

**No. 14/41/2010-DGAD**  
**Government of India**  
**Department of Commerce**  
**Ministry of Commerce & Industry**  
**(Directorate General of Anti-Dumping & Allied Duties)**  
**Udyog Bhawan, New Delhi**

**NOTIFICATION**

Dated the 5<sup>th</sup> December 2011

**Final Findings**

**Subject: - Anti-Dumping Investigation concerning imports of ‘Morpholine’ originating in or exported from China PR, European Union and USA.**

**No. 14/41/2010-DGAD:** - Whereas the Designated authority, having regard to the Customs Tariff Act, 1975, as amended (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended, (hereinafter referred to as the AD Rules); recommended imposition of Anti Dumping duty on the imports of ‘Morpholine’ originating in or exported from China PR, European Union and USA vide notification dated 9<sup>th</sup> August 2011.

**A. Background of the Case**

2. Having regard to the Act and the AD Rules, the Designated Authority (hereinafter referred to as the Authority), under the AD Rules, received a written application from the M/s. Balaji Amines Ltd., Sholapur, Maharashtra on behalf of the domestic industry, alleging dumping of ‘Morpholine’ (hereinafter also referred to as the subject goods); originating in or exported from China PR, European Union and USA (hereinafter also referred to as the subject countries/territory).
3. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation concerning imports of the subject goods originating in or exported from the subject countries/territory. The Authority notified the Representative office / Embassies of the subject countries/territory in India about the receipt of the application containing , *inter alia*, allegations of dumping and consequent injury to the domestic industry before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules. The Authority issued a public notice dated 7<sup>th</sup> December, 2010 published in the Gazette of India, Extraordinary, initiating Anti-dumping investigation concerning imports of the subject goods originating in or exported from the subject countries/territory, in accordance with the Rule 6(1) of the AD Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be

adequate to remove the injury to the domestic industry. Subsequently, a corrigendum dated 15<sup>th</sup> December 2010 was issued on the captioned subject.

4. The Authority recommended imposition of provisional Anti-dumping duty on the imports of ‘Morpholine’ originating in or exported from China PR, European Union and USA vide notification dated 9<sup>th</sup> August 2011.

**B. PROCEDURE**

5. The procedure described herein below has been followed:

- i. The Authority sent a copy of initiation notification dated 7<sup>th</sup> December 2010, to the Representative office / Embassies of the subject territory/ countries in India, known exporters from the subject countries/territory, known importers/ users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- ii. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Representative office / Embassies of the subject territory /countries in India in accordance with Rule 6(3) supra.
- iii. Representative office / Embassies of the subject territory/ countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country/territory to respond to the questionnaire(s) within prescribed time limit. A copy of the letter and questionnaire(s) sent to the exporters was also sent to them along with the names and addresses of the known exporters.
- iv. The Authority sent questionnaire(s) to elicit relevant information to the following known exporters in subject countries/territory in accordance with Rule 6(4) of the AD Rules:

S.N.	Name of Producer/Exporter
1	M/s.Huntsman Corporation UK Ltd. Llanelli Plant, Bynea Llanelli, Carmarthenshire Sa 149 Te, UK
2	M/s. BASF SE 67056 Ludwigshafen Germany
3	M/s. Huntsman Corporation 10003 Woodloch Forest Drive The Woodlands, Tx 77380. USA
4	M/s. BASF Corporation Geismar Site 8404 River Road, Geismar

	La-70734, Louisiana. USA
5	M/s. Anhui Haoyuan Chemical Group Co.Ltd No.1 Fukang Road, Fuyang Anhui China PR
6	M/s. Puyang Wiilling Chemicals Co.Ltd. Industrial And Commercial Newzone, Puyang, Henan, China PR
7	M/s. Tianyou Pharma Co.Ltd Buliding 4-1-501,Jialv Beiyuan, Hangzhou,China PR

v. In response to the above notification, following exporters/ producers have responded:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union
4	M/s. Anhui Haoyuan Chemical Group Co. Ltd	China PR

vi. Questionnaires were sent to the following known importers / users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

S.N.	Company's Name	S.N.	Company's Name
1	Urmi Chemicals	28	Kantilal Manilal & Co.,
2	Sajjan India Ltd.	29	Orchid Chemicals & Pharmaceuticals Ltd.
3	Thermax Ltd.	30	Surya Pharmaceuticals Limited
4	NOCIL Ltd.	31	Harman Finochem Ltd.
5	Amjey Chemicals	32	Banwarilal Jhanwar& Sons
6	Khyati Chemicals Pvt.Ltd.	33	Hindustan Speciality Chemicals
7	Paramount Minerals & Chemicals Ltd.	34	Leo Chemoplast Pvt .Ltd.
8	Diamond Dye-Chem Ltd.	35	Shakti Chemicals
9	C J Shah & Co.	36	Sanjay Chemicals (India) Pvt.Ltd.
10	Alfa Chemical Corporation	37	Bilag Industries Ltd.
11	Merchem Ltd.	38	Indoco Remedies Limited
12	Unimark Remedies Limited.	39	Cipla Limited
13	Lupin Ltd	40	Thermax Ltd.
14	Harman Finochem	41	Clariant Chemicals ( I ) Limited
15	Clariant Chemicals ( I ) Limited	42	BASF India Limited
16	Merchem Limited	43	ION Exchange (India) Limited

17	Aasrti Industries Ltd.	44	PMC Rubber Chemicals India Pvt.Ltd.
18	Lofty Laboratories Pvt Ltd	45	Aurobindo Pharma Ltd
19	Hetero Drugs Limited	46	Surya Pharmaceuticals Ltd
20	Gail India Limited	47	Sri Krishna Drugs Ltd
21	Viswaat Chemicals Ltd.	48	Thermax Ltd.
22	Laffane Petrochemicals Ltd.	49	Reliance Industries Limited
23	Bajaj Hindustan Limited	50	Virchow Laboratories Ltd
24	SMS Pharmaceuticals Ltd	51	Panchsheel Organics Ltd
25	Amines & Plasticizers Limited	52	Dhanuka Laboratories Limited
26	The Waxpol Industries Limited	53	IOCL Mathura
27	Jaipur Scientifics & Chemicals	54	Avon Organics Limited

vii. In response to the above notification, following importers/ users have responded:

S.N.	Importer's Name
1.	M/s BASF India Ltd.
2.	M/s Khyati Chemicals Pvt. Ltd.
3.	M/s NOCIL Ltd.
4.	M/s Bhanwarlal Jhanwar & Sons
5.	M/s Suchem International

viii. A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters/producers and Embassy of China PR in New Delhi. For the purpose of initiation, the Normal value in China PR was considered based on the constructed cost of production of the subject goods in China PR, as the applicant pleaded that the information for market economy third country is not available to them. This claim has not been contested by any other interested party. The Authority informed known exporters that it proposes to examine the claim of the applicants in the light of paras 7 and 8 of Annexure I of the AD Rules. The exporters/producers of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure of the AD Rules to enable the Authority to consider whether market economy treatment be granted to co-operative exporters/producers from China PR.

ix. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

- x. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, including the period of investigation.
- xi. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xii. Investigation was carried out for the period starting from 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2010 (POI). The examination of trends, in the context of injury analysis, covered the periods April 2007-March 2008, April 2008-March 2009, April 2009-March 2010 and the POI.
- xiii. The Authority, having regard to the Act and the AD Rules; vide Notification No. 14/41/2010-DGAD dated 9<sup>th</sup> August 2011 recommended imposition of provisional Anti Dumping duty on imports of the subject goods from the subject countries/territory. The provisional Anti-dumping duty on imports of the subject goods from the subject countries/territory was imposed vide Customs notification No. 91/2011-Customs dated 20<sup>th</sup> September 2011.
- xiv. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 19<sup>th</sup> September 2011. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. Interested parties were provided opportunity for rejoinder submissions on the views expressed by opposing interested parties.
- xv. The arguments made in the written submissions / rejoinders received from interested parties have been considered, wherever found relevant, in these final findings;
- xvi. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating producers/exporters.
- xvii. In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the known interested parties and comments received on the same have been considered, wherever found relevant, in these final findings.
- xviii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, 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.

- xix. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.
- xx. \*\*\* in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

### **C. Submissions made by the interested parties post Disclosure statement**

The following comments, in brief, have been made by the interested parties after issuance of the Disclosure statement:

M/s Huntsman has contended that there is no evidence of material injury to the domestic industry and causal link between import volumes and prices and the market share of the Petitioner, and any injury caused can only be wholly attributed to difficulties faced by the Petitioner such as its increasing costs and its diversion of sales on the export market, among others. Imposition of duties will only lead to an insufficient supply and increased prices for the downstream industry.

M/s NOCIL, in brief, has contended that

- It is denied that NOCIL has been invoiced any material by the petitioner during the injury period. Since no sale has been made during the injury period, the claim is factually incorrect. Therefore, the evidence provided by the petitioner must be disclosed to NOCIL. Such evidence cannot be confidential from NOCIL, particularly since the alleged sales were made to NOCIL.
- The claim of Huntsman to difference in price based on market segment/application is justified and is consistent with the legal requirements.
- With regard to exports by the domestic industry, the arguments of the interested parties have not considered in the context of causal link analysis. What the interested parties have submitted is that the profits in exports are higher than domestic, it follows that it has preferred exports.
- Non injurious price – the disclosure statement states that the domestic industry capacity utilisation remained under-utilised. Such being the case, it follows that the domestic industry had sub-optimal capacity utilisation. The NIP should then be determined at the level of capacity utilisation that the petitioner considers optimum for the purpose of injury analysis. Should the authority consider that the

petitioner could have achieved higher capacity utilisation, the authority should consider such higher capacity utilisation for the purpose of NIP determination.

- Confidentiality –the petitioner has claimed excessive confidentiality.
- Thrust on exports by the petitioner is the root of the domestic performance.
- No marketing efforts made by the petitioner to sell the product and therefore cannot claim that alleged dumping has prevented it from selling the product. Market share of petitioner has all along remained low, reasons for which are not in dumping, but marketing strategy of the company. It has not been explained why the market share of the petitioner was low when the price undercutting was also low.
- Benchmark duty must be considered.
- Reasons for import given by petitioner are false and fabricated.
- Incorrect justification for considering IBIS data and false statement given in the petition. There is insufficient evidence of Injury and causal link between alleged dumping and alleged injury. There is insufficient justification for imposition of ADD.
- The disclosure statement states that post POI data are irrelevant. However, there are a number of cases where the DA had called post POI data from the petitioner companies. The DA would not have called irrelevant information in those cases. And, if post POI data was considered relevant in other investigations, it is relevant in the present case as well.
- The claim made by Huntsman with regard to consideration of price based on market segment or application is justified and must be allowed.

### **Examination by the Authority**

The Authority has examined all the issues that were considered pertinent in the instant matter.

- It is noted that no new submissions have been made by any interested party after the issuance of the Disclosure Statement.
- As regards NOCIL's submissions regarding sales of the subject goods by the domestic industry to NOCIL is concerned; the Authority notes the domestic industry had filed evidence before the Authority substantiating its claim of having sold the subject goods during the injury by filing copies of the following documents :
  - a) E mail dated 4<sup>th</sup> May, 2007 written by Mr. S.D. Patel, Marketing Manager of domestic Industry to Mr. A. Sivaraman, G.M., purchase of NOCIL for supplying Morpholine.

- b) Copy of purchase order dated 13<sup>th</sup> November, 2007 for materials to be sent to NOCIL
- c) Copy of sales invoice to NOCIL invoice bearing no - 4151 dated 19<sup>th</sup> December, 2007 evidencing sales of 7000 Kg.

In view of the above it is noted that the claim of NOCIL that domestic industry did not approach NOCIL, is misleading and not true.

- As regards the claim based on difference in prices based on market-segmentation, the Authority notes that while M/s Huntsman has not filed any comment on this issue subsequent to the issuance of the Disclosure statement; M/s NOCIL has sought to raise the issue without substantiating the same. The Authority, however, reiterates its view that the claim is untenable as the rules & regulations on the subject do not support such a view. The Authority has noted that the goods sold by the company in its domestic market, exports to India and export to other countries were manufactured through the same production process and no difference on any account were claimed by the company. Besides, a business enterprise is expected to realize maximum price depending upon the elasticity of the market and is not expected to realize a lower value depending upon different end use segments.
- As regards the material injury and causal link, the Authority notes that the relevant factors have been duly examined in these findings and the same have been appropriately addressed in the relevant sections of these findings.
- As regards the determination of NIP and injury analysis is concerned, the Authority notes that the same have been determined as per the stipulated rules & regulations on the subject.
- As regards the form of duty, the submissions made by interested parties on this issue have been examined; the domestic industry has contested the claim and has stated that the prices of major input to produce the subject goods, namely DEG has increased by 57% as compared to price prevailing in the period of investigation; whereas it has not been able to realise the pro rata increase in its net selling price of Morpholine. In view of the facts available on record, the Authority notes that it would be appropriate to recommend the fixed form of duty in the instant matter.

#### **D. Submissions made by interested parties**

##### **Submissions made by other interested parties**

6. The submissions made by interested parties, in brief, are as follows:

- i. The applicant has claimed excessive confidentiality by not disclosing even the figures which are available in the public domain.
- ii. The period 2006-07 should not be excluded from the injury period as the POI in the present investigation has 9 months overlapping with preceding year. This implies reducing the injury period to three years.
- iii. M/s Haoyuan has, *inter alia*, reiterated that there is no State interference in the operation of Haoyuan, which is evident from the fact that the day to day business activities of the Company is undertaken by the General Manager as per the Articles of Association and that Authority has erred in affording NME status to Haoyuan, thereby disregarding the normal value calculation offered by Haoyuan which in turn has adversely effected the margin for Haoyuan.

#### **Submissions made by domestic industry**

7. The exporters have claimed excessive confidentiality without any proper justification. Further, non-confidential version of the questionnaire response has not been given for all the information contained in the confidential version without assigning proper reasons.

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

8. The Authority has taken note of the above submissions. The information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as 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. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.
9. As regards the issue that period 2006-07 should not have been excluded from the injury period as the POI in the present investigation has 9 months overlapping with preceding year; the Authority notes that it has followed its consistent practice, which is also in line with Trade notice no. 2 dated 12<sup>th</sup> May 2004, *inter alia*, issued on the subject.
10. Notwithstanding the claims made by M/s Haoyuan regarding MET; the Authority notes that during the on-the-spot verification of the company, the company was requested to produce the documents substantiating their Market economy claim. However, the company stated in writing that they were not in a position to provide the relevant documents and hence it chose to forego its claim for MET treatment.

## **E. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE**

11. The product under consideration is 'Morpholine'. It has been stated that Morpholine is an extremely versatile chemical and is used as a chemical intermediate in the rubber industry, in corrosion control, and in the synthesis of a large number of drugs. It is also used for crop protection agents, dyes and optical brighteners. Morpholine is a solvent for a large variety of organic materials, including resins, dyes and waxes. It can be used as a catalyst.
12. Morpholine is used in the in toiletry and cosmetic products at concentrations up to 5% (Cosmetic Ingredient). It can be use for / in the several direct and indirect food additive applications. Morpholine is used as intermediates for rubber accelerators and as corrosion inhibitor in steam boiler systems. It is used for optical brighteners in detergent formulations. Morpholine derivatives are used in rubber vulcanization, stabilization and the manufacture of special high-speed tyres. Morpholine may be released during rubber processing. Morpholine has volatility similar to water. Morpholine derivatives such as N-methylmorpholine and N-ethylmorpholine are used as Catalysts for the production of polyurethane foams. Morpholine derivatives are also used as analgesics and local anesthetics, antibiotics, antimycotics and for plaque control in dentistry. Morpholine is used in several direct and indirect food additive applications. Morpholine is used by the cosmetic industry also.
13. The product falls under customs classification 2933.39.17. It has, however, been contended by the applicant that Morpholine has been imported under several Customs Tariff-head's classifications. Thus, the Customs classification is indicative only and is in no way binding on the scope of the present investigation.

### **Like Articles**

#### **Submissions made by domestic industry**

14. The applicant has claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject goods. The two are technically and commercially substitutable and hence should be treated as 'like article' under the AD Rules.

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

15. The Authority notes that the above claim has not been disputed by any other interested party. Thus, for the purpose of these findings, the Authority determines that the subject goods produced by the applicant domestic industry is like article to the product under consideration in accordance with the AD Rules.

## **F. SCOPE OF 'DOMESTIC INDUSTRY' & 'STANDING'**

16. Rule 2(b) of the AD Rules defines domestic industry as under:

*‘domestic industry’ means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers only.*

17. The Application has been filed by M/s. Balaji Amines Ltd. on behalf of the domestic industry. As per information available on record, M/s. Balaji Amines Ltd. is the sole producer of the subject goods in India

**Submissions made by other interested parties**

18. The following submissions, in brief, have been made by the other interested parties:

- The applicant is not the sole producer and that there is one more producer, namely M/s. Amines and Plasticizers Limited, which has not been disclosed at all to Authority.
- From the perusal of the information given on the websites named [www.tradeindia.com](http://www.tradeindia.com) and [www.indianindustry.com](http://www.indianindustry.com), it can be seen there are number of buyers and sellers of Morpholine in India. In spite of the said information being readily available in the public domain, the Applicant has sought to exclude other Indian Producers of the PUC/like product from the ambit of ‘domestic industry’
- A bare perusal of websites will establish that there are several other domestic producers and the claim of Petitioner being sole producer in India falls flat. The petitioner may not have the locus to file the present petition as they may not have the required 25% share in Indian Production.
- Petitioner being an importer of subject goods from subject countries has no locus to file the petition. Further, it has imported around 92 MTS from the said exporter in 2008.

**Submissions made by domestic industry**

19. They are the sole producer of Morpholine in India. An e-mail received from Mr. A.D. Mate, Vice President, Materials, M/s-Amines and Plasticizers Limited was filed by them confirming that they do not produce Morpholine. The domestic industry has stated that in fact M/s. Amines and Plasticizers Limited purchases Morpholine from them and produces

derivatives of Morpholine. Reference in this regard has been made to the transaction-wise sales details during the POI to substantiate the point.

### **Examination by the Authority**

20. The Authority has noted the arguments raised by the interested parties. In response to the allegation that M/s. Amines and Plasticizers Limited is also a domestic producer of the subject goods; the applicant has submitted an E-mail received from Vice President of M/s. Amines and Plasticizers Limited, clarifying that the company does not produce the subject goods. In fact, it was clarified that the company purchases Morpholine from the applicant and produces derivatives of the same. Besides, the Applicant has also submitted customer-wise sales wherein it can be seen that M/s. Amines and Plasticizers Limited has purchased 56,000 KG of Morpholine from the Applicant in POI which gives credence to the claim of Domestic Industry that they are the only producer of the subject goods in India.
21. As regards the enterprises referred to in the web-sites, the Authority wrote to the companies. *inter alia*, eliciting information whether they produce the subject goods. However, no response thereto was received from them communicating that they do produce the subject goods.
22. As regards imports made by the Applicant from the said exporter during 2008; the Applicant has stated that they had imported \*\*\* MT of Morpholine from China PR during the year 2008-09 because they had faced a problem in procuring DEG (the major raw material to produce Morpholine) during some period of this year and as the company had pending order in hand and thus had to execute these orders, so it had imported the PUC. The Authority further notes that no imports of the subject goods have been made by the Applicant during the POI.
23. As per the evidence available on record, the production of M/s. Balaji Amines Ltd. is the sole producer of the subject goods and accounts for the entire domestic production of the like article. Thus, the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s. Balaji Amines Ltd. is being treated as 'domestic industry' within the meaning of Rule 2(b) of the AD Rules for the purpose of present findings.

### **G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

#### **Submissions made by interested parties**

24. M/s. Khyati Chemicals Pvt. Ltd., in brief, has submitted as follows:
  - a. The methodology stated in the initiation notification for the determination of Normal value for USA and EU is different from the claim made by the Applicant in the petition.
  - b. The raw material prices taken for constructing Normal value are not for POI. Hence, normal value is not for POI.

- c. The constructed normal value for China PR cannot be higher than the cost of production in India and the same cannot be higher than the normal value of other subject countries.
- d. The various adjustments claimed by petitioner to arrive net export price are highly inflated, unrealistic and they have not provided any evidence of the same.
- e. With regard to the determination of normal value in case of USA and EU on the basis of exports price, there is no prescribed methodology in the ADD rules.
- f. The landed price of applicant's export cannot be fit for the determination of normal value as the imports made by the subject countries can be for exports.
- g. The DEG prices from DGCI&S for the construction of normal value are incorrect. The reason being from month by month analysis it is evident that prices are abnormally high in some month. Therefore, transaction by transaction analysis should be done in order to have fair comparison.
- h. After revising normal value and export price on the above basis, the dumping margin is coming negative in respect of subject countries.

#### **Submissions made by M/s Huntsman Petrochemical Corporation, USA**

25. The following submissions, in brief, have been made by the companies:

- a. The normal value determined by the Applicant is based on conjectures. The normal value on the U.S. and EU market was calculated based on the Applicant's own export price. This methodology is not permitted under the Rules.
- b. There is absence of proper comparison between normal value and export price as the Applicant has taken landed prices in the exporting countries before adjustments whereas export price is net of a large number of adjustments.
- c. It has been contended that in order to properly take into account the effect of demand for Morpholine based on rubber accelerators, the exports to India must be compared to Huntsman's U.S. sales to Emerald, the only existing RA customer in the United States. It cited rulings of the WTO panel in the Egypt-Steel Rebar case; Appellate Body's ruling in US- Hot-Rolled Steel case and CESTAT's ruling in the matter of Alkali Manufacturers Association of India, Hindustan Lever Limited and National Aluminium Co. Ltd. v/s. Designated Authority case that "where it is demonstrated by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an adjustment must be made.". It has been contended that Article 2.4 expressly requires that 'allowances' be made for 'any other differences which are also demonstrated to affect price comparability.

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

26. The Authority notes that the Applicant domestic industry is required to provide information that is reasonably available to it and sufficient information was made available to justify initiation of the investigation in the instant matter.

27. As regards the issue of methodology used stated in the initiation notification for the determination of Normal value for China PR is different from the claim made by the Applicant in the petition; the Applicant had submitted that China PR is a NME country and that they could not determine the Normal value on the basis of price or constructed value in a market economy third country as the relevant information is not available to them. It was further submitted by them that India is an appropriate surrogate country for Chinese producers. Therefore, Normal value was determined by them on the basis of cost of production of India. However, the Authority moderated these claims considering the difference between the international prices of the raw-materials *vis a vis* the price of these inputs as procured by domestic industry and adopted the lesser value. It was thus determined that there was sufficient evidence of record in this respect to justify initiation of the investigation.
28. As regards the determination of Normal value for EU and USA; the Applicant had contended that they have made all possible efforts to get information/evidence of price of the subject goods in the domestic market of USA and EU but could not succeed. However, as they had exported the subject goods to both USA and EU in substantial volumes; and as the export price to these countries would also reflect the prevailing domestic prices of the subject goods in these countries; the Normal values for EU and USA was determined on the basis of the landed price in these countries. The Authority noted that ordinarily the domestic selling prices of the subject goods in EU and USA should be higher than the landed values, assuming that the goods were not sold at a loss.
29. The Authority, however, notes that it expects concerned exporters/producers from the subject countries to co-operate in the investigative process by filing their exporter' questionnaire response for facilitating appropriate determination of the dumping margins.
30. A perusal of the exporters' questionnaire' response shows that the dumping margin is significantly positive.
31. As regards the issue of DEG prices; the international prices of this input were obtained and compared with the prices at which the input was obtained by the domestic industry; the lesser price has been considered while constructing the Normal values.
32. As regards Huntsman contention that price differences when sales are made into different end use segments should be considered; the Authority notes that the company's claim is untenable. Neither the rules & regulations on the subject nor the judgments cited support such a view. The Authority further notes that the goods sold by the company in its domestic market, exports to India and export to other countries were manufactured through the same production process and no difference on any account has been claimed by the company. It is further noted that a business enterprise is expected to realize maximum price depending upon the elasticity of the market and it is not expected to realize a lower value depending upon different end use segments.

## **NORMAL VALUE**

33. The Authority sent questionnaire to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. Response to the questionnaires were received from the following:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union
4	M/s. Anhui Haoyuan Chemical Group Co. Ltd	China PR

### **Examination of Market Economy claims in respect of China PR by the Authority**

34. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

35. As per Paragraph 8 of Annexure I of the AD Rules, 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) of Paragraph 8 and establish the facts to the contrary. The co-operating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of Annexure I of the AD Rules in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether: -

- 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;
- 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;
- such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- the exchange rate conversions are carried out at the market rate.

36. The Authority indicated, in the initiation notification that the applicant has claimed that China PR should be treated as Non Market Economy and therefore Normal value in case of China PR should be determined in accordance with Para 7 and 8 of Annexure I of the

AD Rules. The applicant has submitted that they have not been able to access information from a market economy third country for the purposes of determination of Normal value in respect of China PR and has pleaded that India can be considered as an appropriate market economy third country for determination of normal value in China PR. The Authority informed known exporters/producers from China PR that it proposes to examine the claim of the Applicant in the light of para 7 and 8 of Annexure I of the AD Rules. The exporters/producers of the subject goods from China PR were therefore requested to furnish, inter alia, necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure I of the AD Rules to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers from China PR.

37. The Authority notes that consequent upon the initiation notice issued by the Authority; one Chinese producer/exporter, namely M/s. Anhui Haoyuan Chemical Group Co. Ltd has submitted its questionnaires' responses including the market economy questionnaire response and has sought to rebut the non-market economy presumption. The questionnaire responses of the respondent were examined for determination of Normal value of the responding producer/exporter of the subject goods from the subject country and deficiencies in the submissions were pointed out and clarifications were sought. From a perusal of the response, it was seen that M/s Shanxi Jincheng Anthracite Mining Group ("Jincheng Group") has significant (35%) shareholding in M/s. Anhui Haoyuan Chemical Group Co. Ltd. The Authority notes that M/s Shanxi Jincheng Anthracite Mining Group is wholly owned by Shanxi provincial government and that M/s Shanxi Jincheng Anthracite Mining Group is controlled by the State-owned Assets and Administration Commission of Shanxi province. Besides, clarification was sought from the company to ascertain whether major inputs procured by them for manufacturing the subject goods substantially reflect market values.
38. In its response, M/s. Anhui Haoyuan Chemical Group Co. Ltd has stated that from the year 1970 to 2002, Haoyuan Chemical's name was Anhui Fuyang Chemical Factory and from the year 2002 to 2007, Haoyuan's name was Anhui Haoyuan Chemical Co., Ltd ("Haoyuan Chemical"). In the year 2002, there were certain individuals who held shares in the Company. At that point of time the shareholding ratio of Haoyuan Chemical was about 80% State-owned and 20% private owned. At the end of the year 2003, all of Haoyuan Chemical's State owned shares were transferred to individuals and employees of company. During the said time, the capital of the Company was also increased. From the year 2003 onwards, the Company has become a privately held company. In the year 2002, Anhui Fuyang Chemical Factory's asset and debts were transferred to Haoyuan Chemical. The factory's assets (including land using right) were valued, and an Assets Valuation Report for land was provided. Furthermore, the operation of assets transfer from to Haoyuan Chemical was on the market price. It has been claimed that presently, there is no State interference in the operation of Haoyuan but it has also been acknowledged that M/s Shanxi jincheng Anthracite mining Group ('Jincheng Group') has 35% of the shares of the Company.

39. However, the Authority notes that Article 2 of Chinese ‘Supervision and Administration of Enterprise State-owned Assets Tentative Regulations’ dated May 27 2003 specifies that these Regulations shall apply to the supervision and administration of the State-owned assets of enterprises owned, controlled or participated in by the State. Considering the above facts, State interference in the decisions of the company regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment etc cannot be ruled out.
40. Besides, during the course of the on-spot verification, the company’s representatives gave in writing that they choose not to further press their claim of Market Economy Status. In view of above, the company has been declared as the one which is operating under Non-Market conditions.

**Determination of Normal value in respect of Exporters / Producers from China PR**

41. Para 7 of Annexure I of the AD Rules provides that

*In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

42. The Authority notes that sufficient information and evidence is not available on record in respect of the price or constructed value of a market economy third country that has the comparable level of development *vis a vis* China PR, particularly considering the subject goods. Thus, in view of the above facts, the Authority, for the purpose of this determination, proceeds to determine the Normal value in respect of exporters/producers from China PR on available reasonable basis, in terms of second proviso of para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the product under consideration have been determined based on constructed costs of production, duly adjusted. The Normal Value has been constructed as per the methodology described below:

**Methodology adopted for constructing Normal Value in case of China PR**

43. Accordingly, the Authority has constructed Normal value for producers in China PR on the following basis:

- a. Price of Ammonia has been considered on the basis of international price prevailing during the POI, i.e. World export price to China as per World Trade Atlas.
- b. Price of DEG has been considered on the basis of domestic industry as international price, prevailing during the POI, as per World Trade Atlas are abnormally high.
- c. Efficient consumption norms of raw materials of domestic industry considered in NIP have been considered.
- d. The utilities cost and conversion costs of the domestic industry considered in NIP have been adopted.
- e. After arriving total cost of production for CNV as above, 5% profit has been allowed.

44. For the purpose of these findings, the normal value so determined comes to \*\*\* US\$/kg.

**Normal value in respect of EU and USA – responding exporters**

45. Response to the questionnaire were filed by the following companies:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union

46. However, M/s. Huntsman Corporation UK Ltd. vide their communication dated 27<sup>th</sup> July 2011 has stated that they have decided not to host the on-site verification to be conducted by the investigating team of the DGAD. It was clarified to them that in such an event it is proposed not to determine individual Dumping Margin for the Company. As regards other respondents, the Authority has determined individual dumping margin in respect of these companies. The methodology adopted for determination of Normal values is as follows:

**General methodology followed for the responding exporters/producers for determination of Normal Values in the subject countries except China PR**

47. It was first seen, whether the domestic sales of the subject goods by the responding exporters/producers in their domestic markets were representative and viable for permitting determination of Normal values on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents.

48. Wherever the respondents have provided transaction-wise details of the sales of the like article in their home markets, the information so provided has been relied upon to determine the Normal value for the subject goods after carrying out the ordinary course of trade test and sufficiency test. Wherever, there were no domestic sales or no sufficient domestic sales, the costs of production as claimed by the respondent and verified by the Authority have been accepted. And where it was not feasible, the Normal value has been determined by the Authority on the basis of 'facts available' in terms of Rule 6(8) of the AD Rules.
49. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted as verified during the on-the spot verification. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of total sales, the weighted average price of all the domestic sales have been taken into consideration. However, wherever the profitable sales volume was found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

**Determination of Normal value in respect of Co-operative Exporters / Producers from EU and USA**

**M/s Huntsman Petrochemical Corporation, USA**

50. From the perusal of the response of the company it is seen that the owner and principal shareholder of Huntsman Petrochemical Corporation is Huntsman Corporation, and the owner and principal shareholder of Huntsman International LLC is Huntsman Corporation.
51. It has been contended by the company that Morpholine used in rubber accelerator (RA) manufacture commands a much lower price in the United States than Morpholine sold into all other applications such as water treatment, optical brighteners, pharmaceuticals, UV absorbers, waxes, corrosion inhibitors, etc. It has been further contended that RA manufacturers in USA compete with low cost RA manufacturers in Asia and if they were required to purchase Morpholine at the price paid by all other end users, they would be forced to exit the RA business. In order to properly take into account the effect of the demand for Morpholine based rubber accelerators, the export sales to India must only be compared to Huntsman's US sales to RA customers in the in the United States. As already stated, the Authority notes that contention that the domestic sales be determined on end-use application basis is untenable and cannot be accepted as per the relevant rules and regulation on the subject.
52. The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant

Appendixes of their response. The information/data filed by the company has been accepted as verified. Accordingly, the Normal value has been determined after carrying out the sufficiency and OCT test. The adjustments as claimed by the company have been accepted as verified. Accordingly, the normal value for the exporter has been determined which works out as US \$ \*\*\*/Kg.

**M/s BASF, SE**

53. From the perusal of the response of the company it is seen that there is no difference whatsoever between the Morpholine sold domestically versus the Morpholine sold into non-domestic markets. All input products used for manufacturing the subject goods were captively produced by BASF.
54. The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. The information/data filed by the company has been accepted as verified during the course of on-the spot verification.
55. Accordingly, the Normal value has been determined after carrying out the sufficiency and OCT test. The adjustments as claimed by the company have been accepted as verified. Accordingly, the normal value for the exporter has been determined which works out as US \$ \*\*\*/Kg.

**Determination of Normal value in respect of Non-Co-operative Exporters / Producers**

56. The Authority notes that none of the other exporters/producers from EU and USA have responded to the exporter' questionnaire. Therefore, the normal value in their cases has been determined on the basis of 'facts available'.

**EXPORT PRICE**

**Export price for the responding exporters**

**M/s. Anhui Haoyuan Chemical Group Co. Ltd., China PR**

57. The Authority examined whether the export prices in respect of responding exporter could be determined on the basis of questionnaire response filed by the respondent. The respondent has furnished information in Appendix 2 relating to exports to India. The export prices have been allowed as verified during the on-the spot verification of the company. The adjustments on account of overseas freight, inland freight, insurance, clearing charges, packing costs, credit costs, bank charges, & VAT have been accepted as verified during the on-the spot verification of the company.

**M/s. Huntsman Petrochemical Corporation, USA**

58. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of inland freight, ocean freight, marine insurance, handling & other expenses, packing, credit expenses have been claimed and have been accepted as verified during the course of on-the spot verification.

**M/s BASF, SE**

59. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of inland & ocean freight, packing & alloc. selling expenses have been claimed and are accepted as verified during the course of on-the spot verification.

**Determination of Export Price in respect of Non-Co-operative Exporters/Producers**

60. Since no other response has been received from any other producer/exporter of the subject goods; the Authority has determined the Export price as per ‘facts available’ in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information provided by the applicant and the information provided by the co-operative exporters.

**H. DUMPING MARGIN**

61. Considering the Normal values and Export prices as determined above, the dumping margins have been determined as follows:

In US\$/Kg					
S.No.	Country- Producer/Exporter	Normal Value	Net Export Price	Dumping Margin	Dumping Margin %
<b>China PR</b>					
1.	M/s. Anhui Haoyuan Chemical Group Co. Ltd	***	***	***	60-70
2.	All producers and exporters	***	***	***	100-110
<b>USA</b>					
3.	M/s. Huntsman Petrochemical Corporation	***	***	***	40-50
4.	All other producers and exporters	***	***	***	70-80
<b>EU</b>					
5.	M/s- BASF SE	***	***	***	30-40
6.	All other producers and exporters	***	***	***	50-60

## **I. INJURY AND CAUSAL LINK**

### **Submissions made by other interested parties**

62. M/s Khyati Chemicals Pvt. Ltd., in brief, has stated as follows:

- The Application is not in the form and manner prescribed. Complete information has not been given. There are lots of inaccuracies/contradiction in the application. There is apprehension that there is a doubling of transactions reported in the IBIS data. The justification given for adoption of IBIS data instead of DGCI&S are factually incorrect as there is no significant difference and there is doubling of transaction reported in IBIS.
- The applicant has claimed desired rate of return as per Performa IVA. Therefore, for calculating NIP the actual return on capital employed as claimed by the applicant should be considered.
- The applicant has superb performance in Post POI. The import price has started increasing once again.
- The cost of production claimed by the applicant is too high as they have started the production of the subject goods a few years back.
- The production capacity of various amines produced by the company is common so proper allocation of expenses needs to be done.
- There is absence of causal link as the decline in market share is due to the capacity limitation of the applicant and therefore cannot be attributed to dumped imports.
- There is no injury on account of production, capacity utilization, sales, productivity, wages - all shows positive increase.
- M/s. Balaji Amines Ltd. in their opinion, has a capacity of producing 1600 MT p.a. approximately as against a demand of 5000 MT/p.a.; hence the imports are essential.
- The imported material has been offered to them at market competitive prices.
- The quality of imported material is far superior to that of M/s. Balaji Amines Limited.
- The cost of production of M/s. Balaji Amines Ltd is higher as compared to the imported material due to factors like high labour and raw material costs.
- Morpholine is used by importer for laundry detergents which is a price sensitive commodity product and hence the importers would find it difficult to sell Morpholine to detergent manufacturers.

63. M/s Suchem International in brief, has stated as follows:

- M/s Suchem International has, *inter alia*, stated that they prefer the quality material of M/s Huoyuan, China and that if the Anti-dumping duty would be imposed then they would suffer.

64. M/s Bhanwarlal Jhanwar & Sons has, *inter alia*, contended that:

- The capacity of Indian manufacturer is very limited at present and they are not able to meet the requirement in India. Besides, the prices of Morpholine have gone up now as compared to last year.

65. M/s Anhui Haoyuan Chemical Group Co. Ltd., China PR has, *inter alia*, contended that:

- Petition does not clearly specify whether import data is based on sales contracted or sales realized.
- The Petitioner has claimed injury without supporting the same without any evidence and it has not suffered any material injury as may be evident from analysis of the injury parameters.
- The minor decline in market share of domestic industry in 2009-10 is due to frequent shutdown of Plants.
- Moreover, the company was still undertaking R&D activities on Morpholine. From the annual report of petitioner, it can be seen that they are investing huge money in infrastructure, R&D etc.
- Injury if any is due to other factors; it is due to the unsuccessful development and quality of the developed PUC by the petitioner. The commercial production of PUC was not successfully undertaken in the year 2007-08 as can be seen from Annual report.
- Petitioner has imported raw material from one of the subject country i.e. USA. This has led to increase in cost of production. Therefore, injury if any is self inflicted,
- Petitioner has been failed to establish causal link between dumped imports and injury suffered by domestic industry.
- That the conditions of competition between the exports from China and the sales of domestic industry, are quite different from the conditions of competition between exports of other countries (under the investigation) and sales of domestic industry as the exports from China were made at much higher prices, than the exports from other countries under investigation.
- Capacity Utilization, Demand and Market Share: That the Petitioner's capacity utilization exceeds capacity for each of the years of 2008-09 and 2009-10 and the POI. The Domestic Demand for the PUC has also increased by leaps and bounds over the period under review. Coupled with the growth in demand, the domestic sales of the PUC have further increased over the years under review. The market share has remained unchanged or changed marginally during the three year injury period that indicates that the increase in imports during this period was on account of an increase in the size of the Indian market, and the imports did not take away any market share from domestic industry. Therefore, marginal increase in the imports of the subject goods has not encroached on the market share of domestic industry, reflecting a lack of injury. The domestic industry has failed to meet the growth in demand in the Indian market. As per the Petitioner's own admission the demand in India has grown, while the capacity of production has remained unchanged. The trend in the level of imports from China was miniscule. The market share of imports from China also declined during most of the years under review in relation to the total import. The level and market share of imports from other

countries including EU & USA have remained strong throughout the years under review, increasing in manifold quantities during the years under review.

- Price effect of imports: the landed value of imports from the subject countries have remained remarkably steady during the years under review and that the landed value of imports had increased drastically in the year 08-09 to Rs.132.09/kg increasing more than Rs.21/kg. The landed value of imports from China has remained constant over the period under review.
- Profitability: It has been contended that the decline in profitability cannot be attributed to dumped imports. The selling price of the Petitioner has only decreased marginally over the years under review. The dip in the profit margin has also been miniscule and can be explained from other factors as well. With a production capacity of 100, the Petitioner Company generated a profit on a demand of 3,757 MTS, it is but obvious that for the years 2009-10 and the POI, with the same capacity of production capped at 100 and corresponding levels of demand being 5,321 MTS and 5,489 MTS respectively, the Petitioner failed to meet the rising demand and suffered consequent losses. The low utilization due to its frequent shut-down of Plant X from its own technical problems was also bound to affect the profitability as production and sales volume was severely hampered on account of the same. However, inspite of the so called losses of the Petitioner, it is interesting to read the Annual Report of the Petitioner Company for the year 2009-10 wherein it is stated in clear and certain words:

*“During the year, your company has achieved a Gross turnover of Rs. 277.14 Crore as compared to the turnover of Rs. 273.58 Crore achieved during the previous year. This growth was achieved despite Global slowdown and consequent pressure on prices and volumes... “*

- Return in Investment: the claim of the domestic industry that the Return on Investment has fallen drastically over the period from 06-07 to the POI on account of dumped imports have not been supported by any evidence and documents at all.
- Employment, Wages and Productivity: Both productivity per day and productivity per employee have increased manifold during most of the years under review. The wages paid has increased positively from 07-08 to the POI. Furthermore, the Petitioner being a multi-product company and therefore the employees engaged in the production of Morpholine is not directly identifiable. In that event the marginal drop in employee index cannot be directly attributed to employees engaged particularly in the production of the product under consideration.
- Inventories, Ability to raise Investments and Growth: While inventory levels and the number of days in inventory have increased overall, the trends in these indicators are not steady.
- Causal Link: it is on account of the lack of R&D activities undertaken by the Petitioner Company that the Petitioner Company was unable to offer substantial and commercially successful PUC in the domestic market leading to consequent drop in market share and dip in profits. PUC was still in the stage of R&D and commercial

production and sales may not have been successful given the same. Given the fact that the Petitioner was unable to meet the domestic demands of the PUC, imports from the subject country including that from Haoyuan would have to fill in the gaps. There is no Injury and causal link between imports and injury as claimed by the Domestic Industry.

66. M/s. Huntsman Corporation, UK Ltd. and M/s Huntsman Petrochemical Corporation, USA, in brief, have submitted the following:

- There is no significant increase in the share of imports in relation to demand and production in India. In fact, the subject countries have taken share of third countries imports.
- There is no relationship between sales price of the applicant domestic industry and import prices, as in POI the sales price increased by 30%; whereas the import price increased by only 20%. Moreover, in 2010 the sales price was lower than landed price of imports.
- There is no evidence of price undercutting or price suppression. The prices of imports could not have suppressed prices to the extent that increases in costs could not be reflected with an increase in the sales prices of the applicant domestic industry.
- The data shown in the application shows an increase in sales volume and improvement in production and capacity utilization.
- Applicant domestic industry has never been able to fulfill demand in India as its capacity is lower than demand. Not only this, it uses capacity of Morpholine production equipment in Tamalwadi to produce more profitable product i.e. methyl amines
- The loss of share in market share of the applicant domestic industry is due to the strategic decision taken by him to concentrate in export market instead of domestic market.
- The decline in profitability is substantially disproportionate to the decrease in sales price. However, if there is any decline in profitability then it must be due to increase in cost.
- The prices of major raw material i.e. DEG which constitutes at least 60% of the total cost of production has shown steadily increased over the years. Furthermore, the exporters are producing the raw material on its own and have cost advantage whereas the applicant has not got this benefit due to not having own production.
- The increase in cost is due to increase in raw material price, more than double of wage cost and thus cannot be due to alleged dumped imports.
- The applicant' claim of decline in productivity is self-contradictory as at one place it is shown as increase and in other place it is shown as decline due to production.
- The conditions of competition between imports originating in US and the EU differ. The import volume trends have developed very differently as it can be seen that volumes from EU has shown increase over the injury period whereas the volume from USA has shown decline. The major reason of decline in USA imports is that Diamond Dye chem has become BASF entity and has started procuring from

BASF. In view of above two situations, cumulative assessment of imports should not be done.

- Global economic crises in tyre sector lead to the decline in prices of Morpholine as major portion of the sales of Morpholine is in tyre industries.
- The domestic industry's Morpholine does not display a consistent quality. Further, it is not matched with the desired specifications.
- The imposition of ADD is not in the public interest for the reasons stated as the applicant domestic industry is the sole producer in India and does not have capacity to meet demand of India. The production method is capital intensive which creates barriers for the new entrants.
- Petitioner is unlikely to produce Morpholine because of high volatility in the prices of DEG. The major interest of the applicant is in the production of methyl amines which is the necessary raw material of NMP. Not only this, it produces Morpholine only when DEG prices comes low and methyl amines becomes less profitable.
- The prices of Morpholine in the export market are higher as compared to the domestic market. Thus, it would increase its supply in export market in order to get better price and limit in domestic market. The impact of increase in prices will be borne by consumers only.
- Disclosure of information: Referring to Hon'ble CESTAT' directions in the matter of Birla Ericsson Optical v. Designated Authority reported in 2004 (167) ELT 63 (NULL), the Authority has been requested to make the disclosures. It has been stated that much of the data in the Preliminary Findings is kept confidential, even though some of it has been disclosed by the Petitioner. Actual demand figures are not confidential information. It has been contended that while the petition's data is similar to the demand indices in the Preliminary Findings, there is a discrepancy with regard to the increase from 2008-POI.
- Production capacity of the Domestic Industry: an accurate indication of the Morpholine production capacity is an essential element in the assessment of whether there is injury caused by the dumped imports. Given domestic industry's policy to export Morpholine, the production cannot cater to the demand and the market share of the domestic industry must of necessity would decrease given the increased demand.
- Information related to the calculation of the injury margin: Given that the proposed duty is to be imposed based on the injury margin, it is imperative that the data and the methodology for this calculation be disclosed and that transaction-by-transaction the prices for Huntsman's Morpholine be disclosed which were taken into account to calculate the CIF price; adjustments made to above prices, including exact percentages for customs and duties to arrive at the landed value; with regard to the domestic industry's net sales, confirmation that sales prices taken into account for price undercutting calculations are ex-factory prices and the methodology used for their calculations such as the indication of the costs subtracted from invoices prices to determine ex-factory prices; a step-by-step explanation of the calculation of the profit taken into account for the calculation of the non-injurious price and confirmation of the rate thereof plus confirmation that

this target profit was applied to the cost of production; a step-by-step explanation of the method for the conversion of the price underselling / injury margin into the specific anti-dumping duty proposed in the Preliminary findings.

- It has been contended that its injury margin for US origin Morpholine should not have been higher than that of EU origin Morpholine. Inasmuch as part of the imports of EU origin Morpholine has been imported by an Indian affiliate of the EU producer-exporter.
- Export volumes of the Petitioner: the Preliminary Findings do not indicate the calculated export volumes of the Petitioner, even though the indexed figures have been provided in the Petition and that this data is not confidential information. This is crucial given that the Petitioner's export performance significantly affected its profitability, and thus, is important to the injury analysis.
- Petitioner's representations regarding plant shut-downs: the Petitioner had shut down its Morpholine plant for a number of days and was forced to stop production for an undisclosed number of days. The reasons for the shut-down notwithstanding, it would have had an effect on its sales volumes, its market share, cost of production, profitability, its relationships with domestic customers etc. There is no reason for the duration of the shut-down to be kept confidential, nor the time period in which it occurred. As a result, the Authority has been requested to disclose the range of days of these shutdowns and date-range so that Huntsman may adequately prepare its defence.
- Petitioner's determination of its capacity utilization in face of inconsistent statements: the Petitioner claims to have imported Morpholine from China in 2008 due to a shortage of DEG on the Indian market. The increase in import volumes from China for that year, compared to the previous and subsequent years suggests that Petitioner imported between 728-794 MT. Yet, it reported that its capacity utilisation in that same time-period increased. It does not seem possible that capacity utilisation could have increased by 20 points whether to serve export or domestic markets, if there was no DEG available.
- The difference in the landed price of imports from Germany and USA does not correspond to the difference in the duty recommended.
- Export price of BASF: It has been contended that on September 12, 2009 BASF announced its plans to merge a Ciba group company, Diamond Dye Chem Ltd, with BASF India Limited. Diamond Dye Chem is a user of Morpholine. The disclosure of the following has been sought:
  - (i) Whether the Petitioner sold the product concerned to Diamond Dye Chem before this merger;
  - (ii) Whether the Petitioner continued to sell Morpholine to the merged company after the merger and, if so, to indicate at least in indices the trend in sales volume and value of these sales pre- and post-merger;
  - (iii) What portion of the Petitioner's total sales volume, sales to Diamond Dye Chem represented before the merger? The effect of any loss of sales due to

the merger cannot be discarded in an injury assessment that is largely driven alleged lack of sales volume on the Indian market.

- The impact of the production of methyl amines and any other products on domestic industry's Morpholine production should be examined also whether the domestic industry manufactures any other products on the production equipment for Morpholine and, if so, what is the impact of production of such other products for the production and sale of Morpholine.
- It has been contended that the effect of imports from various countries should be analysed on de-cumulated basis because the imports of US origin Morpholine displays a totally different trend compared to imports from the EU and that the market share of the domestic industry decreased simultaneously with the increase in market share of the imports of EU Morpholine.
- Injury due to other causes should not be attributed to imports: It has been contended that the Authority should analyze any known factors other than dumped imports which are at the same time injuring the domestic industry and should take note of the fact that the domestic industry favoured exports over domestic sales and given the production outages, the domestic industry did not have the excess capacity to meet domestic demand. Market share cannot be a good indicator of the existence of injury, even if the Domestic Industry had operated at full capacity levels, given the increase in consumption, its market share would still have decreased substantially. That means also that market share developments cannot be an indicator of injury caused by the targeted imports.
- Referring to the Annual Report of 2009-2010, it has been contended that the domestic industry itself does not in its financial results make any reference to dumping having caused injury.
- It has been contended that the domestic industry does not have the buying leverage to command the best DEG prices comparable to the volume of DEG that is being ordered by other large Morpholine producers such as BASF or Huntsman that has an impact on the cost of production of the domestic industry.
- The increase in cost of production: It has been contended that the total wages paid by the domestic industry increased substantially though there was a decrease in the number of employees. Therefore, the wage cost per person increased for the Petitioner, which affected its profitability and costs. The impact of labour costs on the profitability of the domestic industry should be seen, even if the domestic industry is a multi-product company. In addition, while the cost of sales when considered overall remained largely stable from 2007-2008, the profitability was the highest when cost of production decreased (2008- 2009) and the profitability started decreasing when cost of production increased again (2009- 2010 and July 2009- June 2010). It would appear that the increased cost of sales is at least a function of the significant increase in cost of employment.
- Irregular supplies and substandard materials: It has been contended that the Domestic Industry supplies Morpholine that is of lesser quality compared to the

imported Morpholine; and that the Domestic Industry is a small and sub-optimal volume producer that cannot offer the flexibility and security of supply of the exporters.

- The injury indicators of the Preliminary Findings do not provide a consistent view on the existence of material injury.

67. M/s BASF SE, in brief, has contended as follows:

- Evidence presented by the applicant to prove dumping and effects of dumping on the market for Morpholine in India does not stand a verification based on the figures disclosed and on published information. The claim of decline of market share of the applicant is not supported by the reported figures in the application. The marginal deviations of the sales development of one single domestic producer do not justify the claim of declining market share. As the demand of the local market has grown considerably, it is natural, that with rather constant market shares of the suppliers, the absolute volumes of imports would increase. The success of the Indian producer in the European market proves the principles and dynamics of global trade based on the free choice a customer makes amongst various suppliers. The constitution of a case claiming that the Indian producer is being pushed to overseas markets is not convincing.
- As regards price differential of imported Morpholine versus domestically produced Morpholine; average raw material costs for DEG in India are considerably higher than in other regions. In order to gain an adequate margin, Morpholine based on local DEG has to be higher priced.
- There is no convincing evidence of price suppression; the domestic selling price is independently set compared to the landed price of imports. The claim of decline of domestic production, capacity utilization and sales is highly questionable, since the domestic production has nearly doubled, whereas the domestic demand increased by 40%.
- The sharp decline in profitability of the domestic producer in 2009 and during the POI is not explainable by the facts given in the application. It is difficult to understand, why capacity utilization was increased nearly by a factor of 2 from 2008 to 2009, when the profitability in 2009 was so low.
- It has been contended that where the Authority makes a determination that dumping has occurred within the meaning of the legislation, then it is essential for the Authority to further establish whether the Indian industry's performance has deteriorated; whether any injury suffered would be considered material, and whether the dumping by BASF has caused the material injury to the industry.
- Any injury that has resulted from other sources should not be attributed to the dumping. Increase of volume did not lead to a significant gain of market share. The increase of the volumes imported corresponded to the growth or decrease of demand on the Indian market. The loss of market share by the Indian industry amounted to 2.7 %. The deviation amounts e.g. 3.1% in the year 04.2009 - 03.2010 which covers the major portion of the POI. Moreover, if the volumes are reported correctly the decrease of total import by 68 tons does not match the

decrease of volume from subject countries by 83 tons. In terms of volumes the petitioner even experienced a gain of 138 MT sold additionally in the local market. Therefore, the conclusion the petitioner suffered a material injury in terms of market share cannot be upheld.

- Price undercutting: The price undercutting assessed at the level of 0 to 5% in the POI induces the conclusion there was no significant price undercutting.
- Reduced profits and profitability: The profit effects described by the Authority cannot be attributed to the imports of Morpholine by BASF. Indian industry mostly suffered in the year 2009-10 when the production of Morpholine was raised from 120 to 231% and the stocks grew accordingly from 21 to 263% even if the sale volume increased by 32%. Indian industry mismatched the market demand in India producing a huge volume of product concerned. Further, in this time even if the imports increased considerably, following the local demand the Indian producer was able to bring 37% more product to the market. The fact that in 2009-10 and the POI the profit and other key performance indicator (KPI) were weak is due to the petitioner's decision to boost the production and to dramatic increase of variable costs for raw material (DEG) than to the dumped imports. Looking at the situation in the base year and year 2008-09 it is evident that a moderate increase of production by 20% with the local sales reduced by 5% and the market share reduced by 0,4% led to profit (Rs/Kg) of 62% and increase of PBIT by 42% on domestic sales . The same would have and should have occurred in the year 2009-10 and the POI as the sales volume was increased by 32% even if the market share dropped gradually by 0.4 and then 1.9 % in the POI. However, in the period 2009-10 as well as POI the profitability picture changed dramatically even if the import price dropped. The reduction of the net selling price by Indian industry by 15% caused a profit loss in Rs./Kg of 150% and decrease of PBIT by 103% on domestic sales. Simultaneously, the capacity utilization grew by 111% and stocks by 242%. Such an evolution in the profit and profitability within 16 months can only be explained by the figures which are related to the production and stock quantity and not by the imports alleged to be dumped. The injury suffered by the petitioner before the volumes expected to be and actually sold in the export market will inevitably be included in all indicators related to Profit/Loss. Therefore, the profitability of the petitioner was mainly impacted by his own decision to produce Morpholine for stock and not for the local/export market. In sum, BASF believes that there is an injury the petitioner suffered; but the market indicators demonstrate that the injury cannot be described as a material or a significant injury.
- The injury suffered is mainly caused by the petitioner himself. The petitioner was apparently faced with the collapse of the export markets in course of the Global Finance Crisis, which impacted the growth in the volume produced and then only partly sold by utmost reduction of the prices achieved. The reduction of the profit ratio from 8.4 to 0.4 with the slight growth in the POI to 0.6 shows one of the true reasons for the lack of profitability and profit in the Morpholine business.
- The increase of the stocks apparently must have been caused by an expectation of the growth in the export market based on the experienced evolution of profit and

volumes sold in the year 2007-08 and 2008-09. Due to GFC in the export markets this expectation was countervailed in the year 2009-10 and POI. Therefore, BASF is of the opinion that the causal link between the imports and the injury is very weak. Finally, the injury does not fulfil the provisions required to assume a material injury, export performance as other factor known contributed to the injury and the weak causality between the imports alleged to be dumped and the injury.

68. M/s NOCIL Limited has, in brief, contended as follows:

- Domestic Industry's thrust on exports is the root of its performance. The domestic industry never approaches NOCIL to sell its product as it is the largest consumer of the subject goods, which shows that it has keen interest in export market in order to get better price.
- The market share of the domestic industry has remained always in the range of 14-18% over the injury period. In 2008-09, price undercutting being negative, even then domestic industry was not able to increase its market share and due to demand supply gap, the imports become necessary.
- It has been contended that bench-mark form of duty be considered because of demand-supply gap; low market share of domestic industry; domestic industry's major focus on exports and that the Authority has recommended this form of duty in the past as well.
- The major reason of decline in sales of the petitioner is merger of Diamond Dye Chem in BASF India Ltd.
- Statements in Annual report shows that overall operations of the domestic industry has improved and achievement of exports award means that exports volumes have also improved.
- The cases referred by domestic industry for non-market economy treatment of China PR are more than three years old. There is a contradiction in the initiation notification and Petition with regard to the determination of Normal Value for EU and USA. The raw material prices taken for constructing Normal value are not for POI. Hence, normal value is not for POI. The applicant domestic industry has claimed excessive confidentiality by not disclosing even the figures which are available in the public domain i.e. raw material prices from DGCI&S for constructing normal value. It is reasonable to disclose volume information of the company as in most of the recent investigation the DA has directed petitioners to disclose it. 2006-07 should not be excluded from the injury period as the POI in the present investigation has 9 months overlapping with preceding year. This implies reducing the injury period to three years. The constructed normal value for China PR cannot be higher than the cost of production in India and the same cannot be higher than the normal value of other subject countries. The various adjustments claimed by petitioner to arrive net export price are highly inflated, unrealistic and they have not provided any evidence. With regard to the determination of normal value in case of USA and EU on the basis of exports

price, there is no prescribed methodology in the ADD rules. After revising normal value and export price, the dumping margin is coming negative.

- The cost of production claimed by the applicant is too high as they have started the production of the subject goods a few years back. The production capacity of various amines produced by the company is common so proper allocation of expenses needs to be done.
- The justification given for adoption of IBIS data instead of DGCI&S is mere conjecture.
- The applicant is not capable to meet demand as its capacity is less than the demand in India. Moreover, their preference is export market. The petitioner is export oriented and wants to create monopoly.
- The applicant has superb performance in Post POI. The import price has started increasing once again.
- Annual report of 2009-10 doesn't show any indication of dumping and threat of injury
- There is no injury on account of production, capacity utilization, sales, productivity, wages - all shows positive increase. There is absence of causal link as the decline in market share is due to the capacity limitation of the petitioner and therefore cannot be attributed to dumped imports.
- It has been contended that the domestic industry has imported the subject goods during the year 2008-09 but has not provided any documentary evidence to that effect and that the domestic industry has made a false claim.
- There is a demand-supply gap in the country but the domestic industry did not increase its market share/domestic sales.

69. European Union in its submissions has contended that injury margin and dumping margins should be disclosed.

#### **Submissions made by the domestic industry**

70. The following submissions, in brief, have been made by the domestic industry:

- It has claimed confidentiality as regards the demand in India, as demand includes sales of the petitioner. Had demand been shown, the sales volume of the domestic industry could have been derived which is confidential business information and the disclosure of the same can be highly disadvantageous to its competitiveness.
- Further, for difference in demand, it has chosen import data from IBIS at the time of petition but later on in the preliminary findings, the Authority has chosen import data from IBIS and co-operating exporters to analyze imports.
- In respect of argument that actual capacity of the petitioner needs to be disclosed; information on capacity is not disclosed in any public domain and nor would be available even with the payment of fees. The disclosure of this information in absolute figures would have adverse effect on the company's operation and give certain advantages to the interested parties as the petitioner

is the only producer of the subject goods. Moreover, inability of the domestic industry to meet domestic demand cannot justify dumping in any case. The main objective of imposing anti-dumping duties is to prevent an unfair practice of dumping and establish a level playing field for the domestic players. Furthermore, since the product is being dumped in the country, it is not in a position to increase its market share in India and hence, is exporting the product.

- As regards the argument with regard to disclosure of actual injury margin and NIP, it is submitted that Authority has determined NIP according to the amended AD Rules.
- With regard to disclosure of the export figures, it is to be noted that the injury claimed by the domestic industry is on account of domestic operations. It has provided costing and injury information for domestic sales separately. Hence, injury to domestic sales cannot be attributed to exports. In fact export performance of the petitioner has increased over the years and therefore petitioner is bound to increase its exports in order to increase its capacity utilization.
- The details of shutdown is already provided to the Authority vide letter dated 14th July, 2011 and the same has been duly examined by the Designated Authority in the preliminary findings.
- The reasons for import of DEG during POI have already been dealt by the Authority in the preliminary findings. Further during 2008-09 the capacity utilization has increased mainly due to increase in exports as exports grew by 88% while domestic sales had a negative growth. In spite of negative growth in sales petitioners profitability increased in 2008-09 as price undercutting was negative because overseas exporters were not able to undercut the domestic selling price.
- In respect to the argument that there is difference in anti-dumping duty for USA and EU, it is to be noted that there was co-operation from both exporters from Germany and USA therefore CIF/ Landed price must have been calculated based on the data provided by the respective exporters.
- With regard to disclosure of sales made to Diamond dye chem. before and after the merger, it is submitted that the Authority is not required to see whether there is a decline in customer-wise sales. From the perusal of the sales figures it would be seen that BASF India still purchases Morpholine from the petitioner even after the Merger with Diamond Dye Chem, in fact post merger the sales quantity has gone up
- It is submitted that adjustment with regard to sales to different segment cannot be considered as per ADD Rules for Normal value. Moreover, the end-use application cannot affect the price comparability. The exporter needs to prove the difference in the product that is sold to different segments of the user industry.
- Imports both from USA and EU have increased during the injury period with an exception in the year 2008-09 where in imports from USA had declined. it

would be appropriate to assess injury to the domestic industry cumulatively from subject countries as:

- i. The margins of dumping from each of the subject countries are more than the limits prescribed,
  - ii. The volume of imports from each of the subject countries is more than the limits prescribed,
  - iii. Cumulative assessment is appropriate in view of the following factors :-
    - o The goods involved are like articles and are competing in the same market;
    - o The imported products are being sold through the comparable channel of distribution and to comparable category of customers;
    - o Products from the subject countries are undercutting the prices of the domestic industry in the market.
    - o Imports from subject countries are increasing.
- The domestic industry is suffering injury on many parameters such as:
    - Increase in Market share of Dumped imports in POI.
    - Imports from subject countries has shown significant increase in POI,
    - Decline in market share of domestic industry.
    - Decline in production resulting in decline in capacity utilization.
    - Decline in profit, PBIT, ROI and cash profit.
    - Significant price undercutting and underselling.
    - Decline in productivity

The above stated parameters show that domestic industry is suffering material injury in both volume as well as price parameters. Further, there is no requirement either in ADD Rules or WTO Agreement that domestic industry is required to mention about dumping in its annual report.

- In respect to the argument that domestic industry favours exports over domestic sales, it is to be noted that increase in export price and export volume shows that Indian market has lower realization due to pressure of dumping resorted by foreign producers of subject countries. If the Authority removes the dumping from Indian market; thereafter, the domestic industry can realize reasonable price and more volume. Since the product is being dumped in the country, the domestic industry is not in a position to increase its market share in India and hence is exporting the product.
- With regard to argument that market share is not a good indicator of injury as petitioner capacity is less than the demand in India; inability of the domestic industry to meet domestic demand cannot justify dumping and cannot prevent the domestic industry from seeking protection under Anti-dumping law. The fundamental purpose of imposing anti-dumping duties is to prevent an unfair practice of dumping and establish a level playing field for the domestic

players. Further, the Authority and CESTAT have already held in a number of investigations that demand/ supply gap does not imply that the dumping should be allowed to cause injury to the domestic industry.

- Moreover, the market share of domestic industry has declined over the injury period whereas share of imports from subject countries has shown increase. Above all, the domestic industry has still underutilized capacity. Further, decline in market share by all means should be considered as an important parameter as the root cause of all losses starts with declining market share.
- As regards the contention of interested parties with regard to increase in wages is the reason of decline in profitability, the petitioner would request the Authority to analyse increase in wage cost keeping in mind the increase in production and the normal increment on salary and wages over the year. Above all, wages per unit of production has shown declining trend.
- As regards the argument that domestic industry's Morpholine does not display a consistent quality; it disagrees with this statement. Assuming the above statement is correct than the exporters product should fetch a better price than the applicant', in fact the positive undercutting proves that the landed price is lower than the petitioner's price in Indian market. It has further contended that the Authority should grant an allowance on account of better quality while calculating the landed value of the imports of this particular exporter.
- In respect to the argument that there is no decline in market share as demand shows considerable increase, it is submitted that sales volume of domestic industry declined in POI as compared to preceding year whereas imports from subject countries increased. The reason for not able to sell in the domestic market is due to the lower price offered by exporters from subject countries. The same is evident from positive price undercutting. The market share of domestic industry has declined as compared to base year as well as preceding year. Further the growth in domestic sales is only 20% while growth in demand is 46%.
- With regard to price undercutting from EU is just 0-5%, it is to be pointed out that price undercutting from EU is in the range of 1-5% as per preliminary findings and not between 0-5%. Further, having positive undercutting, significant dumping and injury margin shows that domestic industry is suffering material injury from dumped imports of EU.
- The major reason of decline in profitability given by the interested parties is the increase in variable cost, which is factually incorrect. From the perusal of figures, it can be seen that raw-material increased by just Rs.\*\*\* in POI as compared to base year and conversion cost decreased by Rs.\*\*\* per kg. The net decrease in total cost is Rs.\*\*\*per kg whereas selling price decreased by Rs.\*\*\* per kg during POI as compared to the base year. Therefore, it cannot be appropriate to say that there is increase in raw-material cost.
- It is to be noted that the report submitted by interested parties is for the company operation as a whole and it is a multi-product company. Therefore, conclusion drawn on the basis of the same would give distorted results.

Further, the Authority has already verified the data and there is no impact of rupee depreciation on the operation of product concerned. The petitioner is a multi-product company producing more than 50 products where in the sales of Morpholine is only 6% to 7% of total sales of the company, so to come for any conclusion on the basis of figures shown in the annual report will only give distorted picture.

- There is decline in production in POI as compared to immediate previous year and the same led to decline in capacity utilization. Demand in India increased by 46% during POI as compared to the base year, whereas the sale of the domestic industry has increased only by 20% during the POI as compared to the base year. The market share of domestic industry has declined by \*\*\*% as compared to base year and by \*\*\*% to preceding year.
- The argument with regard to market share is without any basis. There is no mention of any research and development expenses in the annual report of the company for the subject product. The petitioner has not claimed any such expenses during POI. Further the Authority has already verified the data provided by the petitioner, the petitioner would request the Authority to rely on the verified data. The plant was shut for only \*\*\* days during POI for preventive maintenance and was shut for \*\*\*days due to lack of orders from the customers. Since the product is being dumped from subject countries the company had no option but to shut the plant.
- The share of import from subject countries were \*\*\*% in the base year which has gone up to \*\*\*% in the POI and at the same time share of domestic industry has come down from \*\*\*% to \*\*\*%. Even if we do the comparison from previous year the share of subject countries have increased by \*\*\*% in POI.
- Though the share of imports from China PR have shown declining trend but still it constitutes 11% of total imports into India. Further, the price undercutting from China PR is positive over the injury period except for 2008-09. The market share of domestic industry has been declined as compared to base year as well as preceding year.
- Though the landed value of China PR is higher than other countries but it is still lower than the prices of domestic industry and there exists a positive price undercutting.
- The petitioner was earning profits in 2008-09 because the price undercutting from the subject countries was negative.
- With regard to the argument that petitioner has limited capacity, it is to be noted that it has still underutilized capacity. Moreover, the demand-supply gap doesn't put any restriction to get Anti-dumping duty imposed. The loss of market share is directly related to dumped imports shows that the injury caused to petitioner is due to dumped imports from subject countries.
- In respect to the news item of the year 2009-10, it is submitted that POI of the current investigation is July'09-June'10 and not 2009-10. So, there is no relation of this news with POI. Moreover, the petitioner is a multi-product company; therefore any analysis on the basis of this will not be fair. With

regard to comparison with 2006-07, it is relevant to mention here that injury period starts from 2007-08 and not from 2006-07. So, any comparison of POI should be from 2007-08 as base year. Productivity has shown declining trend as compared to preceding year. The wages per unit of production has declined over the injury period and the same been verified by the Authority. Decline in level of inventories in 2008-09 was due to low production. In this year, DI has curtailed its production due to the recession and has not preferred to build up inventories.

- There is causal link between injury suffered by the Domestic industry and dumped imports from subject countries. Followings are relevant in this regard:
  - Increase in imports both in absolute term and in relation to consumption in India in POI as compared to the base year. Further, the imports also shows increase in relation to production during POI as compared to preceding year
  - Decline in production resulting in decline in capacity utilization during POI as compared to 2009-10.
  - Decline in volume of domestic sales by 9% during POI as compared to preceding year.
  - Decline in profit, PBIT, ROI and cash profit over the injury period.
  - Significant price undercutting and underselling in POI.
  - Decline in productivity during POI as compared to 2009-10.
  - There is negative growth in Production, domestic sales, Profit, ROI of DI whereas Imports from subject countries shows positive growth.
- With regard to the argument that no efforts made by domestic industry to sell subject goods to NOCIL, it is submitted that DI has made efforts by sending offer to NOCIL and also sold some quantity to them during injury period.
- The market share of domestic industry has declined over the injury period whereas share of imports from subject countries shown increase. Above all, the domestic industry has still underutilized capacity. In 2008-09, the company was earning highest profits which clearly indicate that there is causal link between landed price of imports and profits. The company was able to earn profit because landed price was lower than selling price leads to negative price undercutting.
- As regards to the recommendation of benchmark duty, it is to be noted that imports price has increase in Post POI and the same time cost of production of the petitioner also increased. So, any recommendation in the form of benchmark will not fulfil the objective of ADD and cause severe injury to the DI.
- It is incorrect to state that DGCI&S data was available up to June 2010 in Oct, 2010 as June-2010 import data was released by DGCI&S on their website on 29th Dec, 2010.
- Referring to cases for NME treatment is not at all mandatory and that is for information only. Petitioner has refereed some of the past cases.

- The rate of raw materials taken for calculation of CNV was based on the data available in public domain at the time of filing the application.
- With regard to confidentiality, it is once again reiterated that information on capacity, production, sales are not disclosed in any public domain and nor would be available even with the payment of fees. Further, it is evident from the NCV petition filed by the domestic industry that the petitioner has disclosed raw material prices from DGCI&S.
- In respect of argument that 2006-07 period should not be excluded from the injury period, reference is invited to the corrigendum to the initiation notification dated 15th December, 2010 where in the period of injury was modified, which is in line with the application filed and the Trade notice No-2/2004 dated 12th May, 2004 .
- The argument that the cost of production being too high on account of significant amount spent in R&D is not correct as no research and development expenses is reflected in the annual report for 2009-10. Neither petitioner has claimed any such expenses during POI.
- Winning an award is based on exports made for all the products produced by the company and this does not mean that petitioner has created its capacity for exports. Increase in export price and export volume shows that Indian market has lower realization due to pressure of dumping resorted by foreign producers of subject countries. If the Authority removes the dumping from Indian market thereafter domestic industry can realize reasonable price and more volume. Since the product is being dumped in the country, domestic industry is not in a position to increase its market share in India and hence is exporting the product.
- The increase in price of the subject goods is in line with increase in cost of production.

### **Examination by the Authority**

71. The Authority has taken note of various submissions of the interested parties on consequent injury to the domestic industry and has analyzed the same considering the facts available on record and applicable law. While some of the issues have been addressed as follows; the rest of the issues have been dealt with in appropriate sections of these findings:

- The Authority notes that an interested party must substantiate its claim with appropriate evidence while making its submissions. The Authority notes that the allegation that the application is not in the form and manner and contains inaccuracies/contradiction has not been substantiated. As regards the transactions reported in IBIS, there does not appear to be any repetition.
- The Authority notes that M/s. Khyati Chemicals has made bland statements, without substantiating the same. The Authority recognises that the AD measure might affect the users' competitiveness; however, no user has a right

to import the subject goods at dumped prices to the detriment of the domestic producers.

- As regards M/s Suchem's contention, the Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, it notes fair competition in the Indian market will not be reduced by the anti-dumping duties, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping duties would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the users/consumers of the subject goods.
- As regards the issue of adoption of IBIS data vis a vis DGCI&S is concerned; the Authority notes that the subject goods have been imported under a number of customs classifications. It is further noted that as per information available on record, the imports volume as reflected in the data of IBIS is more than that reflected in the DGCI&S data and hence the IBIS data has been adopted for the purposes of present determination. As regards the import data; the same is based on the data as reflected in the questionnaires' responses and the IBIS data.
- As regards the issue of the applicant's performance in Post POI is concerned; the Authority notes that post POI data is not considered for undertaking either dumping or material injury analysis.
- The Authority notes that AD Rules do not require that the Applicant must be able to fulfill demand in India and have adequate capacity to this end, before seeking redressal of injury caused to it on account of dumping.
- As regards the issue of desired rate of return, the Authority determines the NIP as per its consistent practice and the same has also been followed in the instant matter.
- As regards the frequent shutdowns of Plant of the Applicant; the domestic industry has clarified that the plant was shut down due to maintenance for a period of 10-20 days (indexed) and due to lack of orders from customers, the company was forced to stop its production for 60-70(indexed) days.
- As regards the R&D activities; the Applicant has clarified that neither it has claimed any R&D expenses nor are they reflected in their annual report so far as the subject goods are concerned. The Authority further notes that no R& D expense has been considered while computing the NIP for the domestic industry.
- As regards the quality claims, the contentions made by the interested party have not been substantiated. The Authority further notes that adjustment on account of any difference in the quality could have been duly considered while determining the injury margin, had the same been substantiated.
- As regards the contention that commercial production of PUC was not successfully undertaken by the applicant in the year 2007-08; the Authority

notes that it has been the consistent practice of the Authority to examine domestic industry' claim of injury during the POI over the injury period.

- As regards the contentions relating to imports of raw material from USA and the loss of share in market share of the applicant is due to exports; the Authority notes the domestic industry had not fully utilised its installed capacities, hence the contentions have not been substantiated.
- As regards the contention that global economic crisis in tyre sector led to the decline in prices of Morpholine; the Authority notes the contentions have not been substantiated. Any reference to the Annual reports is not correct as the company is a multi-product company.
- As regards the issue that production of Morpholine is reduced when prices of DEG increase; the Authority has verified their production data, and notes that the domestic industry produces the subject goods to the extent it can either pass on the increased costs to the buyers or bear the increase on its own.
- As regards the contention that the sharp decline in profitability of the domestic producer in 2009-10 and during the POI is not explainable as capacity utilization was increased nearly by a factor of 2 from 2007-08 to 2008-09, when the profitability in 2009-10 was so low; the Authority notes that contentions is not substantiated as the domestic industry had significantly better profitability in 2008- 09. As regards the profitability going down in 2009-10, it is noted that the domestic industry was forced to lower the prices due to presence of dumped imports, inspite of increase in costs.
- The Authority notes that the domestic industry has claimed confidentiality as regards demand in India as demand includes its sales. It has been contended by them that had demand been shown the sales volume of the domestic industry could have been derived, which is confidential business information and the disclosure of the same can be highly disadvantageous to its competitiveness. Notwithstanding the domestic industry's claim, actual demand figures have been disclosed as the same have also been disclosed by them in their application itself. As regards the discrepancy in the data as mentioned in the application and the preliminary findings; it is clarified that the preliminary findings were based on information available on record at the time of its issuance and not merely on the basis of the information provided in the application.
- Morpholine's production capacity has been claimed as confidential by the applicant domestic industry claiming that its disclosure would have adverse effect on their operations and give certain advantages to other interested parties. The claims as regards the confidentiality were examined and upon Authority's satisfaction, considered as confidential as per the AD Rules. Moreover, the domestic industry has reiterated that the disclosure of confidential information would have adverse effect on their operation and give certain advantages to the interested parties as they are the only producer of the subject goods.
- The Authority notes that there is no requirement under the relevant rules & regulations that domestic industry must cater to demand. It is further noted

that the domestic industry has not yet achieved its full capacity utilisation. In any case, the injury assessment is based on a number of parameters and one or several of the parameters may not necessarily give decisive guidance, as is also acknowledged by the rules & regulations on the subject.

- The complete data that included transaction-by-transaction CIF prices for Huntsman have already been disclosed to the company's lawyers. Besides, these prices are as verified during the on-the spot verification of the company's data. For determination of the landed value, the Authority has a standard practice to add 1% handling charges, the applicable customs duty & cess to it. Price undercutting is determined as the difference between the Net selling price of the domestic industry and the landed value the imports. The NIP methodology has been explained in the Annexure 1V of the disclosure statement. The Authority has determined NIP as per the AD Rules ( as amended) and the same has been determined based on data or information relating to the cost of production of the domestic industry, which has been claimed as business sensitive information by the domestic industry and hence, the same cannot be disclosed.
- As regards the contention that the difference in the landed price of imports from Germany and USA; the Authority notes that the same is on based on facts as available on record. Further, the landed value of the co-operative respondents from the subject countries in the instant matter is bound to differ as these are based on their respective data. The data has been subsequently verified during the on-the spot verifications and the same have been adopted for the determination of the landed values.
- As regards the contention that Huntman's injury margin for US origin Morpholine should not have been higher than that of EU origin Morpholine; it is clarified that injury margin is the difference between the landed value and the NIP; and since the landed values of the subject goods has been determined on the respective data of the co-operative exporter and facts available on record; the injury margins are bound to differ. The Authority has considered the issue of affiliation of the EU producer-exporter as per the rule s & regulations on the subject.
- As regards the contention that the effect of imports from various countries should be analysed on de-cumulated basis; the Authority notes that contention is based on incorrect appreciation of rules & regulations on the subject and that it has cumulatively analysed the injury only after ascertaining the requirements of Article 3.3 of the AD Agreement and corresponding provision in the AD Rules.
- As regards the contention that export volumes of the domestic industry have not been disclosed; the Authority notes that the Applicant's claim as regards its confidentiality was accepted by the Authority. Besides, the injury to the domestic industry has been analyzed on account of its domestic operations, to the extent feasible.
- As regards the contentions relating to inconsistent statements regarding the domestic industry's capacity utilization; it is noted that the contentions are not

borne out of facts. It is further noted that capacity utilisation had increased due to improved performance of the domestic industry on exports front.

- As regards the export price of BASF, the Authority notes that the domestic industry's sales of the subject goods to M/s Diamond Dye Chem before the merger, increased after M/s Diamond Dye Chem merged into M/s BASF. Hence, the contentions made by M/s Huntsman on the subject, after examination, are found to be devoid of any merit.
- As regards the contention relating to impact of the production of methyl amines and any other products on Domestic Industry's Morpholine production: it is noted that the domestic industry has a dedicated production line for producing Morpholine and no other products are produced in that production line.
- As regards the contention that injury due to other causes should not be attributed to imports; it is noted that the domestic industry has not fully utilised its installed capacity; thus, it cannot be assumed that any diversion of the subject goods for exports would have necessarily impacted its domestic operations. On the contrary, if the domestic industry had not exported, its performance would have worsened. Allegations regarding deliberate diversion of the subject goods for exports have not been substantiated. It is further noted that the dumped imports from the subject territory/countries are causing significant price undercutting and as well as significant price underselling.
- As regards absence of any reference to the Annual Report of 2009 – 2010, it is noted that the domestic industry is a multi-product company and Morpholine is one of over 50 products that are being produced by the domestic industry. As regards increase in profit as per annual report, it is noted that the financial result of the company reported in its Annual Report is for the company as a whole and cannot be fully attributed to the product under consideration. Hence, no significance needs to be attached to its absence from the Annual Reports.
- As regards the contention that the domestic industry does not have the buying leverage to command the best DEG prices, it is seen that the domestic industry has imported the input at comparable prices vis a vis other importers of the input into India.
- As regards the contention relating to increase in cost of production due to increase in wages; the same has not been properly appreciated; as notwithstanding the increase in wages in absolute terms, it is seen that the wages per unit of production have declined over the injury period.
- As regards the claim relating to irregular supplies and substandard materials; it is noted that the domestic industry has sold significant quantity of the subject goods not only in India but has also exported the same. Moreover, the claim remains unsubstantiated.
- As regards the contention that the injury indicators of the Preliminary Findings do not provide a consistent view on the existence of material injury, it is noted that the contention is not based on correct appreciation of facts. The

domestic industry's performance has moved in tandem with its decision taken from time to time whether it should retain the market share or hold the price line.

- As regards M/s. NOCIL's submissions that the applicant domestic industry does not approach it, the Authority notes that it has no significance in the context of AD investigation as the buyers' and sellers' of a product would approach each other depending upon the demand and supply position of a product in the market at a given point of time. In addition, the domestic industry has submitted documentary evidence that the subject goods had indeed been sold to M/s. NOCIL during the injury period.
- As regards the contention that the domestic industry made false claim vis a vis its imports during 2008-09; it is noted that the Authority has undertaken the dumping and consequent injury analysis for the POI and any imports prior to the POI, would not have any material bearing on the investigation.
- As regards the contention regarding the normal value for China PR; it is not given to the importer to question the basis of determination of normal value. The Authority further notes that the normal value for China PR has been constructed in the backdrop that the only Chinese respondent's chose to forego its claim of market economy treatment. Likewise, contentions regarding adjustments are devoid of any facts. The Authority further notes that the export price of the Chinese co-operative respondent has been strictly worked out as per the data of the respondent, as verified during the course of the on-the-spot verification.
- As regards the contention that the domestic industry has not been able to increase its market share despite price undercutting; the Authority notes that an enterprise has a choice either to retain/increase its market share or to improve its profitability. In the instant matter, apparently the domestic industry has chosen the latter course, as during the said period its profitability had distinctly improved.
- As regards the form of the Anti-dumping duty; the Authority notes that the form of duty is prerogative of the Authority and the same is decided on the facts and circumstances of each case.
- As regards the contention that the cost of production of the domestic industry is too high; the Authority notes that any difference in the cost of production between producers in different markets does not justify dumping. As regards the claim of the domestic industry relating to consequent injury caused to it on account of dumping, the same has been duly examined and reflected in the relevant sections of this determination.
- As regards European Union submissions regarding disclosure of injury margin and dumping margins; the Authority notes that it has already disclosed the dumping margin to the co-operative respondent from European Union and has again disclosed the same vide the Disclosure statement. As regards the injury margin, the methodology thereof is being disclosed as per Annexure IV of the Disclosure statement.

- As regards the other submissions made by NOCIL Limited; the Authority notes that somewhat similar submissions have also been made by other interested parties. These issues have been appropriately addressed above and in the relevant sections of these findings.
- Other injury related issues such as pertaining to cost of production, production capacity of various amines produced by the applicant company, market share, capacity vis a vis demand, relationship between sales price of the applicant and import prices, price undercutting or price suppression, profitability, productivity, increase in cost of raw materials and wages, absence of causal link etc have been examined appropriately in the relevant sections of this determination.

### **Cumulative assessment**

72. Annexure II para (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively accounts for more than seven percent of the import of like article and
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

73. The Authority notes that:-

- The subject goods are being dumped into India from a number of countries.
- The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;
- The volume of imports from each of the subject countries is more than the *de-minimis* limits prescribed;
- Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market, which is evident from the following:-
  - a. The products manufactured by the producers from the subject countries and the products manufactured by the Applicant have comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are *inter-se* like articles.

- b. There are common parties who are resorting to use of the imported subject goods from various sources and the goods produced by the domestic industry. Both, the imported and the domestic subject goods, are being used interchangeably and there is direct competition between the domestic product & imported products and *inter-se* amongst imported products.
- c. The exporters from the subject countries and domestic industry have sold the product in the same periods to the same set of customers. The sales channels are comparable.
- d. The volume of imports from each of the subject countries is significant.

74. The Authority notes that imports made on account of any extraneous consideration such as affiliation should not be impacting the above perspective.

75. In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries

76. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

77. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states 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 margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

**Demand and Market Share**

78. The applicant has claimed that for the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry have been added to the total imports into India, which has been summarized as under.

Particulars	Unit	2007-08	2008-09	2009-10	July'09-
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					June'10 [POI]
<b>Imports from</b>					
Subject countries/territory	MT	2,989	2,906	4,389	4,815
Other Countries	MT	184	199	32	-
Total Imports	MT	3,174	3,106	4,421	4,815
Demand	MT	3,858	3,757	5,321	5,637
Trend	Indexed	100	97	138	146

79. The Authority notes that demand has shown a positive trend and increased significantly in the period of investigation as compared to the base year. The growth in the demand during period of investigation was about 46% as compared to the base year. The sale of domestic industry during the POI has increased by 20% as compared to the base year. However, the sales of domestic industry did not proportionately increase *vis a vis* the increase in demand.

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

80. Annexure-II (ii) of the AD Rules provides that “while examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports either in absolute term or relative to production or consumption in India ...” Thus, with regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

81. The applicant has claimed that subject goods are being imported in different Customs classifications. Further, the imports of the product under consideration reported in the IBIS data is significantly more than what has been reported in the DGCI&S data and therefore the volume of imports has been assessed on the basis of the IBIS data and the data of the co-operating exporters.

82. The Authority notes that:

- (a) The imports from the subject countries have increased significantly in absolute terms in the period of investigation as compared to the base year as per the table below.

<b>Imports from</b>	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
China PR	MT	426	1,220	492	511
USA	MT	1,202	348	1,387	1,419
EU	MT	1,361	1,339	2,510	2,885
Other Countries	MT	184	199	32	-
<b>Subject</b>	<b>MT</b>	<b>2,989</b>	<b>2,906</b>	<b>4,389</b>	<b>4,815</b>

<b>countries/territory</b>					
Total Imports	MT	3,173	3,106	4,421	4,815

- (b) It is seen that market share of subject countries have increased during the POI as compared to the base year, whereas the market share of domestic industry has declined as compared to the base year as shown in the table below.

<b>Market Share in Demand</b>	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Subject countries/territory	Indexed	100	100	106	110
Other Countries	Indexed	100	111	13	0
Domestic industry	Indexed	100	98	95	82

83. From the above table, it is noted that:

The market share of dumped imports from the subject countries have increased during POI as compared to the base year.

- The imports from the subject countries have increased in POI as compared to the base year and in relation to the total imports.
- The share of the domestic industry has declined in POI.

### **Price effect of imports**

84. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of the like articles 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. In order to assess the extent of price undercutting, the Authority has compared the net sales realization of the domestic industry with the landed value of the imports. The net sales realization was arrived, after deducting all rebates and taxes. It is seen that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting. The position is as follows.

Particulars	Landed Value (Rs./Kg)	Price Undercutting (Rs./Kg)	Price Undercutting (%) Range
NSR Rs.*** Per/ KG			
<b>Country/Territory</b>			
China PR	***	***	1-5

USA	***	***	5-10
EU	***	***	1-5
Subject Countries as a whole	***	***	1-5

85. The Authority has also determined price undercutting cumulatively from the subject countries as a whole, which is as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Average landed import price	Rs./Kg	***	***	***	***
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Price undercutting amount	Rs./Kg	***	***	***	***
Price undercutting %	Range	5-10	(10-15)	0-5	0-5

#### Price Suppression/ Price Depression

86. In order to assess whether the imports from the subject countries were suppressing/ depressing the prices of the domestic industry, the Authority has compared the cost of production and the net selling price of the domestic industry along with the average landed price of the imports over the injury period, which is given in the following table:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Cost of Sales	Rs./Kg	***	***	***	***
Trend	Indexed	100	89	93	99
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Trend	Indexed	100	98	83	87
Profit/Loss	Rs./Kg	***	***	***	***
Trend	Indexed	100	162	12	(6)
Average landed price of subject countries	Rs./Kg	***	***	***	***
Trend	Indexed	100	119	86	91

87. From the above, it is apparent that there is decrease in both the cost of sales and the selling price of the domestic industry during the POI as compared to the base year. However, the decrease in the net selling price is proportionately higher as compared to the decrease in the cost of sales, thereby reflecting price depression.

**Economic parameters of the domestic industry**

88. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like article. With regard to consequent impact of these imports on domestic producers of such products, the AD Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual 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.

89. The various injury parameters relating to the domestic industry are discussed herein below:-

**Production, sales, capacity and capacity utilization**

90. The production, domestic sales, capacity & capacity utilization of the domestic industry has been stated as follows:

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
Capacity	MT	***	***	***	***
Trend	Indexed	100	100	100	100
Production	MT	***	***	***	***
Trend	Indexed	100	120	231	229
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100	120	231	229
Domestic Sales	MT	***	***	***	***
Trend	Indexed	100	95	132	120
Export sales	MT	***	***	***	***
Trend	Indexed	100	187	616	741
Demand	MT	3,858	3,757	5,321	5,637
Trend	Indexed	100	97	138	146
Domestic Sales in % of Demand	%	***	***	***	***
Trend	Indexed	100	98	95	82

91. From the above, it is noted that:

- a) The domestic industry has maintained the same level of installed capacities throughout the injury period.
- b) The production, capacity utilization has increased during the POI as compared to the base year. The demand has increased by 46% during POI as compared to the base year, whereas the sale of the domestic industry has increased by 20% during the POI as compared to the base year.

### **Profitability**

92. The cost of production, net sales realization & profit/loss of the domestic industry are as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Cost of Sales	Rs./Kg	***	***	***	***
Trend	Indexed	100	90	93	99
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Trend	Indexed	100	98	83	87
Profit/Loss	Rs./Kg	***	***	***	***
Trend	Indexed	100	162	12	(6)
Profit/Loss Domestic Sales	Rs.lacs	***	***	***	***
Trend	Indexed	100	154	16	(7)
PBIT on Domestic Sales	Rs.lacs	***	***	***	***
Trend	Indexed	100	142	39	20

93. It is noted that profitability of the domestic industry for the subject goods has improved till 2008-09. However, from 2009-10, it has started declining and the profitability of the domestic industry declined significantly in the POI leading to significant financial losses, during the POI.

### **Return on investments and Cash flow**

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Capital Employed-GFA	Rs.Lacs	***	***	***	***
Trend	Indexed	100	96	108	106
ROI- GFA Basis	%	***	***	***	***
Trend	Indexed	100	148	36	19

Capital Employed-NFA	Rs.Lacs	***	***	***	***
Trend	Indexed	100	91	106	106
ROI - NFA Basis	%	***	***	***	***
Trend	Indexed	100	157	36	19
Cash Profit	Rs. Lacs	***	***	***	***
Trend	Indexed	100	156	36	18
Depreciation	Rs. Lacs	***	***	***	***
Trend	Indexed	100	162	120	120

94. The Authority notes that return on investment and cash profit of the domestic industry deteriorated significantly during the POI as compared to the base year as would be apparent from the above table. The return on investment has been determined considering PBIT and capital employed for the product. Impact on cash flow has been determined considering profit before depreciation but after interest cost. The cash profit has shown a significant decline in the POI as compared to the base year. It is noted that the depreciation has increased during the POI as compared to the base year. The depreciation after 2008-09 is almost in the same region, whereas the profits have declined. The Authority notes that the decline in profits is not due to increase in depreciation expenses.

### **Market Share**

95. From the table below, it is seen that demand for the subject goods in India has shown an increasing trend except decline during 2008-09. However, the market share of the subject countries/territory in demand of the product in India has increased significantly and that of the domestic industry has declined in the POI compared to the base year.

Market Share in Demand	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Subject countries/territory	Indexed	100	100	106	110
Other Countries	Indexed	100	111	13	0
Domestic industry	Indexed	100	98	95	82
Demand	MT	***	***	***	***
Trend	Indexed	100	97	138	146
Domestic Sales in % of Demand	%	***	***	***	***
Trend	Indexed	100	98	95	82

### **Employment, wages and productivity**

96. The data relating to employment, wages and productivity is as follows:

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
No. of Employees	Nos.	***	***	***	***
Trend	Indexed	100	100	86	86
Wages	Rs.lacs	***	***	***	***
Trend	Indexed	100	117	222	218
Productivity per day	Mt/day	***	***	***	***
Trend	Indexed	100	120	230	228
Productivity per employee	MT	***	***	***	***
Trend	Indexed	100	120	266	264

97. It is seen from the above that there has been decrease in the number of employees and also increase in wages during period of investigation as compared to the base year. However, it is seen that the company is a multi-product company and hence its performance on these counts may not be appropriate in the instant analysis.

### **Inventories**

98. The data relating to inventories shows as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
Average Inventories	MT	***	***	***	***
Trend	Indexed	100	21	263	197
Capacity Utilization	Indexed	100	120	231	229

99. From the above table, it is seen that average inventory has increased in the POI as compared to the base year. Apparently, due to presence of dumped imports from the subject countries, the domestic Industry has not been able to sell its goods that were produced.

### **Growth**

100. Growth of the domestic industry in terms of inventories and market share was negative, while the same in respect of production, capacity utilisation and sales volume was positive during POI as compared to the base year. Growth in terms of price parameters, viz. profits, cash profits and return on investment has been negative.

### **Ability to raise funds**

101. It is noted that the company is a multi-product company and hence its performance on these counts may not be appropriate in the instant analysis.

### **Conclusion on material injury**

102. It is thus seen that:
- a) Imports from subject countries have significantly increased in absolute terms.
  - b) The imports have increased in relation to imports in India, production and consumption in India.
  - c) The imports are significantly undercutting the prices of domestic industry.
  - d) The selling prices of the domestic industry have decreased. Although the cost of production of the domestic industry also decreased yet the decrease in the selling price was higher than the decrease in the cost of production thereby causing significant price depression.
  - e) The domestic industry has not been able to utilize its installed capacity, despite the demand for the subject goods in India.
  - f) The domestic industry's domestic sales increased over the injury period but the increase in the sales was proportionately lower than the increase in demand. Despite the increase in demand, the domestic industry was not able to sell the subject goods produced leading to increased inventories. Besides, the domestic industry has claimed to have undertaken exports to liquidate the inventories.
  - g) The market share of the dumped imports has increased and that of domestic industry has declined.
  - h) The profits, return on investment and cash profits of the domestic industry have deteriorated significantly.
  - i) Dumping margins are significant.
103. In view of the above, the Authority is of the view that the domestic industry has suffered material injury.

### **J. Causal Link**

#### **Submissions made by the Domestic Industry**

104. The Domestic Industry has submitted that their market share has declined significantly in the POI, whereas share of the subject countries imports has increased.

#### **Submissions made by other interested parties**

105. There is absence of causal link as the decline in market share is due to the capacity limitation of the petitioner and therefore cannot be attributed to dumped imports.

106. As per the AD Rules, the Authority, inter alia, is 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 may 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 dumped 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 AD Rules could have contributed to injury to the domestic industry. It was found that:-

- a. Volume and Price of imports from third countries:** The Authority notes that imports from third countries are either negligible or their volume is *de-minimis* during previous years. In fact, there are no imports in POI. Thus, imports from third countries could not have caused injury to the domestic industry.
- b. Contraction in Demand and Changes in pattern of consumption:** It is noted that the demand of the subject goods has increased by 46% in the period of investigation as compared to the base year. There is also no indication of any change in the consumption pattern.
- c. Trade Restrictive Practices of and Competition between the Foreign and Domestic producers:** The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed price of subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.
- d. Development of Technology:** None of the interested party has raised any issue with regard to developments in technology as being the cause of injury to the domestic industry. No information, in respect of any significant development in technology is on record that could be the principal cause of injury to the domestic industry.
- e. Export Performance:** The Authority notes that the export volume of the domestic industry has increased during the POI. Thus, possible decline in exports is not a factor which could have attributed injury to the domestic industry. Further, the domestic industry has contended that they are being forced to export only because of lack of demand for their product in the Country because of presence of the dumped imports in the Indian market.

107. The Authority notes that while listed known other factors do not show injury to the domestic industry, the following parameters show that injury to the domestic industry has been caused by dumped imports.

- a) Imports of the product under consideration have increased significantly and the market share of the subject countries increased, whereas that of the domestic industry's share decreased.
- b) Apparently, the domestic industry has lost its sales volumes due to the presence of the dumped subject goods in India.
- c) The imports, from the subject countries as a whole, are significantly undercutting the prices of the domestic industry.
- d) The imports are significantly depressing the domestic prices.
- e) The deterioration in the domestic industry's profits and return on capital employed are apparently as a result of the dumped imports.
- f) The domestic industry's performance has become negative in respect of a number of parameters.

**Magnitude of injury and injury margin**

108. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the AD Rules, as amended.

**Co-operating Exporter**

Particulars	Unit	M/s.Huntsman Petrochemical Corporation(USA)	BASF SE(EU)	M/s. Anhui Haoyuan Chemical Group Co. Ltd(China PR)
NIP	US\$/KG	***	***	***
Landed Price	US\$/KG	***	***	***
Injury Margin	US\$/KG	***	***	***
Injury Margin range	%	20-25	10-15	10-15

**Non-Co-operating Exporter**

Particulars	Unit	China PR	USA	EU
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NIP	US\$/KG	***	***	***
Landed Price	US\$/KG	***	***	***
Injury Margin	US\$/KG	***	***	***
Injury Margin(%) range	%	30-35	40-45	30-35

**K. Conclusions:**

109. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:
- a. The product under consideration has been exported to India from the subject countries below associated normal values, thus resulting in dumping of the subject goods from the subject countries/territory.
  - b. The domestic industry has suffered material injury in respect of the subject goods.
  - c. The material injury to the domestic industry has been caused by the dumped imports of the subject goods from the subject countries/territory.

**L. Indian industry's interest & other issues**

110. The Authority notes 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. Imposition of anti-dumping measures would not restrict imports from the subject countries/territory in any way, and, therefore, would not affect the availability of the subject goods to the consumers.
111. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping measures would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

**M. Recommendations**

112. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the Act and the AD Rules and having established

definitively positive dumping margins concerning imports of the subject goods originating in or exported from the subject countries and as well as material injury thereof to the domestic industry caused by such dumped imports; the Authority is of the view that imposition of definitive duty is required to offset the dumping and 'injury' in the instant matter. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties concerning imports of the subject goods from the subject countries/territory in the form and manner described hereunder.

113. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning all imports of the subject goods originating in or exported from the subject countries.

**Duty table**

Sl. No	Heading/ Sub-heading	Description of goods	Country /territory of Origin	Country /territory of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	2933.39.17	Morpholine	China PR	China PR	M/s. Anhui Haoyuan Chemical Group Co. Ltd	M/s. Anhui Haoyuan Chemical Group Co. Ltd	0.29	Kg	US\$
2.	-do-	-do-	China PR	China PR	Any other than combination at Sr. No.1		0.63	Kg	US\$
3.	-do-	-do-	Any country other than the subject countries	China PR	Any	Any	0.63	Kg	US\$
4.	-do-	-do-	China PR	Any country other than the subject countries	Any	Any	0.63	Kg	US\$

5.	-do-	-do-	European Union	European Union	M/s BASF SE	M/s BASF SE	0.35	Kg	US\$
6.	-do-	-do-	European Union	European Union	Any other than combination at Sr. No.5		0.68	Kg	US\$
7.	-do-	-do-	Any country other than the subject countries	European Union	Any	Any	0.68	Kg	US\$
8.	-do-	-do-	European Union	Any country other than the subject countries	Any	Any	0.68	Kg	US\$
9.	-do-	-do-	USA	USA	M/s.Huntsman Petrochemical Corporation	M/s.Huntsman Petrochemical Corporation	0.50	Kg	US\$
10	-do-	-do-	USA	USA	Any other than combination at Sr. No.9		0.81	Kg	US\$
11	-do-	-do-	USA	Any country other than the subject countries	Any	Any	0.81	Kg	US\$
12	-do-	-do-	Any country other than the subject countries	USA	Any	Any	0.81	Kg	US\$

114. 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)*  
Designated Authority