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4). The notice was forwarded to following exporters:

Name of Company
1. M/s Quzhua Fluorine Chemical Company Ltd. Zhejiang
2. M/s Yingpeng Chemical Company Ltd.
3. M/s Yingguang Chemical Company Ltd.
4. M/s Sanmei Chemical Industry Co. Ltd.
5. M/s Yongfei Chemicals Co. Ltd.
6. M/s 3-F Jinan Chemical Co. Ltd.
7. M/s Dongyue Chemical Co. Ltd.
8. M/s Melian Chemical Co. Ltd.
9. M/s A to-3F Changsu Chemical Co. Ltd.
10. M/s Xiangxiang Aluminium Plant
11. M/s Shyeyang, Jiangsu
12. M/s Fudu Chemical Co. Ltd.

13. M/s Xinhua Chemical Plant
14. M/s Shanghai tianyuan Fluorine Chemical Co. Ltd.

- vii) None of the producers/ exporters from China PR have filed any response to questionnaire in the form and manner prescribed.
- viii) The Authority forwarded a copy of the public notice to all the following known importers (whose names and addresses were made available to the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4).

<b>Name of Company</b>
1. M/s Competent Dyestuff & Allied Products Pvt. Ltd.
2. M/s Oswal Enterprises
3. M/s MFPL Fluorine Products Ltd.

- ix) Response to importer's questionnaire were received from M/s Madras Flourine Pvt. Ltd., Chennai. Another importer, M/s Flourides & Chemicals have only given their submissions in this regard.
- x) Exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation have been treated as non-cooperating interested parties.
- xi) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigations, which was received by the Authority.
- xii) The complete and authentic details about domestic producers/production of the subject items were called from the Deptt. of Chemicals & Petrochemicals, the Administrative Ministry for the subject goods. However, no information has been made available by the concerned administrative department.
- xiii) Information was sought from the applicant and other domestic producer to determine non-injurious price based on the cost of production of the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove

injury to Domestic Industry. On the spot verification of the data provided by the applicant was carried out to the extent considered necessary.

- xiv) Investigation was carried out for the period starting from 1st Jan., 2009 to 31st Dec., 2009 (POI). However, injury examination was conducted for a period from 2006-07, 2007-08, 2008-09 and the POI.
- xv) The Authority held a public hearing on 22th February, 2011 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6(6), which was attended by M/s Navin Fluorine International Limited and two importers namely M/s Fluorides & Chemicals and M/s Madras Fluorine Pvt. Ltd. (through their consultants) The interested parties present at the time of hearing were advised to file written submissions of the views expressed orally and were also given an opportunity to file rejoinder to the views expressed by other interested parties. The written submissions and rejoinders received from interested parties have been considered, to the extent considered relevant;
- xvi) Arguments raised and information/evidence provided by the interested parties during the course of the investigation, to that extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority. The Authority during the course of investigation satisfied itself as to the adequacy and accuracy of the information supplied. Additional/ supplementary details regarding injury were sought from the domestic industry, which were also received.
- xvii) In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation have been disclosed to the known interested parties. The comments received on the disclosure statement, to the extent considered relevant, have been duly considered in these findings.
- xviii) The Authority made available non-confidential version of the evidence presented by the interested parties through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xix) \*\*\* represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.

- xx) 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.
- xxi) Information provided by 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 other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xxii) The Authority asked the petitioner to furnish information relating to Tanfac Industries Ltd who has supported the application, which was submitted by the petitioner. A letter was issued to the petitioner to rectify the deficiencies in the data of M/s Tanfac Industries Ltd. which have not been fully rectified. However, the Authority has considered the information provided by M/s Tanfac to the extent relevant for determination of non-injurious price and the injury analysis for the purpose of the present investigation.

#### **4. Comments made by interested parties in response to the Disclosure statement**

##### **Domestic Industry**

- The constructed normal value, dumping margin and export price, which are based either on the information of the domestic industry or on public information, should be revealed to the domestic industry. Rule 7 of AD Rules does not contemplate any right in the DA to claim confidentiality.
- There is significant difference in the dumping margin determined by the authority in the disclosure statement and the dumping margin determined by the domestic industry.
- The disclosure statement does not refer to the issue regarding “form of duty”. The anti dumping duty be imposed only as fixed quantum of anti dumping duty (fixed form of duty), expressed as duty per kg in USD. Benchmark form of duty for the product under consideration is not appropriate for the reason that price of key raw material Fluorspar varies significantly.

- Tanfac has replied to all the deficiencies received. Notwithstanding, if Tanfac data was deficient, the same should have been rejected by the Authority instead of using partially.
- Determination of weighted average dumping margin for different concentration of the product through cumulated export price is not correct. Since the imports are made in different concentrations, the imports cannot be cumulated by expressing the purity to 100%. This is for the reason that the packing cost of the product, amongst other things, remains the same regardless of its concentration.
- It is not appropriate to compare the performance of the domestic industry between the base year and the POI. Instead of end-point to end-point analysis, the examination of the economic situation of the domestic industry should take into account events within the injury period. The Authority may consider performance of the domestic industry throughout the injury period by undertaking year on year analysis
- Dumping would cause injury to the domestic industry in the event of revocation of anti-dumping duty. CESTAT in various cases clearly held that the anti-dumping duties are required to be continued in case the price undercutting, dumping margin and injury margin are positive.
- The Authority may consider the fact of past dumping of the product and the effect of such dumping on the performance of the domestic industry.
- The imports in relation to consumption in India declined significantly between 2006-07 and 2008-2009 during the investigation phase of sunset review. However, the market share of imports increased steeply once again in period of investigation. The imports increased in absolute volumes and the same was significant.
- The market share below 10% is considered significant even in numerous investigations conducted by the Authority. Since the current investigation is a midterm review investigation where anti-dumping duties are imposed, It must be concluded that the existing level of duties are insufficient to prevent imports at dumping prices.
- The Authority has clearly found that the imports are significantly undercutting the prices of the product. The Authority has found that the imports are suppressing the prices of the domestic industry in the market. Petitioner submits that the rules clearly provide for existence of either price undercutting or price suppression/depression. Existence of both price effects is not mandatory.
- The domestic industry refers to the judgement of the Hon'ble supreme court in the matter of Rishiroop Polymers Pvt. Ltd Vs. Designated Authority [2006 (196) ELT 129 (S.C)]. It would be seen that the Designated Authority argued and the Tribunal and Supreme Court agreed that the Designated Authority has done comparison of period of investigation with

preceding year and the same was justified under the law. Following this decision and considering that the base year is part period of investigation of sunset review and 2007-08 and 2008-09 are part of the investigation phase, the Designated Authority should undertake injury analysis in the present case.

- The market share of domestic industry declined between 2008-09 and period of investigation. Further, this decline is after excluding captive consumption and therefore is unaffected by movement in captive consumption. In fact, demand excluding captive consumption has gone up, whereas the market share of the domestic industry has declined.
- **Profit, return and cash profit:** With regard to performance of the domestic industry on account of profits, return on capital employed and cash profit, petitioner submits that the current performance is not representative of the impact of the dumped imports for the reasons that (i) it includes stock gains earned by the domestic industry and (ii) it pertains to a period of high volatility in raw material prices.
- Since price of Fluorspar have moved too significantly, the profitability of the domestic industry during the period is reflective of the price at which Fluorspar has been purchased. In other words, these are profits earned out of purchases of Fluorspar purchased by Tanfac at much older prices and do not reflect the current prices of Fluorspar in the investigation period of the case.
- The domestic industry would suffer significant financial losses and would eventually close down, if the domestic industry were to sell the product at a price matching the landed price of the imports.
- Inventories with the domestic industry have increased despite existing anti-dumping duties.
- **Non injurious price vs. net sales realization:** The fact that domestic industry is able to realize a price higher than non injurious price is totally immaterial. The non injurious price is a notional price calculated for the limited purpose of determining injury margin. The non injurious price is totally irrelevant in deciding price effect. For price effect, the price undercutting, suppression, depression and injury margin are the relevant parameters.
- a market share of 11% cannot be considered insignificant. In Mid Term Review or Sunset Review the volume of imports is not a determining factor for the purpose of likelihood.
- The Authority has clearly found that the information available at World Trade Atlas clearly shows that China's exports to third countries are significant and are at prices marginally lower than price to India. Given higher price in Indian market, it is evident that these third countries export would be diverted to Indian market.

- Fluorspar a major raw material controlled by China and movement in prices of Fluorspar and QHF Acid clearly establishes likelihood of dumping and injury. The import price of HF Acid has not moved in tandem with that of costs on account of fluorspar. This clearly shows the fact that the import price of HF Acid is not governed by the fluorspar prices (but the excess capacities available and the export orientation of the producers). When the input costs have increased, the Chinese producers have not increased their prices in the proportion to cost increases. When the input prices have fallen, the product prices have declined far beyond the cost declines. It is thus evident that Chinese producers are capable of pricing their product without any relationship to Fluorspar.

### **M/s Madras Fluorine Pvt. Ltd. & M/s Fluorides and Chemicals**

- The DI has filed its further submissions just before 5 days of issuance of disclosure statement. It is apparent that DI does not want to give opportunity to the interested parties otherwise they could have filed the further submissions in the written submissions filed by them after public hearing.
- The evaluation of all the economic indices clearly establishes that the Domestic industry has not suffered injury on account of any of the economic parameter as a result of so called alleged dumping of subject goods from China PR. Despite alleged inadequacy of measure the NSR of the DI continued to be higher than its NIP.
- Further in the absence of current injury the issue of continuation of injury never arises and moreover during POI the volume of imports from China PR remains below the level of base year.
- The domestic Industry is not suffering from any injury nor is there any likelihood of recurrence of injury as measures were remains ineffective since its imposition and moreover NSR is continued to higher than NIP. Therefore, no question of likely injury arises. The domestic industry has posted significant growths on almost all of the injury parameters which includes production, domestic sales, capacity utilization, domestic profits, ROCE, NSR.
- The claim of likely injury by the domestic industry due to surplus production capacity of foreign producers is not valid because the evidence provided by DI in support of its claim is for 2008 not for POI. As per the China Hydrofluoric Market Report 2008-08, the demand in China is 9 lac tonnes and the capacity utilisation is 87.33%. The capacity utilisation of 87.33% in chemical sector is supposed to be very good utilisation. Therefore, the claim of surplus capacity does not arise at all.
- Further, it has been held by the Hon'ble CESTAT in the matter of Indian Spinner Association v. Designated Authority that mere surplus capacity with a exporter cannot

lead to a conclusion that there is “imminent danger of material injury” such that the duty must be continued.

- Demand in Indian market is not at all attractive for Chinese producers as they could have easily captured significant share as no price effect can be seen on domestic industry from 2006-07 onwards. Hence any attempt to project likelihood of injury on basis of such conjectures by the DI should be rejected as the actual data completely negates the contention of domestic industry.
- The increase in imports from China PR during POI is below the level of base year and further it has not shown any adverse effect on selling price of domestic industry or its performance.
- Market share of DI has increased by 4% during POI as compared to base year 2006-07 and same has declined by 4% during the POI as compared to 2008-09, the fact that the selling prices of the domestic industry was much higher than non-injurious price clearly establishes that such decline is not material. The domestic industry had an option of selling at a lower price (level of NIP) and maintains its market share.
- It is submitted that the cost and price structure of the domestic industry in absolute terms shows that the increase in the prices of domestic industry during POI is more than the cost over the base year. Therefore, there is no price suppression/depression taking in to consideration 2006-07 as a base year In this respect it is submitted that there has been no price suppression impact on the domestic industry due to alleged dumped imports during POI as compared to base year or preceding year.
- The production and capacity utilization of the domestic industry have declined during the POI but this decline is in line with the decline in the captive consumption.
- Profit/loss had shown deterioration during 2008-09 because of factors other than dumping as M/s Tanfac has earned huge profits at Rs.12108 per MT whereas M/s. Navin was in losses in the same period. Further, M/s. Navin was in losses due to other factors which are procurement of raw material at higher rate and unusual high consumption norm of raw material etc.
- Domestic industry has claimed in their submission vide letter dated 11.05.2011 return on investment as 27% in 2006-07, 39% in 2007-08, 12% in 2008-09 and 29% in POI that means ROI was more than 22% throughout the injury period. NSR is much higher than reasonable price in injury period. Further, during 2008-09 ROI as claimed by DI was 12% this lower ROI was due to increase in consumption norms of M/s Navin, otherwise ROI would have been much more than 22%.

- The raw material (Fluorspar) price of M/s Navin is more than not only from M/s. Tanfac but also from international price. Therefore, we request to Designated Authority to kindly take international prices of Fluorspar raw material during POI for analysis.
- The DI has made significant returns on capital employed throughout the injury period. It is hereby submitted that the DI is not suffering from any injury. Domestic Industry has return on investment more than 22% over the injury period this means selling price of domestic industry was above reasonable fair price despite of positive undercutting and ineffective measures.
- The continued imposition of anti-dumping duties is reviewed and in the present case, the anti-dumping duties were in place since the base year 2006-07. Hence the contention regarding inappropriateness of injury analysis in the present investigation from the year 2006-07 is without any merit.
- It is submitted that the landed price of subject goods from China PR was higher since 2006-07 than the reference price.
- The landed price of subject goods from China PR since 2006-07 was higher than the reference price levied by the Revenue Department vide Notification dated 28th April 2008, as can be seen from the table below. Therefore we would request the Authority to compare the figures of POI with base year and not with immediate preceeding year for the purpose of objective analysis.
- Hydrofluoric acid is sold in diluted concentrations ranging from 20% to 70% as abbreviated in the original investigation as 20% to 70% or as 100% pure anhydrous i.e. AHF (100% concentration). Therefore, for comparison of export price of china PR it should be taken at AHF only.
- There is not even any analysis which could support their claims as to how injury to the Domestic Industry would recur in case the duties are discontinued when despite alleged inadequacy of measure the NSR of the DI continued to be higher than its NIP. Therefore, this claim is based on mere conjecture not on merit so it should be rejected

### **Examination by the Authority**

- a. The methodology of construction of normal value in respect of the non-cooperating exporters from China PR and percentage range of dumping margin has been disclosed. The export price considered by the Authority has also been disclosed.
- b. As regards the non-reference to the issue regarding the form of duty in the disclosure statement, the Authority notes that under Rule 16 of the Rules, the Authority is required to disclose the essential facts under consideration which form the basis for its

decision. The form of duty forms part of recommendation by the Authority and not an essential fact.

c. The Authority has used the data provided by M/s Tanfac that has been found relevant for assessment of injury to the domestic industry. Rule 6(8) empowers the Authority to record its findings on the basis of fact available in case any interested party provides deficient data.

d. As regards the claim that the imports cannot be cumulated by expressing the purity to 100% as the imports are made in different concentrations, the Authority notes that the domestic industry has never claimed separate dumping margins for different concentrations of HF Acid. On the other hand, the Domestic Industry has themselves claimed in their application the imports of HF Acid by expressing the purity to 100% level.

e. The Domestic Industry has claimed that Authority may consider performance of the domestic industry throughout the injury period by undertaking year to year analysis. In this regard, the Authority while issuing the disclosure statement has done comparison of the performance during the POI with the year 2008-09 also in addition to the base year since the anti-dumping duties on the subject goods from China PR were modified by Sunset Review Final Findings dated 25<sup>th</sup> March 2008 and the duties were levied by the Revenue Department vide Notification dated 28<sup>th</sup> April 2008.

f. The Authority notes that although there are continued imports of the product under consideration after imposition of anti dumping duties, which are undercutting the prices of the domestic industry after addition of anti dumping duties and injury margin is also positive, the adverse impact of the same on the volume and prices of domestic industry is absent.

g. As regards the price suppression, the Authority notes that although the import prices are found to be suppressing the prices of the domestic industry in relative terms (i.e., percentage terms), the same is however absent in absolute terms. In absolute terms, the increase in selling prices of the domestic industry is more than the cost of sales as compared to the base year as well as to the year 2008-09.

h. The Authority notes that the performance of the Domestic Industry is factor of two variables, i.e., cost of sales and selling prices. As regards the cost of sales, the Authority notes that the cost of fluorspar consumed by M/s Navin Flourine is higher than the international prices of fluorspar. While filing the application, M/s Navin Flourine has not claimed any downward adjustment on account of higher prices of fluorspar. Now after M/s Tanfac submitted the data, whose cost of fluorspar is claimed to be lower than the international prices, the DI is arguing that M/s Tanfac have purchased fluorspar at much older prices and do not reflect the current prices of Fluorspar in the investigation period of the case. The Authority notes that the contradictory stands for different constituents of the domestic industry and that too at post – disclosure stage cannot be accepted. As regards the selling prices, the Authority notes that the same are significantly higher than the import prices and non-injurious price.

i. It has been contended by the domestic industry that realization price higher than non injurious price is totally immaterial and the non injurious price is a notional price calculated for the limited purpose of determining injury margin. The Authority notes that the NIP is based on the factual data of the domestic industry and reflects the fair selling price of the subject goods. The sales realisation vis-a-vis NIP is one of the economic parameter that reflects the state of the industry. As per para (iv) of Annexure – II of the Rules, the Authority is required to evaluate all relevant factors and indices having a bearing on the state of the industry.

j. As regards the higher export prices by China PR in Indian market as against the third countries as per world trade atlas, the Authority notes that world trade atlas prices are average prices for all the concentration level HF Acid and therefore not representative of any particular price trend.

k. With regard to the contention that when the input costs have increased, the Chinese producers have not increased their prices in proportion to cost increase and when the input prices have fallen, the product prices have declined far beyond the cost decline, the Authority has examined the price effect of the imports from China PR to examine this issue.

l. The Authority normally does not accept the belated submissions. However, in the present case, while the application in the present mid-term review investigation was filed by M/s. Navin Fluorine International Ltd., M/s Tanfac Industries limited has subsequently cooperated with the Authority and has provided the information at post oral hearing stage. The Authority has considered the information provided by both the companies for injury analysis. The Authority therefore considered the submissions made by the DI on the combined data of M/s. Navin Fluorine International Ltd., M/s Tanfac Industries limited, which were made by DI on 11th May 2011 and kept a copy of the same was made available in public file.

m. The domestic industry provided an evidence of surplus capacities in China PR sourced from China Chemical Reporter (CCR) and importer, M/s Madras Fluorine provide evidence from China Hydrofluoric Market Report 2008-09 for the same period 2008. Both reports shows contradictory picture of capacities in China PR for HF Acid. It shows unreliability of information available in China PR public domain. The Authority notes that such information cannot be relied upon for accessing the production capacity of subject goods in China PR.

n. Apart from the above, the Authority has considered all the issues that have been raised by the interested parties that were found relevant to this case, in the appropriate sections of these findings.

**B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:**

## **VIEWS OF THE DOMESTIC INDUSTRY**

5. Following issues raised by the domestic industry with regard to product under consideration and like article:

- i. The present review investigation is a midterm review investigation. The product involved in the original investigation, the sunset review investigation and in the present midterm review investigation is Hydrofluoric Acid. The product under consideration in the present midterm review is the same as has been held by the Designated Authority in the previous investigations.
- ii. Hydrofluoric (or HF) Acid could be in the form of liquid or gas and anhydrous or aqueous/diluted. It is used as a catalyst for gasoline alkylation, in manufacture of inorganic fluorides, fluorinated hydrocarbon compounds, refrigerants, as a pickling agent for descaling stainless strips and high silicon sheets, glass etching, etc.
- iii. Hydrofluoric acid produced by the domestic industry and imported from China PR are like product.
- iv. Hydrofluoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act under Customs Sub-heading 281111 of the Customs Tariff Act, 1975
- v. There is no difference in Hydrofluoric acid produced by the domestic industry and imported from subject country. Hydrofluoric acid produced by the domestic industry and imported from subject country 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. Hydrofluoric acid produced by the petitioners and imported from subject country is like article.
- vi. Present investigation is a midterm review investigation. The Designated Authority has examined the issue of product under consideration and like article in the previous two investigations, which is relied upon.

## **VIEWS OF THE IMPORTERS, CONSUMERS, EXPORTERS AND OTHER INTERESTED PARTIES**

6. None of the importers, consumers, exporters and other interested parties has filed any comment or submissions with regard to product under consideration, and like articles.

## **EXAMINATION BY THE AUTHORITY**

7. The present investigation is review investigation. Anti dumping duties are in force on imports of Hydrofluoric acid on the basis of recommendations earlier made by the Authority. Product under consideration is Hydrofluoric acid, The product under consideration in the present investigation, as defined in the original investigation, is Hydrofluoric acid of all forms, purities and concentrations originating in or exported from China PR. Hydrofluoric (or HF) Acid could be in the form of liquid or gas and anhydrous or aqueous/diluted. It is used as a catalyst for gasoline alkylation, in manufacture of inorganic fluorides, fluorinated hydrocarbon compounds, refrigerants, as a pickling agent for descaling stainless strips and high silicon sheets, glass etching, etc. The raw materials used are acid grade fluorspar, sulphuric acid and oleum, which are fed into a pre-reactor at predetermined rates, mixed and converted into a homogeneous mixture and pushed into the HF acid reactor. The resulting HF gas is drawn into a pre-scrubbing tower for washing and then condensed using chilled calcium chloride solution. The liquid is then purified by distillation and the anhydrite by-product is withdrawn separately. HF acid is sold in diluted concentrations ranging from 20% to 70%.

8. Hydrofluoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act under Customs Sub-heading 281111 of the Customs Tariff Act, 1975 and the International Trade Classification. The classification, however, is only indicative and in no way binding on the scope of the present investigation, which being a mid-term review investigation, has its scope limited to the product already identified in the previous investigation.

9. Rule 2(d) of the Anti-dumping Rule specifies that like articles mean 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 articles under examination. The petitioner claimed that the goods produced by them are like articles to the goods originating in or exported from the subject country. The Authority notes that Hydrofluoric acid produced by domestic industry has characteristics, which are similar to those of Hydrofluoric acid imported from the subject country. The subject goods produced by domestic industry are used interchangeably with those imported from the subject country, In view of the above the Authority notes that Hydrofluoric acid produced by the domestic industry and that being imported from the subject country are like articles within the meaning of the Rules.

### **C. DOMESTIC INDUSTRY**

#### **VIEWS OF THE DOMESTIC INDUSTRY**

10. Following submissions have been made by the domestic industry with regard to standing of the domestic industry.

- a) The petition was filed by M/s. Navin Fluorine International Ltd. Subject goods are also being produced by Tanfac Industries Ltd, SRF Ltd and Gujarat Fluorochemicals Ltd. M/s Tanfac Industries Ltd has supported the petition. M/s SRF Ltd and Gujarat Fluorochemicals Ltd are producing the product concerned primarily for captive purpose.

- b) The production of petitioner constitutes a major proportion in Indian Production and therefore petitioner should be treated as “domestic industry” within the meaning of the Rules.

### **VIEWS OF THE EXPORTER, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES**

11. M/s Tanfac Industries limited which has 50.33% share in the Indian production has not submitted its data. Being a major share in Indian production, its data should be taken for objective injury analysis so as to have fair picture of Indian industry.

### **EXAMINATION BY THE AUTHORITY**

12. The present investigations is review investigation. Anti dumping duties are in force on imports of HF Acid on the basis of recommendations earlier made by the Authority. It is noted that Tanfac Industries limited provided all relevant information in the last sunset review investigation. M/s Tenfac Industries limited alongwith the supporter M/s. Navin Fluorine International Ltd. constituted the domestic industry at the time of previous sunset review investigation.

13. While the application in the present mid-term review investigation was filed by M/s. Navin Fluorine International Ltd., M/s Tenfac Industries limited has subsequently cooperated with the Authority and has provided the information. Since both M/s. Navin Fluorine International Ltd. and M/s Tenfac Industries limited have cooperated with the Authority in the present investigations and their production accounts for about 99% of the production of subject goods in India, the Authority has considered them as domestic industry for the purpose of the present investigation.

14. Authority therefore notes that the applicants fulfil the requisite criteria to satisfy standing and constitutes domestic industry, as required under Rule 2(b) of AD Rules.

### **OTHER ISSUES**

### **VIEWS OF THE DOMESTIC INDUSTRY**

15. The domestic industry raised following issues:
- i. None of the exporters have responded to the questionnaire issued by the Authority. Exporters should therefore be considered non-cooperative as per Rule 6(8) and the Authority should proceed according to the best information available.
  - ii. The response filed by the Importers are not only significantly beyond time limits but also more than seven months delayed from the last date prescribed for submissions of

responses, which cannot be considered as reasonable. Hence the response filed by the importers should be rejected on the ground stated above.

- iii. The non confidential version of the response filed by the importers is not provided to the domestic industry as required under the Anti-Dumping Agreement and Rule 7 of the Rules.
- iv. The two importers turned up at the time of oral hearing, for the first time during the course of the present proceedings. Out of two, one of them even claimed that it had filed a questionnaire response but the non-confidential version of the same is not available in the public file.
- v. The Designated Authority can enhance the anti dumping duty and the same has remained unchallenged before CESTAT. Any argument on this account must be rejected.

### **VIEWS OF INTERESTED PARTIES**

16. The other interested parties raised the following issues:

- The non-confidential version of the petition of the DI is wholly deficient, which has hampered the right to file the submissions.
- Since NSR is more than the NIP of the DI, change of form of the duty from reference to fixed form is not likely to affect the domestic industry materially.
- Enhancement of the duties already imposed or change in the form of duty cannot be done through review proceedings.

### **EXAMINATION OF THE AUTHORITY**

17. The Authority provided opportunity to the interested parties to present the information relevant to the investigation during the oral hearing in accordance with Rule 6(6) of anti-dumping rules. The oral information which has been subsequently reproduced in writing has been considered by the Authority to the extent relevant. The rejection or acceptance of the response is not a pre-requisite for taking the views of interested parties on board.

18. The Authority made available non-confidential version of the evidence presented by the interested parties through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

19. The Authority notes that the instant MTR investigation was, *inter alia*, initiated in accordance Rule 23 of the AD Rules. Rule 23 of the AD Rules enables the Authority not only to examine the need for continuation of the anti-dumping duty but also to determine the quantum thereof that needs to be recommended based on information/data available on record. Thus, the

contention that there is no legal authority to change, alter or modify the level of duties already imposed is devoid of any merit and hence is rejected.

20. The Authority in MTR investigations examines the need for continuation of anti-dumping duty on the basis of various economic parameters as laid down under the Rules.

#### **E. Normal value, Export Price and Dumping Margin**

##### **Market economy claims**

21. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provided information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise producers/exporters in their country to provide information.

22. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporter/producer of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) The exchange rate conversions are carried out at the market rate.

##### **Views Of The Domestic Industry**

23. Domestic industry has made following submissions with regard to Normal Value.
- (i) China is a non market economy country and the Designated Authority has also treated China as a non market economy country in anti-dumping investigations. Similarly USA and European Commission have also treated China as a non-market economy country in anti-dumping investigations.
  - (ii) None of the producers/ exporters of the subject goods have filed any response to the Authority, and therefore, normal value cannot be determined in the absence of the domestic sales price or the cost of production of the manufacturers. The domestic industry has argued that China is a non market economy country, therefore, normal value may be constructed as per para 7 of Annexure I of AD Rules.
  - (iii) Normal value cannot be determined on the basis of the price in a market economy third country, constructed value in a market economy third country as such information is not available with the petitioners. Petitioner submits that normal value could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available to the petitioner
  - (iv) India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country would result in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country.
  - (v) Substantial volumes of exports from China have been reported in 2008 and the POI as is evident from the information collected from IBIS. If such is the quantum of imports in the presence of existing measures, likelihood of increased dumped imports entering in to the country cannot be ruled out in case the anti dumping duty is revoked.

#### **View Of Exporters/Importers And Other Interested Parties**

24. Following is the submissions made by interested parties:
- i. Domestic industry should confirm that imports volumes, demand, export price, cost of production, selling price CNV and injury analysis is based on common indices ie at AHF basis (100% concentration).
  - ii. In view of non-consideration of CIF export price at AHF basis (100% concentration), the same considered for calculation of dumping margin is misleading.
  - iii. The cost of the petitioner is higher due to lower capacity utilization that resulted in higher conversion cost. The Authority therefore constructed Normal Value by considering conversion cost of DI at reasonable utilization rate.

## **Examination By The Authority**

### **Normal Value for China PR**

25. No producer/exporter from China has co-operated in this investigation and provided any information for rebutting the non-market treatment as per para 8(2) of Annexure 1 of the AD Rules. Therefore, the presumption of non-market economy as per para 8(2) of Annexure 1 of the AD Rules remains un-rebutted. The Authority, therefore, has determined the Normal value in accordance with para 7 Annexure I of the AD Rules. In absence of sufficient information on record regarding the other methods as are enshrined in para 7 of Annexure I of the AD Rules, the Authority has determined the Normal value by adopting the method “or any other reasonable basis”.

26. The Authority has therefore constructed normal value taking into account international price of the major inputs, consumption norms, conversion cost, and SGA expenses of the efficient domestic industry and after addition of a reasonable profit margin of 5%. The Normal value so determined works out as US\$ \*\*\* per MT.

### **Export Price**

27. The Authority notes that none of the exporters / producers from subject country for the subject good has co-operated with the Authority in this investigation. As regards the contention of the interested party that CIF export price has not been considered at AHF (100%) basis, the same is devoid of any merit as the Authority has considered the ‘Export price’ on the basis of ‘facts available’ on record considering HF Acid at 100% concentration. The export volumes at 100% concentration have been worked out by multiplying the export volume by its concentration level.

28. In view of non-cooperation by the exporters / producers, the Authority considered whether import statistics provided by IBIS and DGCI&S could be used to determine the export price of the subject goods during the POI. It is seen that the domestic industry has claimed volume, value and import price on the basis of information provided by IBIS. The Authority also called for the data from DGCI&S. The data from the two sources was corroborated and volume and value of imports as reported were compared. Its analysis revealed that the volume of imports as reported by the DGCI&S during the POI were higher than the volume of imports reported by the IBIS. In view of the same, the Authority has adopted the import data as reported by DGCI&S in order to determine volume, value and import price of imports for the purpose of present determination as the volume and price per unit is higher in the DGCI&S data.

29. Thus, the Authority has determined weighted average import price for the products under consideration on the basis of information provided by DGCI&S. It is seen that the import prices as reported in the DGCI&S are on CIF basis.

30. For determination of 'Export price' from China PR, all reported transactions have been taken into account and the export price has been calculated on weighted average basis. To calculate the net export price, expenses on internal freight, ocean freight and insurance, port charges and bank commission have been deducted. By this method, the net export price has been calculated as under:

Particulars	Unit	China PR
Import volume	MT	1276.67
Import value	Rs. in lacs	725.51
CIF import price	Rs./MT	56828.34
Exchange rate	USD/INR	48.90
CIF export price in US\$	USD/MT	1162.13
Price adjustments (total)	USD/MT	118.31
Ex-factory export price	USD/MT	1043.82

### **Dumping Margin**

31. On the basis of the Normal values and net Export prices so determined at ex-factory level; the dumping margin during the POI for all exporters/producers from China PR has been determined as follows:

Dumping Margin Calculation:

	Per MT
Normal value(US\$)	***
Export price(US\$)	1,043.82
Dumping margin(US\$)	***
Dumping Margin %	8-18%

### **Continuation or recurrence of dumping:**

32. Submissions made by the domestic industry:

The domestic industry has, *inter alia*, contended as follows:

- a) Substantial volumes of exports from China PR have been reported at dumped prices in the POI as is evident from the import information. The price undercutting is significant even after considering anti-dumping duty in force causing severe injury to the domestic industry.
- b) The existing measures are insufficient to provide adequate relief to the domestic industry. In case the existing measures are not revised, likelihood of continuation of increased dumped imports entering in to the country cannot be ruled out.
- c) There are surplus capacities available with Chinese producers. If the present situation continues the dumping is likely to intensify.

#### **Examination by the Authority**

33. The Authority notes that none of the exporters / producers from China PR has responded to the initiation notification and provided information in the form and manner prescribed. However, the Authority notes that the information made available by DGCI&S shows imports of 1277 MT from China PR. The Authority notes that the present dumping margin in respect of exports of HFA from China PR is significant.

34. As regards the claim of domestic industry that the surplus capacities are available with the Chinese producers as per the extracts from China Chemical Reporter May, 21<sup>st</sup> 2010 issue (A copy of the same is enclosed with this Disclosure statement), the Authority notes that the present investigation is mid-term review investigation and under Rule 23 the Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

#### **F. INJURY AND CAUSAL LINK**

##### **VIEWS OF THE DOMESTIC INDUSTRY**

35. The domestic industry has submitted as under:-
- i. Existing measures is no longer sufficient to counteract the dumping which is causing injury to the domestic industry.
  - ii. The market share of imports which was declined in 2008-09, increased to level of 7% during POI.
  - iii. With the increase in Flouspar price, import price of subject goods increased above benchmark and the imports at dumped value of imports from the subject country was

- lower than the net sales realization of the domestic industry during POI thereby undercutting the selling price of domestic industry. This resulted in decline in market share of domestic industry.
- iv. Due to high price undercutting, the domestic industry was has no option but to reduce its prices. Price undercutting is resulting in depressing the prices of domestic industry.
  - v. Production, capacity utilization and sales volume of the domestic industry increased upto 2007-08 and declined subsequently thereby establishing that present form of duty is ineffective.
  - vi. Profit/loss had shown deterioration during 2008-09 significantly. The profit increased during POI but could not regain the levels enjoyed by domestic industry in previous years.
  - vii. Profit before interest & taxes, cash profits, return on investments have all shown a trend similar to that of profits.
  - viii. When both cost of production and selling price increased during POI, but the increase in selling price is much less than the increase in cost of production.
  - ix. Employment levels and wages level have increased.
  - x. Inventory level with the domestic industry declined during 2008-09 and increased significantly during POI.
  - xi. In the event the existing measures are not revised, dumped imports would aggravate the injury caused to the domestic industry.
  - xii. Current exports from Cihna PR to various countries show significant potential for exports to India. Such likely volumes are higher than Indian demand.
  - xiii. Given that the prices prevailing in the Indian market are much better, the exporters are likely to get a better price as compared to their third countries prices and still undercut the Indian producers' prices.
  - xiv. The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury.
  - xv. Whereas the domestic industry suffered price injury in 2008-09, the domestic industry suffered volume injury in POI.
  - xvi. Owing to overlapping of 6 months in the POI (April 2006-Sep, 2006) of sunset review and base year (2006-07) of the present investigation with the injury suffered by domestic industry in the same period, any analysis in the present investigation from the year 2006-07 will not be appropriate.
  - xvii. The purpose of four years injury period for injury assessment is to consider the performance of the domestic industry for the entire period of four years. It would not be appropriate to compare the performance of the domestic industry between the base year and the POI. Any such analysis would also imply rendering information for the intervening period redundant and would not be an objective analysis.
  - xviii. the import price of HF Acid is not governed by the fluorspar prices (but the excess capacities available and the export orientation of the producers). When the input costs have increased, the Chinese producers have not increased their prices in the proportion to cost increases. When the input prices have fallen, the product prices have declined far beyond the cost declines.

#### **VIEWS OF THE EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

36. Following are the submissions made by the interested parties in this regard:
- i. Injury analysis in accordance with para I of the Annexure II of ADD Rules shall duly consider whether Tanfac Industries Ltd. has suffered injury or not.
  - ii. Capacity: producers have created excessive capacities than normal demand of the product including captive consumption.
  - iii. Production: decline in production is due to higher decline in captive consumption and thus not attributable to all the alleged dumped imports.
  - iv. Capacity Utilization: decline in captive consumption lead to decline in capacity utilization.
  - v. Domestic Sales Volume: Inter se competition between the domestic producers would have caused decline in the sales of the petitioner.
  - vi. Imports volume of subject country has declined as compared to the base year. This can be seen in the light of the fact that selling price is more than non-injurious price and the landed price of the subject goods always remains higher than the reference price over the period.
  - vii. Price Effect is absent: The selling price of the domestic industry is always above the estimated NIP with significant increase in market share from 2002-03 onwards. In this situation, there is no price effect on domestic prices despite of significant price undercutting.
  - viii. The profits of the domestic producers have been at the highest levels during POI as compared from 2002-03. With this kind of huge profits earned by the domestic industry, anti-dumping duties should not be continued otherwise user industry will not be able to survive.
  - ix. Market share of the petitioner has declined due to share captured by the supporter. The market share of the domestic producers as a whole has increased.
  - x. The import prices and domestic selling prices are moving independently and have no correlation. Domestic prices remained reasonably higher than landed prices by more than 50%. Thus imports price are not dictating domestic prices and there is no causal link between import prices and domestic prices.
  - xi. Domestic industry did not make any claim regarding likely injury and had not made any claim regarding the same. In spite of landed value almost below 30-40% below domestic prices and sales volume of domestic producers has also increased, the discontinuation of the anti-dumping duty may not be likely to lead to continuation or recurrence of injury to the domestic industry. Thus, the investigations are required to be terminated on this ground alone.

- xii. Levy of anti-dumping duty on the said article would cause serious prejudice to consumers of the said article who uses the same for manufacture of products which are sold in the country.

### **EXAMINATION BY THE AUTHORITY**

37. It has been contended that inter se competition between the domestic producers would have caused decline in the sales of the petitioner. The Authority notes that while the application in the present mid-term review investigation was filed by M/s. Navin Fluorine International Ltd., M/s Tanfac Industries limited has subsequently cooperated with the Authority and has provided the information. The Authority has considered the information provided by both the companies for injury analysis. Moreover, the other known producers namely SRF Ltd and Gujarat Fluorochemicals Ltd, as reported by the domestic industry, are primarily producing the subject goods for captive consumption. Hence, any possible inter se competition between them has not affected the injury analysis of the domestic industry.

38. As regards the contention that the domestic industry suffered price injury in 2008-09, the domestic industry suffered volume injury in POI, the Authority notes that the examination of both volume effect and price effect is carried out with reference to the period of investigation only.

39. As regards the contention that any analysis in the present investigation from the year 2006-07 will not be appropriate owing to overlapping of 6 months in the POI (April 2006-Sep, 2006) of sunset review and base year (2006-07), the Authority notes that in mid-term review the continued imposition of anti-dumping duties are reviewed and in the present case, the anti-dumping duties were in place since the base year 2006-07. Hence the contention regarding inappropriateness of injury analysis in the present investigation from the year 2006-07 is without any merit.

40. It has been contended that it would not be appropriate to compare the performance of the domestic industry between the base year and the POI. Any such analysis would also imply rendering information for the intervening period redundant and would not be an objective analysis. In this regard, the Authority notes that the anti-dumping duties on the subject goods from China PR were modified by Sunset Review Final Findings dated 25<sup>th</sup> March 2008 and the duties were levied by the Revenue Department vide Notification dated 28<sup>th</sup> April 2008. Hence, the Authority has considered it appropriate to compare the performance during the POI with the year 2008-09 also in addition to the base year.

41. With regard to the contention that when the input costs have increased, the Chinese producers have not increased their prices in the proportion to cost increases and when the input

prices have fallen, the product prices have declined far beyond the cost declines, the Authority has examined the price effect of the imports from China PR to examine this issue.

42. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury and the issues have been addressed in appropriate places in the findings.

#### **Examination by the Authority of injury parameters**

43. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to suppress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

44. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

45. The present investigation is mid term review investigation of anti dumping duties in force. Rule 23 provides that provisions of Rule 11 shall apply, mutatis mutandis basis in case of a review as well. The Authority has therefore determined injury to the domestic industry considering, mutates mutandis, the provisions of Rule 11 read with Annexure II. Further, since anti dumping duties are in force on imports of the product under consideration, the Authority considers that the fact of existing anti dumping duties on the product on imports from China is required to be considered while examining injury to the domestic industry.

46. For the purpose of current injury analysis the Authority has examined the volume and prices effects of imports of the subject goods from subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

47. The Authority has also examined whether there is likelihood of continuation or recurrence of injury to the domestic industry on the basis of its performance during the period of investigation (POI).

48. The Authority has determined injury to the domestic industry by considering information relating M/s. Navin Fluorine International Ltd. and M/s Tanfac Industries limited. Though M/s Tanfac Industries Limited furnished deficient data, the Authority notes that the same is relevant for assessment of injury to the domestic industry.

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

49. 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**

50. Designated Authority has determined demand as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods in India from all sources. The Authority has determined import volumes for the products under consideration on the basis of information provided by DGCI&S. The demand so assessed is shown in the following table. It would be seen that demand of the product in the country has increased in the POI after a decline in 2008-09.

		2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Subject Country-China	MT	1500	1179	415	1277
Trend	Index	100.00	78.60	27.67	85.13
Other Countries	MT	0	44	7	7
Sales of Domestic Industry	MT	7352	9210	8238	9487
Trend	Index	100.00	125.27	112.05	129.04
Sales of other producers	MT	580	508	937	834
Total Demand-excluding captive	MT	9432	10941	9597	11605
Trend	Index	100.00	116.00	101.75	123.04
<b>Market Share in Demand</b>					
Subject Country-China	%	16	11	4	11
Other Countries	%	0%	0%	0	0%
Sales of Domestic Industry	%	78	84	86	82
Sales of other producers	%	6%	5%	10%	7%

Total Demand	%	100%	100%	100%	100%
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51. The Authority notes that the demand for the subject goods has shown a positive trend and increased significantly in the period of investigation as compared to the base year. The Authority notes that as compared to base year where the demand has increased by 23%, the sales of domestic industry have increased by 29%. On the other hand, Imports from the subject country have declined by 15% during that period.

52. When compared to the year 2008-09, during POI the demand has increased by 21% (2008 MT), the sales of domestic industry have increased by 15% (1249 MT) and imports of subject goods from subject country have increased by 208% (862 MT). Out of total increase of demand of 2008 MT, 62% share has gone to domestic industry and 43% has gone to the imports from subject countries resulting in decline in market share of domestic industry from 86% in 2008-09 to 82% in POI.

**b) Import volumes and market share**

53. With regard to the volume of the imports, it has been examined whether there has been a significant increase in imports from subject country, either in absolute terms or relative to production or consumption in India. The table below summarizes the factual position with regard to import volumes and market share –

Particular	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Imports from Subject country – China PR	MT	1500	1179	415	1277
Imports from Other countries	MT	0	44	7	7
Total Imports	MT	1500	1223	422	1284
Production of domestic industry	MT	28,057	30,311	25,036	25,309
Sale of domestic industry	MT	7352	9210	8238	9487
Sales of other producers	MT	580	508	937	834
Total Demand-excluding captive	MT	9432	10941	9597	11605
Subject Imports in relation to					
Total Imports	%	100	96	98	99
Production	%	5	4	2	5
Consumption	%	16	11	4	11
Market share of Domestic Industry in demand	%	78	84	86	82

From the above, the Authority notes that:

- (i) The volume of imports from China PR which declined in 2008-09, increased substantially in the period of investigation. However, during the POI, the volume of imports from China PR remains below the level of base year.
- (ii) Imports from subject country have declined during POI in relation to the total imports, production and consumption in India as compared to the base year. However, as compared to 2008-09, the imports from Subject country increased during POI in relation to the total imports, production and consumption.
- (iii) As a result of the decline in market share of imports from 16% to 11%, the market share of the domestic industry has increased from 78% in base year to 86% in 2008-09 and then declined to 82% in the POI.

### **Price Effect**

54. 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."*

55. With regard to the effect of the dumped imports on prices, it has been examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. A comparison for product concerned was made between the landed value of exported product and the average selling price of the domestic industry. Selling price of the domestic industry has been determined net of all rebates and taxes, at the same level of trade. This comparison showed that imports from China were significantly undercutting the prices of the domestic industry in the market.

	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Landed Value-without anti dumping duty	Rs./MT	47730	55911	85257	61831
<i>Indexed</i>		100.00	117.14	178.62	129.54
Landed Value-with anti dumping duty	Rs./MT	47730	55911	85257	61831
<i>Indexed</i>		100.00	117.14	178.62	129.54
Net Sales Realization	Rs./MT	***	***	***	***
<i>Indexed</i>		100.00	116.27	161.68	146.19
Price Undercutting-without anti dumping duty	Rs./MT	***	***	***	***
<i>Indexed</i>		100.00	113.23	102.00	204.79
Price Undercutting-with anti dumping duty	Rs./MT	***	***	***	***
<i>Indexed</i>		100.00	113.23	102.00	204.79
Price Undercutting-without anti dumping duty	%	20-25	20-25	10-15	27-32
Price Undercutting-with anti dumping duty	%	20-25	20-25	10-15	27-32

### **Price suppression and depression**

Particulars	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Cost of sales	Rs/MT	***	***	***	***
Change from base year	Indexed	100	112	177	150
Net sales realization	Rs/MT	***	***	***	***

Change from base year	Indexed	100	116	162	146
Landed Value of Imports	Rs/MT	47730	55911	85257	61831
Change from base year		100.00	117.14	178.62	129.54

56. Price depression exists when the industry's prices are lower than the level of the previous period. Price suppression occurs when dumping prevents price increases that would otherwise take place due to increase in costs. The cost and price structure of the domestic industry and the landed value of imports from the subject country show that the cost has increased by about 50% over the base year whereas the prices of domestic industry have increased by 46% and landed value of imports have increased by 30%. However, the Authority notes that although the import prices are found to be suppressing the prices of the domestic industry in relative terms (i.e., percentage terms), the same is however absent in absolute terms. As compared to the year 2008-09, price depression is missing both in absolute as well as relative terms as the cost of sales has declined by 15% in POI whereas the selling prices have declined by only 10%.

57. It is further noted that the landed price of imports are below the non injurious price of the domestic industry. The dumped imports are therefore resulting in price underselling in the market.

Particulars	Unit	All exporters
Landed price of imports	Rs. per Kg	61831
Non injurious price of the domestic industry	Rs. per Kg	***
Price underselling amount	Rs. per Kg	***
Price underselling %	%	10-20%

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

58. Annexure II to the Rules requires that the determination of injury shall involve an object 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**

59. Production, sales, capacity & capacity utilization of the domestic industry moved as shown below.

Particulars	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Installed capacity	Mt	37,670	37,670	37,670	37,670
Trend	Indexed	100	100	100	100
Production	Mt	28,057	30,311	25,036	25,309
Trend	Indexed	100	108	89	90
Capacity utilization	%	74%	80%	66%	67%
Trend	Indexed	100	108	89	90
Captive Transfer	MT	20196	20709	16021	15224
Trend	Indexed	100	103	79	75
Domestic sales	Mt	7,352	9,210	8,238	9,487
Trend	Indexed	100	125	112	129
Demand excluding captive consumption	Mt	9432	10941	9597	11605
Trend	Indexed	100.00	116.00	101.75	123.04
Sales as % of demand	Mt	78%	84%	86%	82%

60. The Authority notes that though the production and capacity utilization of the domestic industry have declined during the POI, the domestic sales of the domestic industry of the subject goods have gone up in absolute terms and also in relation to demand/consumption of the product in India. However, as compared to the year 2008-09, production, capacity utilization and domestic sales have gone up.

61. The Authority further notes that the production of the domestic industry has declined in line with the decline in the captive consumption. Hence there appears to be some substance in the contention of one of the interested party that the decline in production is due to decline in captive consumption.

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

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

Particulars	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Profit before tax	Rs/Lacs	***	***	***	***
Trend	Indexed	100	184	67	153
Profit before interest and tax	Rs/Lacs	***	***	***	***
Trend	Indexed	100	170	86	164
Return on capital employed (NFA basis)	%	***	***	***	***
Trend	Indexed	100	160	66	114
Cash profit	Rs/Lacs	***	***	***	***
Trend	Indexed	100	166	84	152

63. The above data shows that the profitability has significantly improved in POI as compared to the base year as well as in comparison to 2008-09.

### **Employment and wages**

64. The Authority notes that the constituent of the domestic industry is a multi product multi location company; 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	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Employment	Nos	***	***	***	***
Trend	Indexed	100	96	111	118
Wages	Rs/Lacs	***	***	***	***
Trend	Indexed	100	131	124	158

65. The Authority notes from the above that employment level of the domestic industry has shown improvement. Further, the level of wages has also increased during POI as compared to base year.

## **Productivity**

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

Particulars	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Productivity per employee	Mt	***	***	***	***
Trend	Indexed	100	112	81	77
Productivity per day	Mt	77	83	69	69
Trend	Indexed	100	108	89	90

The Authority notes productivity has improved in tandem with production.

## **Inventories**

67. Designated Authority has examined the inventory level of the domestic industry, which is given in the following table:-

Particulars	Unit	2006-07	2007-08	2008-09	POI (Jan-Dec-09)
Average stock	MT	305	262	329	506
Trend	Indexed	100	86	108	166
Average stock in terms of No. of days sales	No. of days	15	10	14	19
Trend	Indexed	100	67	93	127

Based on the above, Authority notes that the inventory levels of the domestic industry have increase in the POI as compared to base year as well as 2008-09.

## **Ability to raise capital investment**

68. There have been no capacity additions during the period of investigation. In view of sufficient profits earned by the domestic industry during the period of investigation, the ability to raise capital investments may not be adversely affected.

## **Magnitude of Margin of Dumping**

69. The Authority notes that while there is positive dumping margins in respect of China PR.

## Growth

70. The Authority notes that Growth of the domestic industry during the POI as compared to the base year in terms of parameters like sales, market share, profits, cash profits and return on capital employed has been positive. However during the POI, a decline has been observed in the production, capacity utilization and captive consumption. When compared with 2008-09, all economic parameters have shown significant growth except market share.

## Likelihood of continuation or recurrence of injury

71. The following factors have been brought before the Authority by the domestic industry for examination of likelihood of continuation or recurrence of injury to the domestic industry. The domestic industry has, *inter alia*, submitted the following:

- That the producers from the subject countries are dumping the material in the Indian market. Though there is an increase in raw material prices, the export price of the exporters has not shown proportionate increase indicating absorption of cost by the exporters.
- That in case the duties are discontinued the injury to the domestic industry would recur.
- That the landed price of imports from the subject country is much lower than the price of domestic industry.
- That the producers are holding significant surplus capacities and their domestic demand is significantly below the capacities created by them. The table showing surplus capacities of subject goods in China as provided by the domestic industry sourced from China Chemical Reporter (CCR) is as under:

	2008
Capacities	12,00,000
Production in China	6,00,000
Surplus unutilized capacities	6,00,000

- The domestic industry has contended that given the level of capacities as reported by China Chemical Reporter, the Chinese producers would naturally be looking at market opportunities. If the quantum of duty is not enhanced, the volume of subject goods' imports is likely to increase further. They have provided the evidence from China Chemical Reporter May 2010 issue.

## Examination by the Authority

72. The Authority has examined the likelihood of continuance or recurrence of injury in the following paragraphs.

- The Authority notes that at the current level of benchmark, the landed price of imports is below the net selling price and non-injurious price of the domestic industry. The Authority further notes that during the POI, the volume of imports increased substantially in comparison to 2008-09, i.e., the period when the current level of benchmark was levied.
- The Authority notes that there are continued imports of the product under consideration after imposition of anti dumping duties at dumped prices, which are undercutting the prices of the domestic industry after addition of anti dumping duties and injury margin is also positive.
- The Authority notes that although the imports from subject country have continued to be substantial, it has declined in POI in relation to the total imports, production and consumption in India as compared to the base year. The domestic industry has been able to sell more domestically and increase its market share when compared to base year.
- However, in comparison to 2008-09, the volume of imports increased substantially resulting in decline of market share of domestic industry from 86% in 2008-09 to 82% in the POI.
- The adverse impact of the imports on the prices of the domestic industry is not apparent as the domestic industry has been able to realize \*\*\* % return on capital employed (on NFA Basis) which is higher as compared to \*\*\*% in 2008-09 and \*\*\*% in the base year. The domestic industry has been able to realize more than its fair selling price, i.e., non-injurious price.
- The domestic industry provided an evidence of surplus capacities in China PR sourced from China Chemical Reporter (CCR) and importer, M/s Madras Fluorine provide evidence from China Hydrofluoric Market Report 2008-09 for the same period 2008. Both reports shows contradictory picture of capacities in China PR for HF Acid. It shows unreliability of information available in China PR public domain. The Authority notes that such information cannot be relied upon for accessing the production capacity of subject goods in China PR.

	Price Rs. per Kg
Landed price (Rs. Per /Kg.)	61831
Non-Injurious Price (Rs. Per /Kg.)	***
Injury Margin (Rs. Per /Kg.)	***
Injury Margin as a % of Landed	10-20%

### **Causal Link**

74. As per the AD Rules, the Designated Authority is, inter alia, required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports

not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It was examined whether these other parameters listed under the Rules could have contributed to injury to the domestic industry. It was found that:

- 
- The present price behavior of the Chinese exporters of subject goods has shown positive price undercutting and price underselling. However the same is not materially injuring the domestic industry, as displayed by the economic parameters examined above.
- The information available at World Trade Atlas shows that the exports made by China to other countries are significant and at the prices marginally lower than the export price to India. As regards the higher export prices by China PR in Indian market as against the third countries as per world trade atlas, the Authority notes that world trade atlas prices are average prices for all the concentration level of HF Acid and therefore not representative of any particular price trend.

Magnitude of Injury and injury margin

73. The non-injurious prices for the subject good has been compared with the landed value of the exports from the subject country for determination of injury margin. The Authority has constructed the landed value of subject goods as reported by DGCI&S data.

Calculation for Injury Margin

POI (Jan'09-December'09)	HF Acid from CHINA PR
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(a) **Imports from Third Countries:** - The Authority notes that volume imports of the product under consideration from countries other than China are insignificant. Thus imports from third countries cannot be considered as the factor that would have impacted the domestic industry.

(b) **Contraction in Demand:** - There is no contraction in the demand during injury period. On the contrary, overall demand for subject goods has shown significant positive growth during the injury period.

(c) **Pattern of consumption:** - It is noted that no significant change in the pattern of consumption has come to the knowledge of the Authority, nor any interested party has made any submission in this regard.

(d) **Trade restrictive practices and Conditions of competition:** - It is noted that the investigation so far has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.

(e) **Developments in technology:** - It is noted that the investigation so far has not shown that there was any significant change in technology which could have caused injury to the domestic industry.

(f) **Export performance of the domestic industry:** - The price and profitability in the domestic and export market has been segregated by the Authority for the purpose of present injury assessment. Therefore, the analysis on injury is not misrepresentative due to possible inclusion of export performance and injury to the domestic industry is not due to possible deterioration in exports.

## **G. CONCLUSIONS**

75. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of the above analysis, the Authority concludes:

a. That although there are continued imports of the product under consideration from the subject country after imposition of anti dumping duties at dumped prices, which are undercutting the prices of the domestic industry and injury margin is also positive, the adverse impact of the same on the volume, prices and profitability of the domestic industry is absent.

b. The present price behavior of the Chinese exporters of subject goods are not injuring the domestic industry as during the POI the domestic industry is able to sell more domestically and increase its market share when compared to base year. The market share marginally declined during POI as compared to 2008-09 but during the same period the domestic industry has been able to significantly increase its profitability. The profits, return on capital employed and cash profits of domestic industry have significantly gone up and it has been able to realize more than its fair selling price during the POI. Moreover, the price suppression/ depression are absent.

c. Further, as the anti-dumping duty in force has been practically infructuous as it was based on reference price, and as claimed by the domestic industry themselves and also observed by the Authority that the import prices of the subject goods have continuously been recorded at the prices above the reference price since it has been imposed, there would not be any likelihood of significant change in the price behavior of the subject goods from the subject country, if the anti-dumping duties ceases to operate. The Authority therefore concludes that if the anti-dumping duties on the subject goods are removed, the injury to the domestic industry is not likely to recur.

## **H. RECOMMENDATIONS**

76. Having concluded as above, the Authority is of the opinion that there is no need for the continued imposition of anti-dumping duties on Hydrofluoric Acid originating in and exported from China PR and the same is required to be withdrawn.

77. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(Vijaylaxmi Joshi)**  
**The Designated Authority**