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**File No. 7/4/2018- DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF TRADE REMEDIES)
Jeevan Tara Building, 4th Floor 5, Parliament Street, New Delhi-110001**

Dated the 14th March, 2019

NOTIFICATION

FINAL FINDINGS

Subject: Sunset review anti-dumping investigation concerning imports of 'Soda Ash', originating in or exported from Turkey and Russia.

A. BACKGROUND OF THE CASE

1. Whereas, the Designated Authority (hereinafter referred to as the Authority), had issued final findings vide Notification No. 14/3/2011-DGAD dated 9th February 2013, recommending imposition of definitive anti-dumping duties on the imports of "Soda Ash" (hereinafter referred to as the subject goods, or product under consideration or Disodium Carbonate), originating in or exported from Turkey and Russia (hereinafter referred to as the subject countries). The definitive anti-dumping duties were accordingly imposed by the Central Government vide Notification No. 08/2013 – Customs (ADD) dated 18th April 2013.
2. And whereas, the Authority conducted a mid-term review investigation under Rule 23 and the Authority vide final findings dated the 22nd July, 2017 revoked the anti-dumping dumping duties levied on subject goods from subject countries.
3. And whereas final findings dated the 22nd July, 2017 was challenged before the Hon'ble High Court of Gujarat in Special Civil Applications No.14203,14205 and 14207 of 2017 and the High Court vide its order dated the 31st July, 2017 restrained Union of India from acting upon the MTR final findings order dated 22.7.2017.
4. And whereas the Central Government vide Notification No. 51/2017-Customs (ADD) dated 18th October, 2017 rescinded customs notification No. 08/2013–Customs (ADD) dated 18th April 2013, and stated that such recession shall remain in abeyance subject to the final order of the Hon'ble High Court of Gujarat in Special Civil Applications Nos. 14203, 14205 and 14207 of 2017.
5. And whereas, a petition was jointly filed by M/s Nirma Ltd and M/s DCW Ltd (hereinafter referred to as 'petitioners') in accordance with the Act and the Rules, seeking initiation of sunset review of the anti-dumping duty in force on import of "Soda Ash" for extending the duties for a further period of five years, alleging likelihood of continuation or recurrence of dumping and injury of the subject goods originating in or

exported from Turkey and Russia.

6. And whereas, based on examination of the petition filed by the Domestic Industry, the Authority came to the conclusion that there was no need to initiate the Sunset Review concerning imports of Soda Ash originating in or exported from Turkey and Russia and accordingly, speaking order dated 5th April 2018 was issued intimating the decision of the Authority on Sunset Review petition.
7. And whereas against the said speaking order, the Domestic Industry filed Special Civil Applications No. 5798 of 2018 and 5808 of 2018 before the Hon'ble High Court of Gujarat at Ahmedabad. The extracts of directions dated 12.04.2018 from Hon'ble High Court are reproduced as under

“Pending admission and final hearing of this Petition, this Hon'ble Court be pleased to direct the Respondent No.2 to initiate Sunset Review investigation under the provisions of Section 9A(5) of the Act read with Rule 23(1B) of the Rules on or before 16.04.2018 and further direct the Respondent No.1 to issue an appropriate notification in terms of 2nd proviso to Section 9A(5) of the Act for extension/continuation of the Duty imposed by way of Customs Notification dated 18.04.2013 for a period not exceeding 1 year pending the outcome of Sunset Review before the expiry of the period of original notification, that is, on or before 17.04.2018.”

8. Pursuant to the above stated orders of the Hon'ble High Court of Gujarat, the Designated Authority initiated the present sunset review in accordance with section 9A (5) of the Custom Tariff Amendment) Act read with Rule 23 of Antidumping Rules vide Initiation Notification F.No. 7/4/2018-DGAD dated 16th April 2018.
9. The present sunset review however was subject to the outcome in the Special Civil Applications No. 5798 of 2018 and 5808 of 2018 and that in the Special Civil Applications Nos. 14203, 14205 and 14207 of 2017, all pending before the Hon'ble High Court of Gujarat.
10. The Hon'ble High Court of Gujarat vide its order dated 11.06.2018 set aside the final findings passed in the mid-term review and accordingly the anti-dumping duties imposed on import of Soda Ash from Turkey and Russia was allowed to continue for full term of five years. Accordingly, the present Sunset review does not suffer from any legal infirmity.

B. PROCEDURE

11. The procedure described below has been followed with regard to the investigation:
 - i. The Authority sent copies of the initiation notification dated 16th April, 2018 to the embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic producers, as per available information. The known interested parties were requested to file the questionnaire responses and make their views known in writing within the prescribed time-limit.
 - ii. Copies of letters and questionnaires sent to the exporters were also sent to

embassies of the subject countries along with a list of known exporters/producers, with a request to advise the exporters/producers from the subject countries to respond within the prescribed time.

- iii. Copy of the non-confidential version of the application filed on behalf of the applicants was made available to the known exporters, domestic producers and the embassies of the subject countries in accordance with Rule 6(3) of the AD Rules.
- iv. The Authority forwarded a copy of the public notice initiating the SSR to the following known producers/exporters in the subject countries and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4) of the Rules:

Soda Sanayii A.S. Turkey TurkiyeSiseVe Cam Fabrikalari A.S. Is Kuleleri, Kule – 334330 4, Levent Istanbul Turkiye
ETI Soda, Ciner Group, Pasalimani Cad No.4, Uskudar 34674, Istanbul Turkey
SASS SODA ASH SALES & SERVICES M. Tolmachevskiy per. 10 Office 7, 8 119017 Moscow Russia
JSC Bashkirian Chemistry 8, B PoluyaroslavsiyPereulok, Moscow, 105 120, Russia

- v. In response to the initiation of the subject investigation, following producers/exporters from Turkey and Russia had responded by filing questionnaire response and made submissions:
 - i. Soda Sanayii A.S., Turkey
 - ii. M/s Trade House Ltd (Bashkirian Chemistry), Russian Federation
 - iii. M/s Open Joint Stock Company “Berezniki Soda Works”, Russian Federation
 - iv. M/s Public Stock Company, Crimea Soda Plant, Republic of Crimea, Russian Federation
- vi. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

Gujarat Guardian Ltd, Village- Kondh, Valia Road, Plant Sate Highway No.13, Ankleshwar, Bharuch 393001
Float Glass India Ltd., T-7, Midc, Industrial Area, Taloja, Maharashtra
Hindustan National Glass & Ind. Ltd., Rishra, West Bengal
Procter & Gamble Hygiene & HealthCare, Mandideep PInt L&C-MFG, Plot No.182, Mandideep, Madhya Pradesh
Advatecg Industries Pvt Ltd, Dhanali, Village –Dhanali, AI-Kadi Distrcit, Mahesana, Gujarat

U.P. Glass Manufacturer, Syndicate, 14-Monapuram, Near Ganesh Nagar, Firozabad-283203, U.P.
Fena (P) Ltd, A-237, Okhla Industrial Area, Phase I, New Delhi-20
Pollachi Chamber of Commerce & Industry, RP Complex, IInd floor, 14, Balagopalapuram Street, Pollachi-642001
Power Soap Ltd, 62-B, North Boag Road, T.Nagar, Chennai – 600017
Alembic Glass Industries Ltd, Alembic Road, Baroda (Vadodara), Gujarat
Deepak Nitrite Ltd, 4/12, Chemical Complex, GIDC, Nanfessari, Baroda (Vadodara), Gujarat
Hindustan Uniliver Ltd., Party Address Dakshina Building, 8th Floor, Plot No-2 Sector-11, CBD Belapur, Navi Mumbai
Albright Morarji & Pandit Ltd, Ambarnath, Dist. Thane, Maharashtra
Saint-Gobain Glass India, Head Office and Plant: A-1 SIPCOT Industrial Park, Sriperumbudur-602105, Kanchipuram District – Tamil Nadu
Asahi India Glass Ltd., 5th Floor, Tower-B, Global Business Park, Mehrauli-Gurgaon Road, Gurgaon-122002(India)
Shree Union Organics P Ltd, BS-3, Apeejay. 130, Bombay Samachar Marg, Mumbai-23
Vasundhara Rasayan Ltd, C-104, MIDC Industrial Area, Mahed, Dist. Raigad, Maharashtra
Shantinath Detergents Pvt Ltd, P-15, Kalakar Street, Kolkata-700007
Advance Home & Personal Care Ltd, Advance Surfactants India Ltd, 511/2/1, Village Rajokri, New Delhi-38
S. Kumar Detergent P. Ltd, Plot No.34, Sector-2, Industrial Area, Pithampur-454775 Distt Dhar, M.P.
Hind Silicates Pvt Ltd., 3A, Auckland Place, 5th floor, Kolkata-17
P & J Cretechem (P) Ltd, 318, Swapnalok, 92/93, SD Road, Secunderabad-500003, AP, India
J.J. Patel Industries, Gondal Road, B/H Rajkamal Petrol Pump, Vavdi, Rajkot-360004
Modern Glass Industries, Coal Siding Road, S.N. Road, Firozabad-283203
Sandeep Organics Pvt Ltd., 104, Nain Krupa, 118/122, Kazi Syeed, Street, Masjid Bunder (West), Vadgadi, Mumbai - 400003
Alembic Glass Industries Ltd., Alembic Road, Baroda(Vadodara) Gujarat
Rohit Surfactants(P) Ltd., 117/H-2/202, Pandu Nagar, Kanpur-05
BDJ Glass Industries Pvt. Ltd, 1 Kyd Street, Place Court, 1 st Floor, Suite-14-A, Kolkata-700016
Jagatjit Industries Ltd., Plot No.78, Sector-18, Institutional Area, Gurgaon-122001

Haldyn Glass Gujarat Ltd., 9, Gayatri Commercial Complex, Behind Mittal Industrial Estate No.5, Andheri Kurla Road, Marol Naka, Andheri(E), Mumbai-400059
Hipolin Limited, Madhuban", 4 th Floor, Ellisbridge, Ahmedabad-380006
Modern Glass Industries, Coal Siding Road, S.N. Road, Firozabad-283203
Detergent Manufacturers, Association (Delhi Region), 148, New Okhla Industrial Complex-1, New Delhi-110020
Mauli Exports, Plot No.97-98, Sector – 25, Part-II, Industrial Area, HUDA, Panipat – 132 104, Haryana
M/s Chempex International, 393/III/6 Bazer, Bikanerian, Katra, Ahluwalia, Amritsar, Punjab
Tata Chemicals Ltd., Leela Business Park, Andheri Kurla Road, Andheri (E), Mumbai -59
M/s Tuticorin Alkali Chemicals and Fertilizers Ltd., 534, Anna Salai, Teynampet, Chennai -18
AGI Glasspac, Glass factory Road, Moti Nagar, Post Box. 1930,Shanth Nagar, Hyderabad – 500 018
Power Soaps Ltd., A-8, 1st Main Road, Ambattur Industrial Estate Chennai – 600 058
Hindcon Chemicals (P) Ltd., 62/B, Braunfled Row,1st floor, Calcutta – 700 027
Empire Industries Ltd., Empire House, 414, Senapati Bapat Marg, Lower Parel, Mumbai – 13

vii. In response to the above notification, following importers/users filed importer questionnaire response and made submissions.

a. Hindustan Unilever Limited

viii. Initiation notification was also sent to the following associations:

Detergent Manufacturers Association (Delhi Region)
Indian Chemical Merchants & Manufacturers Association
Bulk Drug Manufacturers Association(India)
Indian Glass Manufacturers' Association
The Dyers & Chemical Merchants Association
All India Glass Manufacturers Federation
Alkali Manufacturers Association of India
Indian Soap & Toiletries Maker's Association

ix. The following parties also made submissions during the course of this investigation:

- i. Domestic industry – M/s Nirma Ltd. and M/s DCW Ltd.
- ii. Ministry of Trade, Republic of Turkey
- iii. The Trade Representation, Russian Federation
- iv. Soda Sanayii A.S., Turkey

- v. JSC Bashkirian Chemistry, Russian Federation
 - vi. PJSC Soda Crimea Plant, Republic of Crimea, Russian Federation
 - vii. Detergent Manufacturers Association of India
 - viii. Indian Glass Manufacturers' Association
 - ix. Hindustan Unilever Ltd.
 - x. Saint Gobain India Pvt. Ltd.
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- x. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
 - xi. Investigation was carried out for the period starting from 1st April, 2016 to 30th September, 2017 (POI). However, injury examination was conducted for a period from 2013-14, 2014-15, 2015-16 and the POI. Post-POI period considered for analysis is 1 October 2017 to 30 September 2018.
 - xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange for details of imports of subject goods for the past three years in addition to the period of investigation and post-POI. The Authority has, therefore, relied upon the DGCI&S data for computation of the volume of imports and required analysis.
 - xiii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry 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. The Non-Injurious Price (NIP) has been determined by the Authority in terms of the principles laid down under Annexure III to the AD Rules.
 - xiv. In accordance with Rule 6(6) of the Anti-dumping Rules, judgment of Gujarat High Court the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 25th July, 2018. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
 - xv. 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.
 - xvi. 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 the final findings on the basis of available facts.

- xvii. The Authority disclosed essential facts under consideration to all parties vide disclosure statement dated the 8th February, 2019. Adequate time was given to all parties to submit their comments on the disclosure statement. Submissions of all parties on the disclosure statement have been recorded and examined at appropriate places in the present findings
- xviii. *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.
- xix. The average exchange rate of 1US\$ = Rs 65.67 prevailing during the POI has been adopted by the Authority

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 12. The Product under Consideration (PUC) in the original investigation as well as in the present sunset review is 'Soda Ash'. In the original investigation the PUC was defined as under:

"i. The product under consideration in the present investigation is Disodium Carbonate, also known as Soda Ash having chemical formula Na₂CO₃. Soda Ash is produced in two forms - Light Soda Ash and Dense Soda Ash. The difference in the two types is bulk density. It can be produced through synthetic route and natural route, known as dissolution process. The present investigation includes all types and forms of Soda Ash.

ii. Soda Ash is an essential ingredient in the manufacture of detergents, soaps, cleaning compounds, sodium-based chemicals, float glass, container and specialty glasses, silicates and other industrial chemicals. It is also widely used in textiles, paper, metallurgical industries and desalination plants. Soda Ash is classified under Chapter 28 of the Customs Tariff Act under subheading No. 2836.20. The customs classification is, however, indicative only and is not binding on the scope of the present investigation."

- 13. None of the importers, consumers, exporters, domestic industry and other interested parties have made any objection with regard to the scope of the product under consideration and like article. In view of the above, the scope of the product under consideration in the present review investigation remains the same as that in the original investigation.

D. DOMESTIC INDUSTRY AND STANDING

Submissions made by the Petitioners

- 14. The following submissions have been made by the Petitioners with regard to standing and scope of the domestic industry:
 - i. The production of the participating companies constitutes a major proportion of the total domestic production. Further, petitioner companies are eligible domestic producers. Thus, the participating companies constitute the domestic industry within the meaning of Rule 2(b) of the AD Rules.
 - ii. Related exporter of Nirma has not exported goods in the POI. Further, as

regards the claims raised hereinabove on the constitution of the domestic industry, the same have not been addressed to it in written submission filed earlier. Standing is not a mandatory requirement in a SSR investigation, Rule 23, dealing with reviews, specifically excludes Rule 5. Furthermore, in the present case where the Petitioners have admittedly claimed a case of no injury, there appears to be no reason to require analysis of data relating to continued injury to the domestic industry. Thus, there is no basis to seek data of the other producers. Without prejudice, the production of the petitioning companies constitutes a major proportion in the Indian production and therefore the Petitioners cannot be denied relief only because other producers have not provided relevant information.

Submissions made by other interested parties

15. The following submissions have been made by other interested parties with regard to standing of the domestic industry:
 - i. In para 32 of their Petition, the Petitioners have averred that M/S Nirma Ltd has a related producer outside India and that there were no exports made by the said related producer to India during the POI. HUL submits that the DA should examine if the related producer has in fact, not exported the PUC during the POI to India, to render Nirma an eligible domestic industry under Rule 2(b) of the AD Rules.
 - ii. At para 28 of the Petition, Petitioners have also stated that there are other domestic producers including M/s GHCL, Tata Chemicals Ltd., Tuticorin Alkali Chemicals & Fertilizers Ltd of the PUC in India. However, they have also stated that GHCL has imported the PUC and that Tata Chemicals is ineligible in view of the original investigation. There appears to be no evidence supporting such claim. GHCL has historically been part of the domestic industry in previous iterations of the present investigation. HUL requests the DA to call for appropriate information from GHCL and assess whether its imports truly disqualify it from being considered domestic industry. HUL further submits that the mere existence of imports does not automatically render a domestic producer ineligible under Rule 2(b) of the AD Rules. An analysis of GHCL's Annual Report shows that their Soda Ash division is performing exceptionally, with their profits having increased by *** and capacity utilization going over ****%.
 - iii. The exclusion of Tata Chemicals is not permissible in law and is illegal. The discretion to include or exclude an importer of the subject goods or a party related to an importer or exporter of the subject goods rests with the Authority. While the domestic industry has excluded Tata Chemicals from the scope of the domestic industry on the basis that it has a related producer in Kenya, it has adopted a completely opposite approach while taking M/s Nirma, who have a related producer in USA, as part of the domestic industry. By excluding Tata Chemicals from the scope of the domestic industry, the petitioners have denied the Authority the opportunity to exercise discretion under Rule 2(b).
 - iv. For the aforementioned reasons, the petitioner failed to provide sufficient information required for the initiation of a sunset review in terms of Rule 23(1)(B) of the Rules. The Authority is requested to terminate the review on this ground alone.

Examination by the Authority

16. The Authority notes that Rule 2(b) of the AD Rules read as follows:

“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”.

17. Rule 2(b) of the AD Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. The Authority is of the considered view that the use of the word ‘may’ in Rule 2(b) suggests that the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. It has accordingly been the consistent practice that exclusion of such producers is decided on a case-to-case basis, by taking into consideration all the legal and economic aspects involved.
18. The Authority notes that in the original investigation also some of the domestic producers were involved in imports of subject goods from the subject countries or were related to the exporters/importers of subject goods from the subject countries. In the final findings of the original investigation, the Authority has clearly dealt with domestic industry and its standing. In the original investigation, the Authority had considered GHCL, Nirma Ltd and DCW Limited as “domestic industry”, in accordance the requirements of Rule 2(b) read with Rule 5(3) of the AD Rules. The present review petition has been jointly filed by Nirma Ltd and DCW Limited.
19. For the purpose of present review, the Authority notes that DCW Limited has neither imported the subject goods from subject countries nor is related to either importer or exporter of subject goods. Further, Nirma Ltd has not imported the subject goods during the injury period. It is alleged that Nirma Ltd has a related producer in USA that was involved in exporting the subject goods to India. The Authority observes that Nirma Ltd’s related producer is based at USA and not in the subject country. Authority further notes that Nirma has neither imported subject goods from the subject country nor is related to any importer. It is thus held that Nirma Ltd and DCW Limited qualify as domestic industry in terms of Rule 2(b) read with Rule 5(3) of the AD Rules.

E. CONFIDENTIALITY

Submissions made by Petitioners

20. Following submissions have been made by the Petitioners:

As regards the claims of excessive confidentiality claimed in section VI, the domestic industry submits that the same contains information of the basic costing of the domestic industry and the disclosure of actual information with regard to the domestic industry can jeopardize the future business of the product. It is

surprising to see that the exporter has raised this issue when the exporter has not filed the NCV of response at all.

Submissions made by other interested parties

21. Following submissions have been made by other interested parties:

- i. Petitioners have claimed confidentiality on several information and data in the Petition, which significantly impairs the ability of Detergent Manufacturers Association of India (DMAI) to defend their interests in so far as essential facts are unknown to them. In particular, the Petitioner had failed to provide a good cause for claiming confidentiality on certain essential facts, as required by Rule 7 of the AD Rules and Article 6.5 of the AD Agreement. It is submitted that information relating to export sales volume, captive consumption, inventory and employment should be reported as per actuals as this information cannot be considered confidential due to the fact that its disclosure neither gives DMAI a significant competitive advantage nor does it adversely affect the Petitioners significantly.
- ii. As per the requirements enshrined in Rule 7 of the AD Rules and Trade Notice 1/2013, the non-confidential version of the Petition is required to contain an indexation and/or a summary of the confidential data. Further, the non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. Paragraph (vi) of the Trade Notice 1/2013 explicitly states that any submission made without a meaningful non-confidential version on confidentiality shall not be taken on record by the Designated Authority. The WTO Panel in Argentina – Ceramic Tiles while examining whether the authorities were allowed to rely on confidential information in their determination, considered that the purpose of the non-confidential summaries is to inform the interested parties so as to enable them to defend their interests. The Designated Authority cannot treat information as confidential merely at a request for confidentiality by the party providing the information. In the *Sterlite Industries (India) Pvt. Ltd. v Designated Authority*, 2003 (158) ELT 673, the Hon'ble Supreme Court held that confidentiality under Rule 7 should not be automatically assumed. The party submitting such information required to provide a non-confidential summary. In the event that a party chooses not to furnish the same, they are required to submit a statement of reasons explaining why such summarization cannot be provided. The Court also observed that not making relevant material available to the other side handicapped their ability to file an effective appeal. This view of the Court was later confirmed in the *Union of India & Anr. v Meghmani Organics Ltd. & Others* case.
- iii. The non-confidential version of the Petition fails to adhere to the confidentiality requirements under Rule 7, Trade Notice 1/2013 as well as the abovementioned judgements. The Petition contains information regarded as confidential without any good cause being shown and fails to permit a reasonable understanding of the substance of the information submitted. Thus, we request that the non – confidential information be made available without delay so that DMAI can fully exercise their rights of defence.
- iv. The applicants have kept information on several economic parameters in violation

- of Rule 7 of the Anti-dumping Rules, 1995 and Article 6.5 of the Anti-dumping Agreement. The claim of confidentiality is excessive with respect to information relating to total Indian demand; information pertaining to the production and sales at individual level; information pertaining to the production and sales of other Indian producers; and information pertaining to costing of the applicants, as non-confidential summaries have not been provided in the petition.
- v. Information pertaining to statement for raw material for 3 years in Statement B; statement of cost of production in Format CI; allocation of and apportionment of expenditure in Format CII; statement of consumption of utilities in Format D; and statement of sales realisation in Format E can all be provided in indexed form. Certain other information has also been kept confidential setting new low standards of unwarranted and illegal claims of confidentiality.
 - vi. The Hon'ble Supreme Court held in *Sterlite Industries (India) Ltd. v. Designated Authority*, 2003 (158) ELT 673 (SC) that confidentiality was not to be granted automatically and should be based on thorough scrutiny. Party providing confidential information should provide a summary of the same and where summary is not possible, provide a statement of reasons as to why summarisation is not possible. The Authority is also required to evaluate the claims of confidentiality and determine whether the information in question can be kept confidential or not. In the present case, the claim for confidentiality has been granted without a thorough evaluation of the information to which the confidentiality claim pertains.
 - vii. The WTO Appellate Body Report in *DS 397 European Communities – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* held that it is for the party claiming confidentiality to show good cause for claiming confidentiality and the authority needs to objectively assess the “good cause” alleged and further scrutinise the party's showing in order to determine whether the request was sufficiently substantiated. Confidentiality of information leads to due process concerns and such due process requires adequate opportunity to interested parties for the defence of their interests. Such opportunity must be meaningful in terms of a party's ability to defend itself.
 - viii. The Authority is requested to provide proper non-confidential versions of the petition with the confidential text redacted so as to enable interested parties to defend their interests fully and completely and to assist the Authority in the best manner.
 - ix. The non-confidential version of the petition does not allow for a reasonable understanding of the allegations contained therein. The non-confidential version of the petition clearly violates the requirements specified in Rule 7 of the Rules and Trade Notice No. 1/2013 dated December 9, 2013.
 - x. The domestic industry has claimed excessive confidentiality and filed an incomplete petition. In response to Section-VI (Costing Information) of the petition, the domestic industry has not furnished any information at all. The domestic industry has replied to all questions raised in Part VI of the petition “enclosed and as per balance sheet”. Nothing has been provided in enclosed formats A to E. Petitioners have marked everything as *** and have not provided sufficient reasons as to why confidentiality was claimed and why summarisation was not possible for certain information. The petitioner is required to show

justification for its claim but has failed to do so.

- xi. The costing information is to be provided for the product under consideration. In response to the few questions, the petitioner has submitted "As per balance sheet". In a multi business company like Nirma Limited and DCW Limited, the balance sheets are consolidated for various products in each segment. It is not possible to assess such consolidated financial information and link the same to the product under consideration. Accordingly, it is evident that the petitioner has not provided complete information as required under the application. Such information is crucial, and the petitioner should be requested to provide the information or at least a summary of documents and indexed data in non-confidential manner.

Examination by the Authority

22. With regard to confidentiality of information, Rule 7 of the AD Rules provides as follows:93

Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

23. Information provided by the 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. The Authority made available the non-confidential versions of the evidences submitted by various interested parties in the form of public file.

F. MISCELLANEOUS SUBMISSIONS

Submissions made by the Petitioners

24. Following miscellaneous submissions have been made by the Petitioners:
 - i. With regard to the order dated 4/4/18, the High Court has overruled the same and

directed initiation of SSR investigation on its own merit. The purpose of this review is to examine what has been the result of the ADD imposed. The Authority needs to examine if the duty in force needs to continue in case there is likelihood of continuation or recurrence of dumping and injury to the Domestic Industry. The Domestic Industry cannot alone provide all relevant information. The exporters in this case have not filed EQR Part-II stating that they have not been asked to. We request the DA to direct the exporters to file EQR Part-II. The exporter has conveniently ignored to give information on the economic parameters of the exporter as required under Appendix 1 of the new exporter questionnaire format. Thus, the exporter is mischievously hiding information.

- ii. The MTR final findings concluded by the Authority were challenged in the High Court of Gujarat, and the same held that the findings were inappropriate and does not consider relevant parameters. The petitioners request the Authority to appreciate the various crucial aspects of the present case as presented by the domestic industry and thereafter conclude whether or not there is likelihood of recurrence of dumping and injury. While it is accepted that in SSR the domestic industry pleading extension on the ground of likelihood of dumping and injury needs to provide evidence establishing the same, it is submitted that the responding exporters must also establish that dumping is unlikely to continue or recur in the event of cessation of ADD. Unless the exporters establish on the basis of information under SRR questionnaire Part II that dumping is unlikely to continue, intensify or recur in the event of cessation of ADD, it must be held otherwise.
- iii. The Authority will proceed as per its established practice. Further, since the present petition claims likelihood of recurrence of injury, the Authority upon finding the same, may kindly extend the duties as levied in the original findings. It is however pointed out that the exporters have not filed responses to EQ-Part-II, clearly establishing them as non-cooperative in the present case.
- iv. It is too belated to raise averments related to incompleteness of petition, considering that the DA has already held hearing. If the interested parties had any such grievance, they should have pointed out the same at the stage of initiation and in any case much before the hearing. The interested parties should not be allowed to colour the investigations by raising such claims at such belated stage of the proceedings. Alternatively, the DA may kindly allow further opportunity to the Domestic Industry to present its case by fixing public or personal hearing. Raising such arguments at this stage of the proceedings is nothing but an attempt to create a bias and cause prejudice to the rights of the domestic industry. Petitioners have provided all relevant information as per the prescribed formats.
- v. The Petitioners have every right to lodge their claims consistent with law. The Petitioners have not submitted that the DA should not call data from GHCL or Tata Chemicals or any other parties. The comparison of Tata Chemicals situation with Nirma is totally misplaced. Imports from Kenya during the present POI were ***MT constituting *** % of total imports, *** % of demand in India and *** % of Tata Chemicals' production. As opposed to this, the related party of Nirma has not exported any material to India during relevant period. Letter from Nirma giving therein information with regard to exports by its US affiliated producer to India is enclosed with these submissions. It would be seen that the interested

parties are comparing the incomparable.

- vi. Threat parameters as laid down under Rules are – a) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter; b) indicating the likelihood of substantially increased dumped exports to Indian markets; c) taking into account the availability of other export markets to absorb any additional exports. In the present case – a) petitioners have submitted with evidence the present demand supply gap in subject countries. It is submitted that capacity which is more than the demand in the country of exports is a freely disposable capacity. Further, significant third country exports are being made by the subject countries. It would be seen that significant exports are being made to other countries at prices lower than that to India. These exports are also likely to be diverted to India. Further, the Petitioners have provided adequate evidence showing imminent substantial increase in capacity by the producers in subject countries; b) the fact that there is significant surplus capacity and capacity expansions planned, the surplus and additional capacity is likely to increase imports into India which has a growing market; c) Petitioners have also provided evidence showing demand-supply gap in various countries. Therefore, in a situation where there is a surplus of subject goods, any market such as India with growing market becomes a favourable market.

Submissions made by other interested parties

25. Following miscellaneous submissions have been made by other interested parties:

- i. Turkey wants to express regret that the High Court of Gujarat overturned the decision of the Designated Authority which repeatedly decided not to continue the anti-dumping duty imposed on imports of the subject goods. We expect this sunset review to be terminated as soon as possible for the sake of maintenance of free and fair bilateral trade.
- ii. India is an important trading partner of Turkey and bilateral trade is largely in favour of India. In 2008, Turkish exports to India amounted to USD 500 million while India's exports to Turkey amounted to USD 2.4 billion. In the last decade, Turkey's exports to India increased only by 40%, while India's exports to Turkey almost tripled. In 2017, the bilateral trade volume between Turkey and India stood at USD 6.9 billion. Continuation of measures will have significant trade-diverting effects on our bilateral trade and will undoubtedly scale up the trade deficit against Turkey to higher levels.
- iii. According to Turkish Statistical Institute, Turkey's soda ash exports to India decreased by 9.5% from USD 14 million in 2013 to USD 12.8 million in 2017. Turkey's exports hit the lowest point with USD 2.1 million in 2016.
- iv. Applicants' claim that volume of imports from subject countries has increased significantly in the POI but data provided by them in Annexure 1.2 in support of this claim is misleading. POI for the purpose of the present investigation covers the period April 2016 until September 2017. Therefore, it is irrelevant to compare POI with previous financial years. DGCI&S import statistics clearly indicate that the volume of imports from subject countries have remained stable since 2014-15 and declined during the injury period. This data clearly reveals that volume of imports from subject countries have declined during the injury period.

- v. During the mid-term review investigation concerning imports of 'Soda Ash' originating in or exported from Turkey and Russia, the investigating authority refuted the claim of Indian producers of soda ash that there are unutilized freely disposable capacities in subject countries. Now applicants repeat this claim as a ground for their line of arguments about threat of injury.
- vi. The petitioners have not brought about any substantive evidence to prove the condition for initiation of the sunset review of anti-dumping investigation.
- vii. The facts on the record reveal that the petitioners have exaggerated the increased imports of the subject product, and deliberately invented injury to the domestic industry.
- viii. The claims of the petitioners are contrary to the published information and appear to be concocted and fabricated to show injury to the petitioners.
- ix. The petitioner failed to evaluate some of the relevant economic factors and indices listed in Rule 11 of the Rules and para IV of Annexure II thereof. Indexed data on unit price, total costs, investments, employment and stocks are not explicitly provided and analysed in the narrative of the petition, which lacks a meaningful analysis. The authority should have examined the accuracy and adequacy of the evidence in the petition in terms of Article 5.3 of the Anti-dumping Agreement and standards laid down by WTO panels in United States – Softwood Lumber from Canada, Guatemala – Cement II and Mexico – Steel Pipes and Tubes.
- x. In recent cases, the Director General has either declined initiation or terminated the investigations where there was no injury or likelihood of injury, for example, in Nylon Filament Yarn, Dry Cell Batteries, Viscose Filament Yarn.
- xi. Applying anti-dumping measures in this case will be inconsistent with the long-term and overall interests of the Indian domestic industry and its downstream industries. There was no dumping of the subject goods from Russia and imported goods did not cause any injury to the domestic industry.
- xii. It is clear that there is no injury to the domestic industry even though there is continued allegation of dumping.
- xiii. As per the parameters of paragraph (vii) of Annexure II, there is no evidence on record to suggest that there is a likelihood of recurrence of injury if duties are discontinued.
- xiv. Over the last three years, there have been three instances where the Hon'ble Designated Authority has found that there is no injury, and no likelihood of recurrence of injury: i) MTR on China PR, the EU, Kenya, Pakistan, Iran, Ukraine and USA vide final findings dated 22 July 2017; ii) MTR on Turkey and Russia vide final findings dated 22 July 2017; and iii) SSR order on Turkey and Russia vide final findings dated 5 April 2018.
- xv. The onus to establish likelihood falls squarely on the domestic industry, which they have failed to establish with any reliable evidence whatsoever.
- xvi. The petitioners have themselves admitted that substantial dumping is taking place during the period of investigation and further admitted that the domestic industry is not suffering any injury during the period of investigation.
- xvii. The present investigation is a sunset review (SSR), with two mid-term reviews

that had been concluded earlier. At this stage, it is clear that there is no injury to the domestic industry, despite continued allegations of dumping. The finding at para 4 of the SSR Order dated 05/04/18 clearly shows that the domestic industry is earning high profits and return on capital employed. Even the other injury parameters from the Petition indicate an absence of injury.

- xviii. The question that arises for consideration is therefore whether there is a likelihood of recurrence of injury. There appears to be no evidence on record to suggest that there is a likelihood of recurrence of injury if duties are discontinued.
- xix. The present investigation being a sunset review, the requirements of Rule 23 of the AD Rules as well as Article 11 of the AD Agreement are relevant in terms of the analysis to be conducted by the DA in the present case. The same require the DA to determine whether or not the expiry of anti-dumping duties is likely to lead to: continuation or recurrence of dumping; and continuation and recurrence of injury.
- xx. The Petitioners have alleged significant dumping, which the DA admitted in its order dated 05/04/2018. However, HUL requests the DA to assess the responses of the individual cooperating entities and accordingly determine whether there has in fact been a continuation of dumping or whether the expiry of duties is likely to lead to a recurrence of dumping. With regards to the analysis for likelihood of continuation or recurrence of injury is concerned, it is important to note that the domestic industry is clearly not suffering present injury.
- xxi. HUL submits that the Petitioner has not provided all requisite post POI data, due to which the alleged likelihood of injury cannot be analyzed by any interested parties. The Petitioners submitted a paper book dated 24/07/18, prior to the oral hearings, which limits post-POI data to import volume, and the same is not sufficient to conclusively determine the likelihood of continuation or recurrence of injury to the domestic industry. Thus, HUL requests the DA to reject the same and not proceed with the investigation unless and until all the requisite post-POI data is made available by the Petitioners.
- xxii. In the Final Findings of the Sunset Review of Anti-dumping investigation concerning imports of Viscose Filament Yarn originating in or exported from China PR, Notification No. 15/16/2016/DGAD dated 20/04/18, the DA noted that the likelihood of injury cannot be established as the post POI data was not provided. It further determined that the domestic industry could not claim to suffer continued injury due to the following reasons: first, no injury suffered with respect to the major economic parameters during the POI, and second, no verifiable post-POI evidence. HUL submits that without such data, and with no iota of evidence provided by the Petitioners for the Post POI data, the present investigation should be terminated immediately due to the absence of likelihood of injury.
- xxiii. Vide their petition at page no. 24, the Petitioners have attempted to shift the burden of proof on the exporters to prove that dumping is unlikely to occur. However, the Petitioners have neither established a likelihood of dumping and injury, nor have they provided verifiable and sufficient evidence on the same. The averments made by the Petitioners with respect to the burden of proof are unfounded and have no legal basis. Rule 23 (1B) of the AD Rules requires an applicant to provide positive information substantiating the need for a review. Once such application is submitted, the DA initiates a review investigation, at the

completion of which it may recommend for the expiry of anti-dumping duty, if the DA comes to a conclusion that injury to the Domestic Industry is not likely to continue or recur on removal of anti-dumping duties. The rule does not require the other interested parties to show that if anti-dumping duty is removed, there is no likelihood of continuation of recurrence of injury. Reliance is placed on the Hon'ble Supreme Court's decision in the Anil Rishi v Gurbaksha Singh case, where the Court held that the onus of proof is always on the party filing an application and the onus of proof could not be shifted. HUL thus submits that the Petitioners cannot shift their burden of proof on the other interested parties. The other parties are required to analyse and comment on the information relied upon by the Petitioners.

- xxiv. In its findings issued in *Certain Rubber Chemicals* Sunset Review, as well as the *Sodium Nitrite* Sunset Review, the DA analysed the following parameters for determining likelihood: first, an increase of subject imports indicating a likelihood of increased importation; second, evidence to demonstrate spare capacities in a subject country which are likely to be diverted to India if duties are removed; third, evidence that proves the existence of depressing/suppressing effect; and fourth, evidence on inventories of the article being investigated. Additionally, in a recent investigation relating to the SSR of the Anti-Dumping Duty in force concerning imports of PTFE, the DA has also analysed other parameters such as, first, dumping margins in previous investigations; second, price attractiveness of the Indian Market; and third, the vulnerability of the domestic industry in terms of price sensitivity of the concerned product and Indian market. HUL submits that the Petitioners in the present submission have not provided concrete or sufficient evidence for proving that discontinuation of duty would lead to recurrence or continuation of injury on account of dumped imports.
- xxv. To establish whether the product is currently being dumped, or if there is an increase in dumped imports, it is pertinent to analyse the authenticated post-POI data which the Petitioners have not provided. Without the abovementioned authenticated data, the likelihood of substantially increased importation cannot be appropriately determined. Without prejudice to the aforementioned, even if the Petitioners' data reflects a significant rate of increase in imports, there is no causal link between the alleged injury suffered by them and the subject imports. Therefore, even if there is no absence of continued dumping, there is an absence of continued injury, which implies that there is no longer a causal link between dumping and injury. In the recent SSR of Anti-dumping investigation concerning imports of 'Caustic Soda' originating in or exported from Saudi Arabia and USA, the concerned authority took into consideration the fact (amongst the others) that the domestic industry therein was able to withstand the increased imports below normal value and have performed positively despite the same, consequently deciding not to recommend continuation of anti-dumping duty.
- xxvi. At para 76 of the Petition, the Petitioners aver that foreign producers from subject countries are holding huge surpluses and significant production capacities and that certain foreign producers such as ETI Soda have installed additional capacity in Feb, 2017. HUL, having closely analysed the evidence provided by the Petitioners, brings to the notice of the DA that such averments are in fact mere conjectures and do not show that there are existing surplus capacities in Subject Countries. For example, the Petitioners while averring that ETI Soda has

installed additional capacity increase of *** MT with on-going investments in Feb 2017 has relied on evidence that reads as “ETI Soda plants started to produce with a ceremony in March 2009. Our plants still produce 1 million ton of soda ash and 100 thousand tons of Sodium Bicarbonate every year. It was planned to commission the additional capacity increase of 600 thousand tons with on-going investments in February, 2017.” From the same, it is clear that while foreign producers have merely planned to commission additional capacity for soda ash and sodium bicarbonate (non-PUC), there is no iota of evidence that there were existing free surplus capacities in the Subject Countries. The submissions made by the Russian Embassy at the oral hearing on 25/07/2018, averred that the increase in Russian capacities is exaggerated by the domestic industry and that any increased capacities are only for the intermediate products and not the PUC.

- xxvii. In the SSR of anti-dumping duty imposed on imports of *Plain Gypsum Plaster Boards*, originating in or exported from China PR, Indonesia, Thailand and UAE, Notification No. 7/8/2017 – DGAD, dated 19/04/18, the DA held that an evaluation of existing surplus capacities and capacity addition must be measured in order to explore the possibility of diversion to Indian market. The conclusion that such diversion is likely cannot be reached without the interested parties providing any verifiable evidence and information with regard to existing surplus capacities and consequent likelihood/possibility of increased dumped exports to Indian market. HUL reiterates that the likelihood analysis in a sunset review is ought to be made on the basis of existing surplus capacities and capacity addition for PUC, if any, export orientation and the post-POI data etc. for PUC, which the Petitioners have not provided. Hence, the averments made by the Petitioners should be rejected. Without prejudice, even assuming that there were existing surplus capacities in the Subject Countries, HUL submits that the fact in itself would not give rise to the conclusion of likelihood of continuation or recurrence of injury based on an observation made by the concerned authority in the SSR of Anti-Dumping Investigation concerning imports of ‘Caustic Soda’ originating in or exported from Saudi Arabia and USA.
- xxviii. The Petitioners have at paras 79 to 81 of the Petition averred that Turkish producers are expanding their production and Russian producers’ exports are gradually increasing in comparison to its local sales. HUL submits that no verifiable evidence has been provided for these claims, and as such their averments should be rejected by the DA. Furthermore, Turkish producers, during the oral hearing on 25/7/18, made submissions that their main focus markets are Egypt and the EU markets due to their geographical proximity with Turkey, and India is not their main market. It is submitted that since India is not the main market of Turkey, it may be noted by the DA that there would be no likelihood of recurrence of dumping or alleged injury to the domestic industry on account of Turkish imports due to their focus on markets other than India. Thus, HUL submits that since the Petitioners have failed to provide any sufficient and verifiable evidence and information, its claims regarding the likelihood of injury due to existing capacities or capacity addition and export orientation should be completely disregarded.
- xxix. Petitioners vide paras 1-3 have described the product scope and made submissions with respect to the same. HUL has no comments on the same. However, it reserves its right to comment in the event new or additional

information is submitted with respect to the product scope.

- xxx. Petitioners vide para 4 have made submissions with respect to the like article. HUL has no comments on the same. However, it reserves its right to comment in the event new or additional information is submitted with respect to the product scope.

EXAMINATION OF THE AUTHORITY

26. Rule 23 of the AD Rules states as follows:

(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive anti-dumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.

27. As regards the submission that post-POI data on economic parameters of the domestic industry was not made available, it is observed that post-POI data to the extent available, was disclosed in the disclosure statement and is made available in the present final findings.
28. As regards the submission that there is no evidence regarding existence of surplus capacities or capacity additions in Turkey and Russia, it is observed that these contentions have been addressed at appropriate places in the final findings.
29. As regards the submission on interest of user industry, the Authority notes that the purpose of anti-dumping duty is to create a level-playing field. It is in the interest of user industry that the domestic industry is given adequate protection from dumped imports that cause injury to the domestic industry.
30. Issues regarding dumping, injury, causal link and likelihood of continuation or

recurrence of dumping and injury have been addressed at appropriate places in the present final findings.

G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

Submissions made by the Petitioners

31. The submissions made by the Petitioners with regard to normal value, export price and dumping margin are as follows:
 - i. Subject goods are shipped from subject countries. The petitioner is not aware of any transshipment. It is widely known in the industry that there are some international traders who buy goods from several countries and then exported to India.
 - ii. Domestic industry has considered prices for Russia as per prices reported in IHS Chemical Global Soda Ash, after efforts at getting information for the Russian market. The Global Soda Ash service provides source of historical and forecasted pricing on a worldwide basis. It has recognition and reliability about the authenticity and usefulness of the data. Since the journal mentions high and low prices, domestic industry has adopted average price.
 - iii. Domestic industry was not able to get any information/evidence of price of subject goods in the domestic market of Turkey. However, given proximity of Turkey to Romania in terms of geographical location, availability of prices in Romania and Turkey are quite comparable. It is submitted that the prices in Romania can be considered appropriate basis for the price of the product under consideration in Turkey. The domestic industry has determined normal value in Turkey on the basis of prices of the product under consideration in Romania for the period April 2016 to April 2017. Petitioners could get actual prices prevailing in Turkey for the period of May 2017 to September 2017 and the same has been considered accordingly.
 - iv. Normal value determined being at ex-factory level, the export prices are required to be adjusted for the following expenses, which the exporter from subject countries have incurred for exporting the material to India – ocean freight, marine insurance, commission, inland transportation, port expenses. Wherever the Petitioners could not get relevant evidence, the Petitioners have adopted the most conservative estimates and submit that the dumping margin are significantly beyond de-minimus even if all price adjustments are ignored.
 - v. Petitioners submit that the comparison made must be considered fair comparison. The prices represent the same level of trade. Further, both the normal value and export price have been determined at ex-factory level. Both the normal value and export price pertain to the same period. Thus, the comparison made by the Petitioners constitutes a fair comparison. It may be seen from the above that the dumping margins are not only above de-minimus but also substantial. Thus, dumping has continued despite imposition of anti-dumping duties.
 - vi. The Authority may kindly do the needful regarding the assessment of responses of individual entities in order to determine if there has been continuation of dumping or if expiry will lead to recurrence. It will be seen that the exporters are dumping the goods. The same was determined even in the MTR investigation.

Further, in a situation of absence of current dumping in the Indian market, the Authority is required to determine the likelihood of recurrence of dumping. Even if dumping is currently negative, the same ipso facto does not establish absence of likelihood.

- vii. The domestic industry requests the Authority to consider the Russian respondents as non-cooperative parties and reject the questionnaire responses filed by them as it is an admitted fact that the questionnaire responses were filed by them just before the public hearing was due to take place, without even providing a non-confidential version of the same. Notwithstanding above, the Petitioners submit that since they attended this hearing without access to the response filed by the Russian exporters, the hearing was not complete. The Petitioners request the Designated Authority to kindly make available the NCV of the questionnaire response and thereafter fix a hearing. Oral hearing can be effective only when pleadings are complete. However, in the instant case, the Petitioners were forced to the hearing without access to the essential information. As such, the present hearing was an ineffective hearing and the domestic industry is severely prejudiced by not getting access to relevant documents and defending its interests. The opportunity to file written submissions is not the same as oral hearing.

Submissions made by the other interested parties

32. The submissions made by other interested parties with regard to normal value, export price and dumping margin are as follows:
 - i. Soda Sanayii A.S. has been cooperating with the Hon'ble Authority over the course of the entire investigation and has placed its complete questionnaire response on record for the exports made to India in the POI in respect of the subject goods originating in or exported from Turkey. If the Authority recommends anti-dumping duty, an individual dumping margin may be accorded to the producer herein due to its complete cooperation in the present investigation.
 - ii. Soda Sanayii A.S. has filed the questionnaire response and requests the Authority to calculate normal value, export price and dumping margin based on the data filed by it.
 - iii. Petitioners have made submissions with respect to the computation of normal value, export price and dumping margin. As a user, HUL does not have any comments on determination of these. However, HUL humbly requests the DA to calculate the same based on the information filed by the cooperating producers/exporters in the present investigation.
 - iv. The Petitioners rely on certain information and data in their Petition in order to determine dumping and injury, but fail, on several instances, to provide the sources of such data. For example, the ex-factory export price has been calculated on the basis of unsubstantiated allowances such as ocean freight, marine insurance, port expenses, commission, bank charges and inland freight. Without any source for such data, DMAI cannot determine the credibility of the same, and as such the Designated Authority is requested to direct the Petitioners to disclose the source of all the above-mentioned allowances, failing which, the data with unknown sources should be disregarded.

- v. In the Secretary (Revenue), GOI v Dyestuffs Manufacturers Association of India, 2015 (322) ELT 3 (SC), the Supreme Court confirmed the CESTAT's ruling that trade journals cannot be relied upon as facts available for the purposes of determining normal value on best judgement assessment principle. In the present review, the Petitioners have determined normal value for Russia based on the prices mentioned in the trade journal IHS Chemical Global Soda Ash. Based on the Hon'ble Court's opinion, the normal value determined in the Petition for Russia should be disregarded.
- vi. The Petitioners have contended that information regarding the price prevailing in Turkey during the POI was unavailable and have instead relied on the prices prevailing in Romania in order to contend that the same were comparable to prices in Turkey and calculated the normal value for Turkey. This approach is strongly objected to as neither have the Petitioners explained how they obtained the data relating to Romania, nor established why the prices in Romania could be treated comparable to prices in Turkey. This approach is incorrect in terms of Section 9A(1)(c) of the Act. The Designated Authority is thus requested to determine the normal values for both the countries only on the basis of the data filed by cooperating producers/exporters.
- vii. Annex 3.2 of the Petition mentions that adjustments have been made in order to compare the normal value and the export price at the same level of trade in the following heads: ocean freight, marine insurance, commission, port expenses, inland freight and bank charges. However, the source of these adjustments and how they were computed have not been disclosed by the Petitioners, despite this information being non-confidential in nature. The determination of the ex-factory export price in the Petition is unsupported by evidence and violates Rule 5(2) & 5(3) of the AD Rules. It is submitted that the dumping margins determined in the Petition for the subject countries are incorrect and should be rejected. Dumping margins for cooperating producers/exporters should be based on their respective data.

H. EXAMINATION BY AUTHORITY

33. The Authority notes that exporter's questionnaire responses have been submitted by producers/exporters from Turkey and Russia. Observations regarding the same are given in the subsequent paragraphs.

Normal value for M/s. Soda Sanayii A.S. , Turkey (Producer/Exporter)

34. From the response filed by M/s. Soda Sanayii A.S., the Authority notes that the company has made direct sales of the product under consideration in the domestic market during the POI. It was also noted that domestic sales were made to related as well as unrelated customers in Turkey. However, the prices to related customers were lower than the prices to unrelated customers. Thus, domestic sales to unrelated customers only have been considered for arriving at the normal value for this company.
35. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production and SGA expenses concerning the product under consideration. Where profit making transactions are more than 80%, the Authority considers all the transactions in the domestic market for the determination of the normal value and in

case, profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value.

36. In this case, based on the ordinary course of trade test, all domestic sales to unrelated customers have been taken for determination of normal value, since the profitable sales were more than 80%. M/s. Soda Sanayii A.S. has claimed adjustments for inland transportation, warehousing expenses, handling and other expenses, credit cost, rebate/discount and the same have been allowed by the Authority. Accordingly, normal value at ex-factory level for the participating producer has been determined as USD *** per MT for M/s. Soda Sanayii A.S.

Normal value of All other Producers/Exporters from Turkey

37. In respect of all other producers/exporters from Turkey who are treated to be non-cooperative, the Authority has determined normal value as per facts available in terms of Rule 6(8) of the AD Rules. The normal value so determined is USD *** per MT.

Normal Value for M/s. Trade House Ltd «Bashkirian Chemistry», Russia (Producer/Exporter) along with its related company M/s. Open Joint Stock Company «Berezniki Soda Works» (Producer), Russia

38. From the response filed by producers, the Authority notes that M/s. Trade House Ltd «Bashkirian Chemistry» and M/s. Open Joint Stock Company «Berezniki Soda Works» are related producers. The responses filed by M/s. Trade House Ltd «Bashkirian Chemistry» and M/s. Open Joint Stock Company «Berezniki Soda Works» are grossly deficient particularly with respect to the cost of production. Accordingly, the Authority rejects the cost of production as claimed by M/s. Trade House Ltd. «Bashkirian Chemistry» and M/s. Open Joint Stock Company «Berezniki Soda Works» and instead determines the normal value on the basis of facts available and the same is shown in the dumping margin table below.

Normal Value for M/s Public Stock Company Crimea Soda Plant, Russia (Producer/Exporter)

39. From the response filed by M/s Public Stock Company Crimea Soda Plant, it is noted that M/s Public Stock Company Crimea Soda Plant is a producer as well as exporter of the subject goods. The response filed by M/s Public Stock Company Crimea Soda Plant is grossly deficient particularly with respect to the cost of production. Accordingly, the Authority rejects the cost of production as claimed M/s Public Stock Company Crimea Soda Plant and instead determines the normal value on the basis of facts available and the same is shown in dumping margin table below.

Normal value of other Producers/Exporters from Russia

40. In respect of all other producers/exporters from Russia who are treated to be non-cooperative, the Authority has determined normal value and export price as per facts available in terms of Rule 6(8) of the AD Rules. The normal value so determined is USD *** per MT.

I. EXPORT PRICE

Export price for M/s. Soda Sanayii A.S., Turkey (Producer/Exporter)

41. From the response filed by M/s. Soda Sanayii A.S., the Authority notes that M/s. Soda Sanayii A.S. is a producer as well as exporter of the subject goods. During the POI,

M/s. Soda Sanayii A.S. has exported subject goods to India directly. Adjustments towards inland freight, credit cost, handling expenses, commission, insurance, overseas freight and foreign exchange loss have been claimed by the producer/exporter. Adjustments towards inland freight, credit cost, handling expenses, commission, insurance and overseas freight have been allowed by the Authority. Accordingly, the net export price determined for exports to India has been determined as USD *** per MT.

Export price for M/s. Trade House Ltd «Bashkirian Chemistry», Russia (Producer/Exporter) alongwith its related company M/s. Open Joint Stock Company «Berezniki Soda Works», Russia (Producer)

42. From the response filed by the producers/exporters, the Authority notes that M/s. Trade House Ltd «Bashkirian Chemistry» and M/s. Open Joint Stock Company «Berezniki Soda Works» are related producers and have exported the subject goods to India during the POI through M/s. Trade House Ltd «Bashkirian Chemistry». Adjustments towards inland freight and overseas freight have been claimed by the producer/exporter and the same have been allowed by the Authority. Accordingly, the net export price determined for exports to India is USD *** per MT.

Export price for M/s Public Stock Company Crimea Soda Plant, Russia (Producer/Exporter)

43. From the response filed by M/s Public Stock Company Crimea Soda Plant, it is noted that this company is a producer as well as exporter of the subject goods. It is further noted that M/s Public Stock Company Crimea Soda Plant has exported the subject goods to the Indian customers through a related company which has not filed the exporter's questionnaire response. The exporter's questionnaire response filed by M/s Public Stock Company Crimea Soda Plant is grossly deficient particularly with respect to cost of production. In the absence of information from related trader as well as the grossly deficient response filed by M/s Public Stock Company Crimea Soda Plant, the Authority is not in a position to determine the export price for the above-mentioned producer. Accordingly, the Authority rejects the response filed by M/s Public Stock Company Crimea Soda Plant and instead determines the export price on the basis of facts available.

Export Price for non-cooperating producers/exporters from Turkey

44. The Authority has determined the export price for non-cooperating producers/exporters from Turkey based on facts available. Accordingly, net export price at ex-factory level for exports from the Turkey is as shown in the dumping margin table below.

Export Price for non-cooperating producers/exporters from Russia

45. The Authority has determined the export price for non-cooperating producers/exporters from Russia on the basis of facts available. Accordingly, net export price at ex-factory level for exports from the Russia is as shown in the dumping margin table below.

J. Determination of dumping margin for producers and exporters in the subject countries

46. Considering the normal value and export price as above, the dumping margins for all producers/exporters of the subject goods from the subject countries is determined as below:

S. No.	Country	Producer	Exporter	CNV/NV (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin (Range)
1.	Turkey	Soda Sanayii A.S.	Soda Sanayii A.S.	***	***	***	***	30-35%
2.	Turkey	Any other	Any other	***	***	***	***	45-50%
3.	Russia	Trade House Ltd «Bashkirian Chemistry»	Trade House Ltd «Bashkirian Chemistry»	***	***	***	***	55-60%
4.	Russia	Open Joint Stock Company "Berezniki Soda Works"	Trade House Ltd «Bashkirian Chemistry»	***	***	***	***	55-60%
5.	Russia	Any other	Any other	***	***	***	***	75-80%

K. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

Submissions made by the Petitioners

47. Following are the submissions made by the Petitioners in this regard:

- i. Para (iv) of Annexure II to the AD rules provides that the effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permits the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports are required to be assessed by the examination of the production to the narrowest group or range of products, which includes the like product, for which necessary information can be provided. Participating companies are multiproduct companies and have provided relevant information in respect of like article to the extent feasible and separately available. However, in those situations where the information is not separately available in respect of the like article, because separate identification of that information is not reasonably available, information has been provided in respect of the narrowest group or range of products, which includes the like article and for which the necessary information is available and can be provided in consonance with the provisions of Annexure II.
- ii. The Petitioners have defined demand or apparent consumption of the product in India as the sum of domestic sales and imports from all sources. The

demand/apparent consumption of the Subject Goods increased over the proposed injury period. The volume of dumped imports from the subject countries declined till 2015-16. However, the same increased significantly in the proposed POI in absolute terms. Imports in the period of investigation were higher than base year and were at highest level in the injury period. Imports related to domestic production and consumption also declined till 2015-16 and increased thereafter in the proposed POI.

- iii. The import price has declined significantly in the proposed POI. The landed price of imports from subject countries is below the selling price of the petitioning domestic industry, which indicates that the imports were undercutting the domestic prices and would further undercut the domestic selling prices in absence of anti-dumping duty. Transportation cost forms a very substantial portion of the cost of production in case of subject goods. Indian producers of Soda Ash are located in Gujarat, but the sales have to be made all over India. Subject goods are also a comparatively lower price product. Thus, the incidence of transportation cost per MT of the product works out very substantial when compared with the selling price of the product. In view of the same, it is submitted that the selling price of the domestic industry should be compared with the landed price of imports only after adding the transportation costs. Further, whereas the domestic freight is increasing, the ocean freight prices are crashing threatening further injury to the domestic industry. The AD Rules requires the DA to determine whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India. The rule, however, does not provide how the DA should determine whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India. While the present practice of the DA is to determine landed price of imports at the port level and net sales realization of the domestic industry at ex-factory level, petitioners submit that there is no one methodology for determining price undercutting. At this stage, the Petitioners have added the post ex-factory expenses paid by them on the domestic product. It is clarified, however, that these do not represent full value of freight. The AD rules make a specific provision with regard to the principle of fair comparison and clearly envisage a situation where comparison may have to be done at level other than ex-factory level. The DA is requested to take into account the paper circulated by the Govt. of India at the WTO wherein the Govt. of India has stated that the term "price of dumped import" shall be interpreted as meaning import prices at any level such as cost, insurance, and freight, or ex-customs area or resale price to the importer or delivered price to the customer, provided that the comparisons with the price of the like product under subpara 1.1, or with the target price under subpara 1.2 for the purpose of arriving at the injury margin are made only at a comparable level. If this is the position of the Govt. of India, it would be unfortunate if the Domestic Industry is made to suffer and it is expected that the DA would not accept what India is contending before 146 WTO member countries.
- iv. Petitioners further submit that there can be three types of freights – a) freight from the factory to the depot as booked in the expenses and borne by the industry; b) freight paid and recovered (wherein the seller makes arrangement for freight and pays for the same but eventually the same is reimbursed by the seller) and; c) freight paid by the buyer (wherein an arrangement for

transportation is made but the charges for the same are paid by the buyer only). Petitioners submit that there can be no reason for excluding freight expense from the factory to the depot as these are nothing but part of expenses, verifiable from the books of accounts and are merely expenses incurred for transportation of goods to an extended factory gate. The Domestic Industry refers to the decision of the EC in relation to Potassium Permanganate originating in India and Ukraine, wherein the exporter sought allowance of transportation cost from the factory to depot and the same was rejected, holding that the plant and the depot are part of the same economic and legal entity. From a simple reading of the case, it is evident that if the goods are transferred from the factory to the depot then the goods are to be considered as a part of the inventory. The domestic industry has no issues with the DA wishing to consult the excise authority as to what they consider as ex-factory prices. The domestic industry requests that the depot prices be considered as ex-factory prices for the purpose of calculation of the NIP and selling price.

- v. Petitioners submit that price undercutting should be determined only considering those import transactions whose landed price of imports is below selling price of the domestic industry. Petitioners' concern is against injurious imports, and not against non-injurious imports. From the WTO report in the matter of EC – ADD on Malleable Case Iron Tube or Pipe Fittings from Brazil, it can be seen that – a) there is no requirement under Article 3.2 to establish one single margin of undercutting on the basis of an examination of every transaction involving the product concerned and the like product; b) a requirement that an investigating authority must base its price undercutting analysis on a methodology that offset undercutting prices with “overcutting” prices would have the result of requiring the investigating authority to conclude that no price undercutting existed when, in fact, there might be a considerable number of sales at undercutting prices, having an adverse effect on the Domestic Industry; c) the extent to which price undercutting would have an impact on a domestic industry would be a function of two variables, the number of sales at undercutting prices and the extent of the undercutting by such sales. The number of sales at undercutting prices is particularly important, because it would provide an indicator of the likely number of sales lost by the domestic industry. The margin of undercutting of such sales is relevant to the extent that in non-price sensitive products a small margin of undercutting may not play a decisive role in purchasers' decision making; and d) the calculation of an average margin of undercutting for all sales, whether or not at undercutting prices, might not be the most effective manner to assess the impact of price undercutting on a domestic industry, as it limits the ability of the investigating authority independently to examine these two variables.
- vi. Comparison of cost of production and selling price of the petitioning domestic industry shows that cost of production declined till 2016-17 and then increased thereafter in the last six months of the proposed investigation period; whereas selling price increased till 2015-16 and then declined thereafter in the proposed POI. Thus, imports have started having suppressing effect on the prices of the domestic industry during the last six months of the proposed POI. Should the present ADD cease, the dumping would cause further suppressing/depressing effect on the prices of the Domestic Industry in the market. The import price has declined significantly in the proposed POI. While the cost of production

increased globally, since the Turkish producers are on natural soda ash, the import price declined by about 25% (Rs. *** per MT) between 2015-16 and H1, 2017-18. As the import price declined in H1, 2017-18, the import volumes increased significantly, showing 370% increase in imports as compared to 2016-17. The volume of dumped imports from the subject countries has increased, both in absolute terms, as well as in relation to production and consumption in India in the proposed POI. Further, imports are undercutting the prices of the Domestic Industry and have started having suppressing/depressing effect on the prices of the domestic industry in the market.

- vii. From the performance of the petitioning domestic industry in respect of these parameters in Proforma IV-A (Part II), it can be seen that, (a) petitioning domestic industry has increased their capacity over the proposed injury period in view of the increasing demand in the country; (b) Production of domestic industry has increased over the injury period, but is lower than what it could have been in the absence of dumping. Under such circumstances, cessation of ADD shall lead to recurrence of injury to domestic industry; (c) the capacity utilization of the petitioning domestic industry improved in 2014-15 but declined thereafter till the investigation period; (d) the domestic sales volume of the petitioning domestic industry has increased over the proposed injury period. Whereas capacity increased by **%, production increased only by **% and sales by **%. Considering that the imports are undercutting the domestic selling price, it is likely that the demand for the imported goods would increase substantially, in the event of cessation of ADD; (e) ADD got levied in 2012. Industry was incurring losses in 2011-12 and was earning low level of profits and ROI until 2013-14. After imposition of ADD, the situation of the domestic industry gradually improved and consequently constituents of domestic industry and other producers felt that the market is viable to invest in capacity expansions. Significant capacities have been added in India by existing as well as new producers. One of the petitioners, Nirma, has added capacity by ** MT during the proposed investigation period, whereas GHCL has added capacity by ** MT. There is enhanced need for protecting the domestic industry now.
- viii. Profitability of the Domestic Industry has improved up to 2015-16. The profitability declined in 2016-17 and thereafter further in 2017-18. Cash flow and return on capital employed also increased till 2015-16 and thereafter declined in the proposed POI. Price parameters showed improvement as a result of imposition of ADD. However, cessation of ADD would lead to decline in profits. Domestic Industry was making low level of profits and ROI until 2013-14. The profits and ROI have increased over the period of injury but declined in the proposed POI as compared to the previous year. Cessation of ADD will lead to significant increase in dumped imports leading to further decline in these parameters of the domestic industry, with profits falling below reasonable levels. While considering the question of extension of present ADD, the DA may kindly consider the possible adverse impact on establishment of these capacities in the country. These investments require a minimum reasonable return of Rs. *** per MT in order to be reasonably viable. As against this necessary return, the average return earned by the Domestic Industry over the injury period was much lower. Should they continue to earn these profits, the fresh investments will be recovered over a period that exceeds even the life of the assets.

Possible cessation of ADD at this stage shall imply serious injury to these investments. MS Gharhi is coming up with a new green plant of a production capacity of *** MT at an investment of Rs. *** crores. Viability of these fresh investments are clearly at stake.

- ix. Interest cost and depreciation cost have declined despite increases in capacity, thus increase in capacity is not the reason for decline in profits. Profits have declined because of decline in import price from Turkey and increase in such dumped imports from Turkey. Thus, despite imposition of ADD, imports have started having suppressing effect on the Domestic Industry. This indicates the likely situation of cessation of ADD, where profitability will decline significantly for the domestic industry. It is pertinent to refer to the case of Forum of Acrylic Fibre Manufacturers v DA, wherein the Hon'ble Tribunal appropriately dealt with the relevance and importance of profits. The Petitioners have determined separate profitability of the new plant, relevant information of which has been provided on confidential basis. It would be seen that profitability of the new plant is considerably lower as compared to that of an old plant. Thus, if the Domestic Industry has earned good profits, the same is only because of the fact that the investments made by the domestic industry are largely depreciated. As far as new investments are concerned, the domestic industry is likely to achieve a meagre ROI if the domestic industry maintains the current level of price and cost structures. However, post cessation of ADD, the domestic industry is likely to reduce these prices, leading to further decline in ROI.
- x. Market share of the petitioning domestic industry increased till 2015-16 and declined in the proposed POI even when the Petitioners have enhanced their capacities. Market share of imports, on the other hand, declined till 2015-16 and has increased in the proposed POI. In the event of cessation of ADD, the domestic industry is likely to lose its market share. Further, with expansion of capacities in the subject countries, the market share of these countries has started showing increasing trend, in the presence of ADD. The market share of the applicant producers remained about the same while that of the other Indian producers show a decline.
- xi. Petitioners submit that parameters of employment, wages and productivity are dependent on other parameters and do not reflect the impact of dumping on the domestic industry. Wages have shown improvement in the injury period. However, these are solely dependent on the subject goods performance, as they are governed by several legislative requirements in the country, and other business compulsions.
- xii. The average inventory of the petitioning domestic industry has increased very significantly in the proposed POI.
- xiii. The growth of the petitioning domestic industry in terms of production, domestic sales volume was positive, however, growth in terms of profits and ROCE was positive and became negative in the proposed POI. The petitioning domestic industry is recovering from the effects of dumping, solely due to the anti-dumping duties in force.
- xiv. While the domestic industry has made investments over the present injury period under the protective umbrella of ADD, it is likely that their ability to raise capital investment is adversely impacted by the cessation of ADD.

- xv. Despite ADD, the subject goods are being dumped by exporters from the subject countries. If the duties cease, the dumping would intensify and cause injury to the domestic industry.
- xvi. An analysis of the import prices from dumping countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market would show that the landed value of concerned products from Subject Countries and other countries attracting is below the selling price of the domestic industry, causing severe price undercutting in the Indian Market. It is thus evident that the only factor responsible for the domestic industry prices are the import prices of the product and the cost of production of the domestic industry, the import prices are much lower than the domestic prices and costs and therefore prevent the domestic industry from increasing their prices.
- xvii. Margin of dumping from both the subject countries is significant and positive. The domestic industry understands that Turkish producers are blessed with the advantage of having immense natural resources and so their cost of production is less compared to the synthetic materials used in India. However, even then the Turkish exporters are resorting to dumping practices as they are exporting to India at prices much below their normal value which is leading to a surge in imports. Having lower cost of production does in no way entitle the subject exporters to indulge in unfair trade practices. The published prices in Turkey are higher than the export price to India. The producers in Turkey are selling at higher prices in their domestic market but exporting at lower prices in order to gain market share in the growing Indian market to utilize their capacity expansions.
- xviii. Data and analysis show that performance of the domestic industry improved till 2015-16 and declined thereafter in the proposed POI. While absolute performance was not at bad levels, the situation of the domestic industry is clearly fragile, and vulnerable to intensified injury due to the cessation of ADD.
- xix. The increase in sales, production and market share only implies absence of injury, but not the absence of likelihood of injury. The domestic industry could have produced and sold more in the absence of continued dumping. Hence, it cannot be said that the capacity utilization declined due to addition of capacities but because of the dumped imports from the subject countries gaining market and making the installed capacities redundant.
- xx. Petitioners have not claimed continued injury. As regards the contentions raised on the prices of the domestic industry not being reduced despite the presence of the dumped imports in the country, the domestic industry submits that the prices are much below the selling prices of the domestic industry. Allegedly significant ROI is only because of the fact that the investments made by the Domestic Industry are highly depreciated. Thus, it is not a case of high ROI, but that of inappropriateness of methodology. As regards 5% profit considered for CNV, it needs to be considered that the same is not a law, but surrogate for actual profit and is applied under principles of best available information when actual profits are not available. Such being the case, there is no basis of the argument that the 5% profit for determination of normal value is an appropriate profit. The Petitioners refer to the case of WTO in the matter of bed linen, where the Appellate Body reversed the Panel's conclusion that an

interpretation of Article 2.2.2(ii) under which sales not in the ordinary course of trade are excluded from the determination of the profit amount to be used in the calculation of a constructed normal value is permissible. The Appellate Body emphasized that instead, it refers to actual amounts incurred and realized by other exporters and producers, and concluded that in light of this wording, in the calculation of weighted average all of the actual amounts have to be included, regardless of whether the underlying sales were made in the ordinary course of trade or not. Thus, the profit for the PUC is required to be considered on actual basis and not as some surrogate percentage on cost of production.

- xxi. It is surprising that the interested parties are contending that the industry has misused the ADD. In fact, the argument has been advanced only to emotionally bias the DA. If profitability of the consumer industry is examined it would be seen that in majority consumption segments, it has shown significant improvement. Further, if the domestic industry is considered at present value, then the profitability of the industry is way below the reasonable profits benchmark. It is not a case of high profits or ROI. It is a case of inappropriate methodology to determine ROI. If the prices in Indian markets are compared with the prices in the international market, it would be seen that the prices prevailing in the international market are in fact higher than the prices prevailing in the Indian market. The allegation with regard to raising of consumers' cost are also without any substance. If globally prices of Soda Ash have gone up and if consumers globally are paying higher prices, it is without any legal and factual basis to contend that the prices are selectively increasing in India. Above all, the domestic industry is looking only for fair protection. Significant capacity expansions have been undertaken through the profits earned by the domestic industry. The domestic industry is not against fair price imports. The exporters are free to export at normal price at which they have been selling in their home market. If the domestic industry thereafter suffers, ADD cannot support the Domestic industry. However, if imports are occurring below such prices, the consumers cannot plead that they want the material at dumped prices.
- xxii. There is no injury to the domestic industry despite dumping as the ADD is in place. The domestic industry will suffer injury if it has to match the prices of imports after cessation of anti-dumping duty.
- xxiii. Data and analysis show that performance of the domestic industry improved till 2015-16 and then declined marginally thereafter in the POI. It can be seen that as the import volumes of the subject goods from the subject countries decreased, as the landed prices of the subject goods increased. As the import volumes surged in the POI, the landed prices decreased, indicating the likely trend of import volumes as well as landing prices if the ADD is ceased. Despite existence of current duties, there is a presence of the dumped goods in the country and the same are undercutting the selling prices of the domestic industry, with or without factoring in the existing ADD. While the absolute performance may not show material injury, the situation of the domestic industry is fragile, and vulnerable to injury in the event that ADD ceases to operate.
- xxiv. A period of three years prior to the POI and the POI itself are taken for analysing the injurious effects of unfair trade upon the domestic industry. The analysis involves a study of the trend that has formed during the investigation

period and not just an end point to end point comparison. Import volumes decreased till 2015-16 only to surge back up in the POI. The increase in imports is coupled with a decrease in import prices, without any decline in cost of production. Imports, in particular, from Turkey have increased significantly. Cessation of ADD is likely to increase imports further. On the issue of landed prices not having caused price suppression/depression, it is submitted that while imports have already started having such effects on the prices of the domestic industry, as evident from the last six months of the POI, for likelihood analysis, the authority is required to consider likely suppressing/depressing effects and not actual effect. In case the ADD is allowed to cease the domestic industry would be forced to reduce their price almost immediately, and the imports then would be having suppressing/depressing effect on the prices of the Domestic Industry.

- xxv. Various stakeholders agree that the claim of the Domestic Industry to add transportation costs has significant rationality. The argument of existing practice is again flawed. First of all, the DA has in fact considered freight for determining price undercutting and injury margin in the matter of white cement case both in original and first SSR investigations. Further, it is DA's position that the present NIP law is nothing but codified practice. Above all, the rule stops at NIP and the domestic industry's argument is on injury margin. There is no law which says that injury margin shall only be the difference between the NIP and landed price of imports at ex-factory levels. The present practice of the Directorate does not recognize business realities.
- xxvi. The Petitioners are willing to provide post POI data. The DA may kindly decide and thereafter give adequate time to the domestic industry to provide post-POI data. If such data needs to include price depression/suppression as well, the domestic industry is required to undertake elaborate exercise in providing the data. Further, such POI performance cannot be limited to merely domestic industry performance. Exporters must also provide data from their side.
- xxvii. The domestic industry has already provided adequate evidences establishing the fact that there has been an addition of capacities by the producers. The domestic industry has disclosed further evidence which cement the fact that there has been addition of capacities. The surge in imports in the post-POI with the commencement of capacities clearly establishes correctness of the submissions earlier made by the domestic industry.
- xxviii. The domestic industry submits that mere statements of 'India not being a major market' do not evidence that there is no likelihood of the continuation/recurrence of injury in case of cessation of the current duties. The domestic industry is enclosing detailed quarter-wise post-POI import data. The same would evidence the movement trend of imports from both the subject countries. Russian imports have shown a continual growth path throughout the injury investigation period whereas the Turkish imports showed a decline till 2015-16 before explosively surging in the POI. Furthermore, capacity expansion plans for subject exporters require favourable markets, such as the growing Indian market. Turkey's dumping of soda ash also establishes likelihood of injury not only from Turkey, but also from EU – a) admittedly, Turkish exporters are selling in the EU at prices lower than the Indian market and shall not hesitate to divert the same to the Indian market; b) Turkish

exporters have displaced the European producers, who in turn may move forward to displace the Indian producers.

- xxix. If Turkish export prices to third countries are much lower than export price to India, at the least, it establishes that these volumes will get diverted to Indian Market. No evidence has been brought on record to show that Turkish producers are exporting to European markets out of some affiliation/medium/emotion or long-term contracts. If exports from Turkey to Europe are happening due to business situations, the minimum that will happen from cessation of ADD is that Turkish producers will enhance their exports to India further by not only enhancing production, but also diverting third country exports.
- xxx. The constituents of the domestic industry are multi-product companies rather than single product companies. The annual reports published are for the companies as a whole, and not for the PUC alone. However, the extracts as referred are an attempt to mislead the DA and are extremely selective. The very same pages referred by the responding party also refer to the threat in future by low cost imports, which has been maliciously left out by the responding party.
- xxxi. The alleged inaccurate/incomplete data is nothing but just cumulative undercutting levels for the base year and hence in the absence of the imports from Russia for the base year it is but obvious that the same would only show the undercutting levels of the only exporting subject country Turkey. As regards the issue raised on absence of ROI/cash profit, it is submitted that the sought information is of highly business sensitive nature and disclosure would put competitors at an advantage.
- xxxii. Domestic Industry has not claimed continued injury. The domestic industry is not affected despite positive undercutting because of the fact of anti-dumping duty in existence. Further, it would be seen from the information provided that cost of production declined till 2016-17 and then increased thereafter in the last six months of the present investigation period; whereas selling price increased till 2015-16 and then declined thereafter in POI. Thus, imports have started having suppressing effect on the prices of the domestic industry during the last six months of the POI.
- xxxiii. Current case is not of continued injury but a case where the facts clearly indicate intensification of dumping and recurrence of material injury in the event of cessation of ADD. Hence, it cannot be said that the capacity utilization declined because of addition of capacities. Rather, it did, because of the dumped subject imports gaining market and making the installed capacities redundant.
- xxxiv. Despite increase in production and domestic sales by the domestic industry, the average inventory of the domestic industry has increased significantly. It has almost doubled in the injury investigation period. What rightfully belonged to the domestic industry is being captured by the subject exporters as can be seen from the sudden rise in import volumes in the POI along with the declining landed prices of the subject imports. The averments that average stock has no meaning is without legal basis. Rules have not stated anything to this effect.

- xxxv. The present case is for extension of ADD based on the grounds of likelihood of recurrence of dumping and injury. Thus, current volume is not sufficient to determine the likely effect of dumped imports. The present volume of imports is still at dumped prices. Thus, cessation of anti-dumping duty is likely to lead to intensified dumping and significant increase in imports.

Submissions made by the other interested parties

48. The other interested parties have submitted as under:

- i. India is not the main market for Turkey's soda ash exports. On the contrary, geographically close markets and trade partners such as Italy, Egypt and Spain are the main destinations for Turkey. Thanks to the customs union between Turkey and the EU as well as its network of FTAs with the surrounding countries, exports from Turkey to Italy, Egypt and Spain constituted 16.4%, 12.3% and 9.7%, respectively of all exports of the product concerned in 2017 while India's share was only 3.8%.
- ii. In the last 5 years, Turkey has exported soda ash to over a hundred countries, but it is facing anti-dumping measures only in India. It is evident that Turkish soda ash exporters trade fairly in international markets.
- iii. Article 3.1 of the Anti-dumping Agreement requires that determination of injury be based on positive evidence regarding volume of the dumped imports and the effects of dumped imports on prices in the domestic market for like products, and consequent impact of these imports on domestic producers of such products. The import statistics in the complaint clearly shows that soda ash imports from Turkey decreased by 45% in terms of quantity from 2013 to POI (Annualised). Similarly, imports from subject countries decreased by 16%. In the same period, production of the domestic industry increased by 18.2%. These figures prove that there is no significant increase of imports either in absolute terms or relative to production of the domestic industry.
- iv. According to the complaint, the domestic industry almost tripled its profit from the domestic operations since 2013 and there are positive trends in terms of market share, sales, production capacity, return on investments, productivity, profit/loss. Turkey believes that there is no injury to the domestic industry. Regarding injury analysis, Turkey expects the Indian authority to act in line with Article 3.2 of the Anti-dumping Agreement as well as India's related laws and practices. Turkey requests the Indian authority to terminate the ongoing sunset review as soon as possible and not to continue any measures. Turkey is closely following the proceeding and reserves its rights under WTO jurisprudence.
- v. Applicants' claim that Russian exporter Bashkir Soda Company enhanced its production capacities by ***% is false. Indeed, in the frame of modernization program Bashkir Soda Company put into operation new carbonating tower and capacity of this tower enhanced by ***%. As a result, the production capacities of the company have increased insignificantly. Data on Russian industry has been provided. It is evident from this data that since 2015, when the investigating authority found no threat of injury, Russian producers' capacities have increased insignificantly. Volume of soda ash production has slightly

increased in order to supply domestic demand. It is indicated that Russian companies are still pursuing domestic-oriented marketing policy.

- vi. Given the irrelevant and biased nature of applicants' claim about substantial increase in production capacities in Russia, we kindly ask the investigating authority to verify the applicants' claim in regard to production capacities in Turkey.
- vii. The decrease in volume of imports from subject countries during the injury period, insignificant increase of production capacities in subject countries along with increasing demand in the Indian market and growth of domestic industry in India are indicating the absence of recurrence of injury. We request the investigating authority to terminate the review without continuation of measures.
- viii. The petitioners have admitted in their written submissions that anti-dumping duty on the subject goods has served its intended purpose and enabled them to expand capacities. In the sunset review of Caustic Soda from Saudi Arabia and USA, the Authority in similar facts recommended not to continue anti-dumping duty on these countries. The domestic industry has been able to withstand the alleged increase in imports below normal value (in terms of positive economic parameters) and hence, the Hon'ble Designated Authority is requested to conclude that there is no likelihood of recurrence or continuation of dumping and injury to the Petitioners.
- ix. Soda Sanayii submits that there is no causal link between the alleged injury suffered by the Petitioners and the subject imports – as the Petitioners' performance in terms of sales volume, value, market share has improved significantly throughout injury period.
- x. The likelihood of substantially increased importation can only be determined after analysing authenticated post-POI data, which the Petitioners have not provided in the Petition. Petitioners have not provided any post-POI data on price suppression/ depression, nor has it made any substantiated submissions with respect to the same.
- xi. Despite the alleged decline in the landed price from 2015-16 to the POI, the selling price of the Petitioners has remained stable during the same period (and most of the injury period). The selling price of the Petitioners shows a positive trend throughout the injury period in comparison to the base year.
- xii. The Petitioners' allegations of freely disposable capacities in the subject countries is mere conjecture. Capacity utilisation of Soda Sanayii is 95%, evidencing that the Turkish producers do not have existing freely disposable or surplus capacities in Turkey, which they could utilise towards India in the event of cessation of duty.
- xiii. The domestic industry has failed to substantiate that there are existing surplus capacities and evidence of capacity addition to demonstrate likelihood of continuation or recurrence of dumping and injury in the event the anti-dumping duty is discontinued.
- xiv. The Petitioners have provided no evidence to substantiate that there is demand-supply gap in the subject countries. The evidence relied upon by the Petitioners at paragraph no. 80 pertains to only a portion of the POI, hence not

sufficient to conduct an effective analysis of likelihood of recurrence or continuation of injury.

- xv. The Designated Authority may take note of the submissions made by the Turkish producers during the oral hearing that their main export markets are Egypt and the EU. The Petitioners have not provided any evidence to substantiate that Turkish producers have export orientation towards India.
- xvi. The Petitioners' contentions regarding price attractiveness of imports is without merit. As per the petition, Turkey's export prices to third countries are already much lower than its price to India. Even if duties expire, there is no likelihood that Turkey's export prices to India would fall.
- xvii. As per petition, the main markets of Turkey are Egypt and Saudi Arabia, and the main markets of Russia are Kazakhstan, Belarus and Ukraine, and exports to these countries are significant as well as at non-dumped prices. Hence, it can be concluded that the main markets of Turkey and Russia would remain as above despite the existence or cessation of the anti-dumping duty in India. Exports from subject countries to third countries are irrelevant while making a likelihood analysis in the present factual matrix.
- xviii. Capacity expansions in non-subject countries like Europe, Pakistan and China PR are irrelevant in the present case. Dumping margins in previous investigation is not the crux of the present sunset review.
- xix. No evidence has been provided regarding price undercutting in post-POI period. No evidence has been provided regarding inventory levels in the subject countries.
- xx. Petitioners are requesting the Hon'ble Designated Authority to continue duties after discarding a majority of the evidence on record, which is not only in violation of the AD Rules, but also the principles of natural justice.
- xxi. If the Hon'ble Designated Authority recommends anti-dumping duty in the review, it is requested to apply lesser-duty rule as laid down under the AD Rules.
- xxii. The average profit of the domestic industry is ***% of cost of sales during the POI, which is way above the one (i.e. ***) permitted by the Director General while constructing normal value in an anti-dumping investigation. The return on capital employed of petitioners is ***% of NFA during the POI whereas the Director General allows ***% while computing NIP in all anti-dumping cases. Therefore, there is no existence of injury to the domestic industry and thus question of its continuation does not arise. There does not exist any special/exceptional circumstances calling for continuance of anti-dumping duty on the subject goods from the subject countries.
- xxiii. The reason for the increase of imports from the subject countries from 2013 to 2017 is not dumping, but the growth of the Indian market demands following the development of downstream industry. It may be seen that the demand has increased to 117 from 100 during the base year 2013-14 to the POI(A). To the contrary, imports from the subject countries have declined by 17% from 100 in the base year to 83 during the POI (A).
- xxiv. The quantum of imports from Russia is very less, only ***% of the total demand during the POI constituting an insignificant share. Such nominal share cannot

cause injury to the domestic industry. The producers from the subject countries have no intention of dumping nor have they used dumping as a method to increase exports to India.

- xxv. Proforma IVA of the petition shows that there is no correlation between cost of sales and selling price in domestic market. From the data, it is evident that the cost of sales has decreased by 15%, from 100 during 2013-14 to 85 during the POI. With the decrease in cost of sales, the domestic industry did not decrease the selling prices accordingly rather kept on increasing the same. The selling price has increased from 100 during the base year to 107 during the POI. This has resulted in high profitability to them during the POI. So, there is no price depression and price suppression. The Director General is requested to critically examine the same.
- xxvi. Price undercutting is an important parameter to establish causal relationship between dumping and injury, but it does not provide the basis for determination and should not be seen in isolation. It has to be seen in light of overall performance of the domestic industry, whether it is resulting in losses. As per petition, price undercutting from Russia is positive during the injury period. In the present case, despite price undercutting, domestic industry has improved its performance. Hence, price undercutting has no relevance in the present investigation.
- xxvii. Capacity and production increased substantially during the POI. Rather than focusing on increasing the capacity, the petitioners should have focused on efficient and effective capacity utilisation. Had the petitioners not increased the capacity, its capacity utilisation must have increased to ***% during the POI and achieved optimum level.
- xxviii. Petitioner is able to sell whatever they are producing. The sales volume of the petitioners has increased from *** MT to *** MT during the POI as compared to base year 2013-14. Petitioners' exports have substantially declined during the injury period and then registered sudden growth during the POI. The decline in exports might have caused injury to the domestic industry. Overall performance of the petitioners has improved.
- xxix. Average stock should not be seen in isolation. It shall be seen in relation with sales and production.
- xxx. Market share of petitioners increased during the injury period and that of the subject countries declined. Major market share has been captured by the domestic industry and other Indian producers. Imports from Russia is only ***% of the total demand. Such negligible share of imports cannot cause injury to the domestic industry.
- xxxi. Profitability of the domestic industry has improved substantially during the POI as compared to the base year 2013-14. Total profit of the company has increased from 100 during the base year 2013-14 to 341 during the POI. The PBIT has also improved to 270 during the POI as compared to base year, 2013-14.
- xxxii. ROCE has increased from 100 in the base year to 167 during the POI. The Director General has terminated many cases wherein the domestic industry was earning huge profits or selling its products at price above NIP, such as, AA

Dry Cell Batteries from China PR and Vietnam in the final findings dated 27th September 2016; Hydrofluoric Acid from China in the mid-term review final findings dated 24th May 2011; Phenol from Korea RP in the mid-term review final findings dated 9th February 2012; Citric Acid from China PR, Korea RP and Ukraine in the final findings dated 25th August 2005; and Gypsum Plaster Board from Indonesia and Thailand in the final findings dated 27th June 2005.

- xxxiii. Total demand for subject goods (including captive) has increased by 17% during the injury period, while total demand (excluding captive) has risen by 15%, in line with requirement of the Indian user industry. On the other hand, imports of the subject goods declined significantly by 17% during the injury period.
- xxxiv. Demand (excluding captive) for the subject goods increased from *** MT in 2013-14 to *** MT in the POI(A), an overall increase of 15%. In line with the growth of demand, the domestic industry increased its annual capacity by 37% from *** MT in 2013-14 to *** MT in the POI(A). Production also increased by 18% from *** MT in 2013-14 to *** MT in the POI(A). Similarly, domestic industry's domestic sales increased by 16 % from ***MT in 2013-14 to ***MT in the POI(A). With year-on-year increase in demand, production and sales, the domestic industry feels encouraged to invest in enhancing its annual capacities by *** lac tons in the near future. The domestic industry's performance during the injury period and their future plans demonstrate no likelihood of recurrence of dumping causing injury.
- xxxv. Overall market share of imports from subject countries has decreased from 2.27% in 2013-14 to 1.65% during POI(A). In the same period, profits of the domestic industry increased from 100 indexed points in 2013-14 to 341 indexed points in the POI(A). Profits of the domestic industry sharply increased by 241 indexed points during the injury period. It was also able to maintain overall ***% share during the injury period, while the market share of other Indian producers slightly declined from ***% in 2013-14 to ***% in the POI (A). This demonstrates that there is no likelihood of recurrence of injury if the anti-dumping duty lapses.
- xxxvi. Capacity utilisation in 2013-14 was **%, which declined to **% during the POI(A). It is reasonable expectation in any industry that when capacities are substantially increased, such capacities may not get utilized immediately. The decline in capacity utilization is a natural consequence of the sudden increase in capacities by 37% during the injury period. Furthermore, imports of the subject goods declined more sharply, by 17% during the injury period. Thus, imports of the subject goods did not cause any decline in the domestic industry's capacity utilization. The domestic industry, according to industry sources, has been operating at full capacity during 2018, and will be adding another *** tons in annual capacities. The additional capacities will enable the domestic industry to capture a much larger share of the Indian market.
- xxxvii. Despite increases in annual capacity and production, the domestic industry has been able to manage its stocks well. While there was a decline from 100 indexed points in 2013-14 to 74 in 2014-15, the stocks increased to 127 in the 2015-16 period, and marginally increased to 129 indexed points during the POI(A). Exports fell from 100 indexed points in 2013-14, to 36 in 2014-15, to a

- further 17 in 2015-16, before sharply increasing to 159 during the POI(A), helping the domestic industry to prevent further increase in stocks.
- xxxviii. While overall employment fell from 100 indexed points in 2013-14 to 85 indexed points in the POI(A), wages paid out increased sharply over the same period from 100 to 133 indexed points. Interestingly, profits were on the rise despite higher wages, as profits in of the domestic industry went up from 100 indexed points in 2013-14 to 341 indexed points. This strongly demonstrates that there is no likelihood of continuation or recurrence of injury if the anti-dumping duty lapses.
- xxxix. The domestic industry's capacity increased from 100 indexed points in 2013-14 to 137 indexed points in the POI, accompanied by a growth in capital employed in the same period, from 100 to 162. RoCE increased from 100 to 167 indexed points as well. Imports have had no impact on the ROCE earned by the domestic industry during the injury period.
- xl. When imports of the subject goods decreased from 100 to 79 indexed points from the period of 2013-14 to 2014-15, the profits increased to 231 indexed points and PBIT increased to 183 indexed points. Imports of the subject goods declined to 41 indexed points in 2015-16, and profits sharply increased to 364 indexed points while PBIT increased to 287 points.
- xli. The cost of sales of the domestic industry declined from 100 indexed points to 85 from 2013-14 to the POI, while the selling price of the domestic industry increased from 100 indexed points to 107 indexed points in the same period.
- xlii. The domestic industry claims price undercutting due to imports from each subject country as well as overall price undercutting in the range of 20% - 30%. However, such price undercutting has had no visible impact on the performance of the domestic industry.
- xliii. In the Truck and Bus Tyres case, the Hon'ble CESTAT annulled the imposition of antidumping on the basis that the injury findings of the Designated Authority were flawed, and opined that "... *if there was really any such price undercutting and price underselling as determined by the DA, then the domestic industry would have been hard put to maintain its sales volumes rather show such an increase in sales.*" In the present case, the domestic sales of the domestic industry increased over the entire injury period with increase in demand for the subject goods. The mere fact that the domestic industry managed to expand its sales in India despite the alleged price undercutting demonstrates the absence of injury and no likelihood of continuation or recurrence of injury.
- xliv. The domestic industry's claim of ***% return on capital employed is illegal as the norm is to consider the historical rate of return in light of the Hon'ble CESTAT's ruling in *Indian Spinners Association v Designated Authority*, 2004 (170) ELT 144 (Tri – Del). The domestic industry's unsubstantiated request that ***% ROCE should be adopted is without logic and should be rejected, and the Designated Authority should examine the ROCE enjoyed by the soda ash industry globally and in India and only then adopt an appropriate ROCE for this case.
- xlv. Any alleged injury suffered by the Petitioners has absolutely no correlation to imports from the subject countries. It is submitted that when the subject imports

allegedly increased from 2015-16 to POI, there was an improvement in the Petitioner's Performance, with the alleged increase in imports from 2015-16 to POI being accompanied by an increase in the Petitioner's domestic sale and sales values. HUL submits that admittedly there is no injury suffered by the Petitioners during the injury period on account of the alleged increase in imports in absolute or relative terms.

- xlvi. However, in para 51 of the Petition, the Petitioners have stated that there was increase in imports on account of quantum of anti-dumping duty being low. In light of the Petitioners' admission that anti-dumping duty has provided adequate protection and helped them improve in the Indian market is itself sufficient to establish that the duty was adequate. Rising imports can instead be linked to rising demand, which the domestic industry seems unable to fulfil. HUL accordingly requests the DA to reject the Petitioners' submission in this regard.
- xlvii. Vide para 16 & paras 18 – 25, Petitioners have averred that the current market share is immaterial and what is relevant is the likely effect of imports on the market share in case current duty is allowed to cease. HUL submits that determination of market share of domestic industry becomes essential while making either an injury or likelihood analysis in an SSR investigation. Hence, the submissions made by the Petitioners in this behalf ought to be rejected. HUL submits that if the Petitioners were suffering alleged injury due to subject imports, they should have also experienced a decline in market share, and a similar increase in the market share for the imports from the Subject Countries. However, in the present case, the market shares of the Petitioners increased by 1.49% in the POI in comparison to the base year, while on the other hand, the market share of imports from the Subject Countries reduced during the same period. Thus, the subject imports have not impacted the market share of the Petitioners.
- xlviii. The landed price of the subject imports has not impacted the selling price of the Petitioners, and not caused any price suppression/depression. Despite the decrease in landed price from 2015-16 to POI, the selling price of the Petitioners has remained stable during the same period (and most of the injury period). The selling price of the Petitioners show a positive trend throughout the injury period in comparison to the base year.
- xliv. From para 53 to para 55 of the Petition, the Petitioners have averred that the landed price is below the selling price and hence imports were undercutting the prices of domestic industry. Vide paras 26 – 48, Petitioners have averred in their Petition that the selling price should be compared with landed price only after adding transportation costs/freight for fair comparison in price undercutting and injury margin. At para 53 of the Petition, Petitioners have stated that they have added post ex-factory expenses paid by the Petitioners on the domestic product while making its injury analysis. HUL submits that the averments made are erroneous and contrary to the DA's past practice of comparing selling price and landed price at ex-factory level and therefore ought to be rejected by the DA. Admittedly, based on the past practice of the DA, the notional fair selling price/NIP and the landed price of the subject imports are determined at the place of importation. The NIP is determined based on the principles laid down in Annexure III of the AD Rules. In determining the same, the DA allows a 22% rate of ROCE on the subject product. Further, since landed price is considered

at the place of importation, the NIP is also calculated at ex-factory level in order to ensure the fair comparison of prices. The Petitioners are herein not right in requesting the DA to deviate from past practice and add the post factory costs/transportation costs/freight before making a comparison between selling price and landed price.

- i. It is imperative to assess the impact of the alleged dumped imports by analysing various economic factors as per Annexure II (iv) of the AD Rules. Petitioners vide their Petition at page 18 have admitted that the economic parameters including production, sales volume have all shown a positive trend in the injury period as well as the POI.
- ii. Domestic sales volume and value figures have been growing steadily throughout the injury period as well as the POI, showing that the domestic industry's sales performance has been profitable irrespective of subject imports. Furthermore, the production of the Petitioners has also increased throughout the injury period.
- iii. The Profit per Unit for the Petitioners has risen by 193 points from the base year to the POI. Their profit before tax has also risen by 170 index points in the POI from the base year, while one of the Petitioners, namely Nirma Ltd. (vide their 2016-17 Annual Report) have seen an increase in profits in absolute terms, despite reduced profit per unit due to new capacities being commissioned by the company. Petitioners at para 58 of their petition have determined the profitability of a new plant separately and have stated that it is low. HUL submits that the plant referred to by the Petitioners is a new plant, it is certain that the Petitioners would have incurred certain production costs and overheads etc., consequently affecting the pricing structure of the domestic industry in respect of the PUC and thereby, the profitability and return on investment of the new plant. Hence, when the Petitioners have in the first place expanded their capacities on account of recovering from the anti-dumping duty and in anticipation of demand for PUC and have incurred low profits in respect of the new plant, it cannot now under the garb of obtaining protection attribute slightest self-inflicted injury to imports.
- iiii. HUL thus submits that the domestic industry is clearly not suffering any injury, and the continuation of an injury that has ceased to exist is not possible. Therefore, the only analysis to be conducted remains the one with regard to likelihood of recurrence of injury.
- liv. Petitioners have identified in their Annual Reports the reasons for their alleged injury, which are not inclusive of the imports from Subject Countries. DCW Ltd, one of the Petitioners, has reported vide page 4 of its Annual Report of 2016-17 that imports were not a threat and that the company was capable of facing international competition. Furthermore, they reported on page 3 that there was a loss in turnover of upto ***% in comparison to the previous year due to shut down of its soda ash division. It would thus be untenable to imply that the consequent loss in revenue can be attributed to the subject imports.
- lv. The Petitioners have failed to provide sufficient information, or have provided inconsistent information and data, in the following instances. On page 36 of the Petition, Petitioners have provided calculations for arriving at price undercutting for imports from Turkey and Russia. They have calculated no undercutting for

PUC from Russia for 2013-14 period, while the undercutting has been reported for the same period from both countries as 10-20%. Calculations carried out by the Petitioners are thus completely erroneous and therefore should be completely disregarded. Petitioners have relied on return on investment and cash profits in their injury analysis, but have failed to provide any data on the same in Proforma IV-A. If the said information is not available, other interested parties cannot conduct an effective analysis of the same.

- lvi. HUL submits that the DA should terminate the present investigation forthwith as *first*, the domestic industry's data is incomplete and insufficient; *second*, there is an absence of continued injury, as no injury has been suffered by the domestic industry in the POI in its critical economical parameters, and no post-POI data has been provided by the Petitioners; and *third*, there is no injury or likelihood of injury caused to the domestic industry. However, any injury suffered is solely self-inflicted and caused by inefficiencies and cannot be attributed to the imports from Subject Countries.
- lvii. Vide para 17 of the Petition, the Petitioners have averred that one of them, namely M/S Nirma as well as GHCL have undertaken significant capacity expansions in anticipation of an increase in demand. At para 16, Petitioners have admitted that they have become capable to carry out such expansion due to an absence of injury. When the Petitioners have, on their own accord, increased capacities on account of an absence of injury or perceived increase in demand, it is clear evidence that there is no longer a need for duties to be in force. The purported objective of anti-dumping duties is not to provide the Petitioners with a security cover for their future investments. In the *SSR Investigation concerning imports of "Melamine" originating in or exported from EU, Iran, Indonesia and Japan*, No. 7/14/2017-DGAD dated 19/02/18, the DA noted that future production plans which are yet to come up pursuant to future capacity expansions cannot be addressed in an ongoing SSR. Accordingly, the DA may take the said precedent into consideration and reject the Petitioners' averments in this regard.
- lviii. Vide para 16 & paras 18 – 25, Petitioners have averred that taking into consideration the sales volume for top five consumers, the sales have declined and there is loss of sales of subject goods. HUL submits that while making an injury analysis, the DA ought to take into consideration the effect of imports on total sales of the domestic industry and not domestic sales made to top five consumers as proposed by the Petitioners. It is reiterated that since the sales of the Petitioners have increased throughout the injury period, the averment above does not stand and evidently, there is no injury to the Petitioners.
- lix. In respect of imports in relation to production and consumption, HUL submits that the imports in relation to production and demand/consumption have declined in the POI, hence, there is no alleged injury to the Petitioners. The imports in relation to production declined in the POI not only by ***% in comparison to the base year but also by ***% in comparison to 2014-15. Further, the imports in relation to demand/consumption declined in the POI when compared to the base year.
- lx. Vide para 16 & paras 18 – 25, Petitioners have averred that producers in Turkey and Russia can give an undertaking that their volume of exports shall remain limited provided the Petitioners would consider not pursuing their

request for extension of anti-dumping duty. HUL submits that there is no injury or likelihood of continuation or recurrence of injury to the domestic industry on account of the Petitioners performing significantly well throughout the injury period. Hence, there being no necessity to continue the levy of anti-dumping duty on account of the Petitioners performance, the question of a volume undertaking by the Subject Countries does not arise in the first place. The submissions made by the Petitioners in this regard should be rejected by the DA.

- lxi. Vide paras 26 – 48, Petitioners have averred in their Petition that price undercutting should be determined only after considering those import transactions whose landed price of imports is below selling price of the domestic industry. HUL submits that the averments here are erroneous and contrary to the DA's past practice. The Petitioners' proposal is akin to zeroing, a practice that has been unanimously held to be unreasonable and in violation of the AD Agreement. In the *Anti-Dumping Investigation concerning imports of Caustic Soda originating in and exported from Japan and Qatar*, a similar proposal by the domestic industry was rejected by the DA, which noted that undercutting would be calculated taking into consideration the DGCI&S data & not selected transactions. The DA is thus requested to accordingly reject the Petitioners' averment in this regard.
- lxii. Petitioners have at pages 33 – 35 of their Written Submissions made submissions in respect of capacity expansion in non – subject countries. HUL submits that the same is irrelevant for the purpose of conducting a likelihood of continuation or recurrence of dumping or injury to domestic industry on account of imports from *Subject Countries* and the Petitioners' averments made in this regard ought to be rejected by the DA.
- lxiii. The Petitioners vide paragraphs 95 – 102 have made submissions in respect of relevance of price undercutting in the POI and the post-POI while examining if cessation of anti-dumping duty would lead to recurrence of injury. The Petitioners have specifically averred that even if one of the situations as mentioned in para 95 is positive, the DA should hold that cessation of duty is likely to lead to recurrence of injury. HUL submits that the averments made by the Petitioners in this behalf are baseless. It is well-settled that the determination of likelihood is a holistic determination, a practice upheld consistently by the DA in the past. Effectively, the Petitioners are requesting the DA to continue duties after discarding a majority of the evidence on record, which is not only in violation of the AD Rules, but also the principles of natural justice. Hence, the averments made by the Petitioners in this behalf ought to be rejected.
- lxiv. The Authority is requested to examine the performance and production parameters of other domestic producers not forming part of the domestic industry. The WTO Appellate Body in *EC – Fasteners (China)* case has held that an investigating authority has to ensure that there is no material risk of distortion while defining the domestic industry.
- lxv. A WTO Panel in *China – Anti-dumping and Countervailing Duty Measures on Broiler Products from United States* noted that an investigating authority is not allowed to ignore the situation of other domestic producers in its injury determination. In the instant case, exclusion of other domestic producers

distorts the picture completely, particularly in view of the fact that the applicant industry is suffering on account of several extraneous factors.

- lxvi. Other producers in India are doing much better than the domestic industry and producers like Tata Chemicals and GHCL are playing a major role in determination of the prices of the subject goods in the country. As observed in the *Polyester Staple Fibre* case, other producers in India hold major share of the demand and playing a major role in determination of prices of the subject goods.
- lxvii. The selling prices of the subject goods in India are governed by the prices determined by the domestic producers. The cost of sales of the domestic industry decreased by 15%, the selling price of domestic producers increased by around 7% during the POI. Production has increased by 18% while capacity utilisation has marginally decreased. The same is solely on account of increase in capacities of the domestic industry.
- lxviii. Soda ash industry has low dependency on imported raw material as the same is abundantly available in India. Thus, there is no effect on cost of the domestic industry due to raw material.
- lxix. Soda ash industry will continue to reap the advantage of local raw material and import-parity pricing with the increased value of Rupee. It is also a matter of fact that the Rupee has been over INR 65 per USD since 2016, which clearly establishes beyond an iota of doubt that there is no reason for continued imposition of the anti-dumping duties.
- lxx. The Authority may examine parameters related to threat of injury for the purpose of likelihood analysis as laid out in *Nirma Ltd. v. Union of India*, order dated 23.02.2017 read with para (vii) of Annexure II of the Anti-dumping Rules, 1995.
- lxxi. The imports of the subject goods have declined from 62,103 MT in the base year to 51,668 MT in the POI(A).
- lxxii. The evidence presented by the domestic industry is of current capacities and not of any freely disposable or increased capacities. The petitioners have to establish beyond doubt that such capacities with the exporters are not being fully utilised to meet demand in their home country or other export markets and the likelihood of their being diverted to India is imminent. The mere existence of excess or idle capacities does not mean dumping or injury to the domestic industry is imminent. The domestic industry is doing very well despite existence of capacities elsewhere in the world. The domestic industry has failed to establish a case of surplus capacity.
- lxxiii. The domestic industry has failed to substantiate a case of price suppression/depression.
- lxxiv. No material has been presented in the petition to demonstrate any affect on the domestic industry's inventories. It is clear from the above that there is no likelihood of dumping and injury.
- lxxv. The claim of the domestic industry that only transactions involving positive price undercutting should be considered for determining the existence of overall price undercutting, is baseless and bereft of any logic. The WTO Panel report cited by the domestic industry is in a different context and does not, in any manner,

establish any particular methodology of carrying out the price undercutting analysis. Therefore, the Authority will be perfectly justified to follow its consistent practice to carry out the price undercutting analysis on an overall basis.

- lxxvi. The claims of the domestic industry that freight should be included in determining injury margin is devoid of sound economic reasoning. The Authority's consistent practice is based on the sound economic principle that the comparison should be made at the first point where the imported goods and the domestically produced goods enter the mainstream commerce of the country and are first available for actual consumption.
- lxxvii. The reference of India's paper on lesser duty rule is misconceived and misleading. India's paper was in the context of persuading other members of the WTO to also practice the lesser duty rule. It would be mischievous to suggest that it was India's stand that comparison should be made closest to the point of consumption. In fact, it is India's practice to make the comparisons at the first point where the goods are available to the customer.
- lxxviii. It is also pertinent to note that Annexure III was introduced much after the said paper was floated in the WTO. Therefore, it clearly proves that not only the legal provisions do not permit inclusion of freight for injury margin calculations, it is not even India's intention to make the comparison at the point of consumption.
- lxxix. There are other factors causing alleged injury to the domestic industry, which information is missing from the petition, such as information on market competition among domestic producers, petitioners not producing enough quantities to meet domestic demand, users of the subject goods tending to import the subject countries from other countries.

EXAMINATION BY THE AUTHORITY

- 49. The Authority has taken note of the arguments and counter-arguments of the interested parties with regard to injury to the domestic industry.
- 50. As regards the contention of the domestic industry for consideration of freight incurred by domestic industry as a factor in injury analysis, the Authority notes that NIP has been determined in terms of Annexure III of the AD Rules. The Authority further notes that the comparison between NIP and Landed Value for injury margin determination has been done at the same level as per the consistent practice of the Authority.
- 51. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.

Cumulative assessment

- 52. Attention is invited to Annexure II para (iii) of the AD Rules which provides that in case imports of a product from more than one country are being simultaneously subjected to an anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that:
 - i. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like

article or where the export of individual countries is less than three per cent, the imports collectively account for more than seven per cent of the import of like article; and

- ii. 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.

53. In this regard, the Authority observes that:

- i. the margins of dumping from each of the subject countries are more than the limits prescribed above;
- ii. the volume of imports from each of the subject countries is more than the limits prescribed;
- iii. The subject goods supplied from various subject countries and by the domestic industry are like articles.
- iv. Imported and domestic product are being used interchangeably and there is direct competition between the domestic product and imported product.

54. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from Turkey and Russia on the domestic industry in the light of conditions of competition between the imported product and like domestic product.

55. The Authority has taken note of the submissions made by the interested parties. Annexure II of the AD Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products. While examining 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 terms or relative to production or consumption in India. With regard to price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to 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 increase which would have otherwise occurred to a significant degree.

56. As regards the impact of 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 the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

57. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net

sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

58. According to Section 9(A)(5) of the Customs Tariff Act, 1975, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time-to-time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of the order of such extension.
59. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.

Demand and market share

60. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry and other Indian producers have been added to the total imports into India and the same have been summarized below:

Particulars	UOM	2013-14	2014-15	2015-16	POI (A)
Demand in India - Including Captive					
Sales of Domestic Industry	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	111	122
Sales of Other Indian producers	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	105	110
Total Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	107	115
Imports- Subject Countries	MT	62,355	49,071	25,674	51,668
<i>Trend</i>	<i>Indexed</i>	100	79	41	83
Imports- Other Countries	MT	506,611	674,148	607,588	628,901
<i>Trend</i>	<i>Indexed</i>	100	133	120	124
Total Demand	MT	2,833,341	3,024,370	3,059,141	3,279,345
<i>Trend</i>	<i>Indexed</i>	100	107	108	116
Market Share in Demand					
Domestic Industry	%	***	***	***	***
Other Indian Producers	%	***	***	***	***
Indian Producers as a whole	%	***	***	***	***
Subject Countries	%	2.2%	1.6%	0.8%	1.6%
Other Countries	%	17.9%	22.3%	19.9%	19.2%

61. The Authority notes that demand has increased during the POI (A) as compared to the base year. The growth in demand during the POI over base year was 16%. Market share of domestic industry increased while that of subject countries declined during the injury period. The Authority notes that market share of subject countries in demand during the POI (A) was 1.6%, while market share of the domestic industry was 34% and Indian producers as a whole accounted for 79% market share in the same period.

L. VOLUME EFFECTS OF DUMPED IMPORTS

Import Volume and Market Share

62. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCI&S. The volume of imports of the subject goods from the subject countries have been analysed as under:

Particulars	UOM	2013-14	2014-15	2015-16	POI	POI (A)
Turkey	MT	62,355	42,114	16,325	51,181	34,121
<i>Trend</i>	<i>Indexed</i>	100	68	26	-	55
Russia	MT	0	6,957	9349	26,321	17,547
<i>Trend</i>	<i>Indexed</i>	-	100	134	-	252
Subject Countries	MT	62,355	49,071	25,674	77,502	51,668
<i>Trend</i>	<i>Indexed</i>	100	79	41	-	83
Other Countries	MT	506,611	674,148	607,588	943,351	628,901
<i>Trend</i>	<i>Indexed</i>	100	133	120	-	124
Total Imports	MT	568,965	723,219	633,261	1,020,853	680,568
<i>Trend</i>	<i>Indexed</i>	100	127	111	-	120
Turkey	%	11%	6%	3%	5%	5%
Russia	%	0%	1%	1%	3%	3%
Subject Countries	%	11%	7%	4%	8%	8%
Other Countries	%	89%	93%	96%	92%	92%
Total	%	100%	100%	100%	100%	100%

63. The Authority notes that imports from the subject countries have decreased in absolute terms from 62,355 MT in the base year to 51,688 MT in the POI (A). Imports from Turkey reduced from 62,355 in the base year to 34,121 MT in the POI (A). Even though imports from Russia increased to 17,547 MT in the POI (A), these imports comprised only 3% of the total imports to India of the subject goods. The Authority notes that market share of subject countries in demand during the POI (A) was mere 1.6%.

M. PRICE EFFECTS OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

64. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products 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. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject countries.

Price suppression and depression effects of the dumped imports

65. The price suppression and price depression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values of the subject goods from the subject countries during the injury period including the POI.

Particulars	UOM	2013-14	2014-15	2015-16	POI
Landed price of Subject Imports	Rs./MT	14,729	16,508	18,394	14,808
<i>Trend</i>	<i>Indexed</i>	100	112	125	101
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	93	83	85
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	109	107

66. From the above information, the Authority notes that the landed price of the imports from the subject countries has increased from Rs. 14,729/MT during the base year to Rs. 14,808/MT during the POI. While the cost of sales of the domestic industry declined during the injury period, the selling price of domestic industry increased during the injury period and was significantly higher than the landed value of imports from the subject countries.

Price Undercutting

67. While working out the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been deducted. The landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty and education cess to the CIF prices from the subject countries, as reported by in DGCI&S data. The domestic industry contended that freight should be included for determination of price undercutting. The Authority notes that the comparison between Net Sales

Realization and Landed Value for price undercutting determination has been done at the same level as per the consistent practice of the Authority.

Particulars	Unit	2013-14	2014-15	2015-16	POI
Turkey					
Landed price of imports	Rs./MT	14,729	16,548	19,572	14,946
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	15-20%	10-15%	0-5%	20-25%
Russia					
Landed price of imports	Rs./MT	-	16,548	16337	14,540
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	-	10-15%	15-20%	25-30%
Subject countries as a whole					
Landed price of imports	Rs./MT	14,729	16,508	18,394	14,808
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	15-20%	15-20%	5-10%	20-25%

68. The Authority notes that during the POI, the price undercutting effect of dumped imports is positive in respect of each of the subject countries. The Authority has carried out further analyses on economic parameters of the domestic industry and likelihood or recurrence of dumping and injury in subsequent paragraphs for a holistic understanding of the situation.

N. EXAMINATION OF OTHER ECONOMIC PARAMETERS OF DOMESTIC INDUSTRY

Production, Capacity, Sales and Capacity Utilization

69. The Production, Capacity and Capacity Utilization details are as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI (A)
Installed capacity	MT	1,111,000	1,111,000	1,236,000	1,524,000
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>111</i>	<i>137</i>
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>110</i>	<i>118</i>

Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	99	86
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	111	122
Demand	MT	2,833,341	3,024,370	3,059,141	3,279,345
<i>Trend</i>	<i>Indexed</i>	100	107	108	116

70. From the above information, the Authority notes that the installed capacity of the domestic industry has increased during the injury period including the POI (A). Both production and sales have increased during the POI (A) as compared to the base year in line with increase in demand. Capacity utilization remained almost same from 2013-14 to 2015-16 but declined during the POI (A) due to increase in capacities

Inventories

71. Data relating to inventories is as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI (A)
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	74	127	129

72. It is noted that average inventories declined from 2013-14 to 2014-15 but increased in the subsequent period to 127 indexed points in 2015-16. Thereafter, despite significant increase in capacity during the POI (A), average inventories increased merely by 2 indexed points.

Profits and actual and potential effects on the cash flow

73. With regard to Profit/Loss and cash flow, it is noted that the profitability of domestic industry in terms of profit, profit before tax and interest cash profit has remarkably increased in the POI as compared to base year.

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	93	83	85
Selling Price	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	109	107
Profit/Loss	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	229	325	293
Profit/Loss	Rs.Lacs	***	***	***	***

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)
<i>Trend</i>	<i>Indexed</i>	100	231	364	341
PBIT	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	183	287	270
Cash Profit	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	189	292	277
Return of investment	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	188	282	171

Employment, wages and productivity

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

Particulars	UOM	2013-14	2014-15	2015-16	POI (A)
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	101	101	85
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	113	125	133

75. It is noted that there was marginal increase in the number of employees from 2013-14 to 2015-16 but the same declined during the POI (A). Wages have increased during the entire injury period.

Magnitude of dumping

76. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the imports of the subject goods from the subject countries are positive and substantial during the POI. However, the same has had no visible impact on the economic parameters of the Petitioners.

Growth

77. The Authority notes that the growth of the domestic industry was positive in terms of improvement in production, sales, profit, profit before tax and interest, cash profit and return on investment during the POI.

Ability to raise funds

78. It is noted that the domestic industry has enhanced its capacity of production of the subject goods in the year 2015-16 and the POI. The domestic industry has made significant capital investment at present and has further planned investments for enhancing capacities. This signifies that their ability to raise capital investment has not been affected adversely.

O. MAGNITUDE OF INJURY AND INJURY MARGIN

79. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports

from the subject countries for determination of injury margin during POI. The injury margin thus determined is as under:

Country	Producer	Exporter	NIP US\$/MT	Landed Value US\$/MT	Injury Margin US\$/MT	Injury Margin %	Injury Margin % Range
Turkey	Soda Sanayii A.S.	Soda Sanayii A.S.	***	***	***	***	5-10%
Turkey	Any other	Any other	***	***	***	***	5-10%
Russia	Trade House Ltd «Bashkirian Chemistry»	Trade House Ltd «Bashkirian Chemistry»	***	***	***	***	5-10%
Russia	Open Joint Stock Company "Berezniki Soda Works"	Trade House Ltd «Bashkirian Chemistry»	***	***	***	***	5-10%
Russia	Any other	Any other	***	***	***	***	10-15%

P. CONCLUSION ON MATERIAL INJURY

80. The Authority notes that the performance of the domestic industry improved in terms of production, sales volumes, market share, profit, cash profit, return on capital employed and inventory during the POI as compared to the base year. The domestic industry has also admitted in its submissions that it was not suffering injury during the injury investigation period. Selling price of the domestic industry has increased over the injury period and remains much higher than the cost of sales despite cost associated with addition of capacities.

Q. OTHER KNOWN FACTORS & CAUSAL LINK

81. Having examined the existence of injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting and price suppression and depression effects, other indicative parameters listed under the AD Rules and AD Agreement have been examined by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry, as follows:-

a. Volume and prices of imports from third countries

The Authority notes that during the POI, imports of the subject goods from countries other than the subject countries have remained very high in volume.

b. Contraction of demand and changes in the pattern of consumption.

The Authority notes that there is no contraction in the demand during the POI. On the contrary, overall demand for subject goods has shown improvement during the POI.

c. Developments in technology

The Authority notes that none of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

d. Trade restrictive practices of and competition between the foreign and domestic producers

The Authority notes that the subject goods are freely importable. The domestic industry is the major producer of the subject goods and accounts for significant domestic production and sales. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

e. Export performance of the domestic industry:

The table below summarises the performance of the domestic industry in respect of exports made by them.

Particulars	UOM	2013-14	2014-15	2015-16	POI (A)
Exports	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>36</i>	<i>17</i>	<i>159</i>

82. The Authority notes that the exports by the domestic industry have increased significantly during the POI (A) as compared to the base year. The domestic industry's performance in the export markets has not affected the assessment made by the Authority of the domestic industry's performance in the Indian market. The Authority conducted its assessment based solely on information pertaining to the domestic sales. Injury on account of domestic sales has been isolated and examined, to the extent possible.

83. From the above analysis, the Authority notes that neither the listed known parameters nor the other factors analysed above show any continued injury to the domestic industry. The economic health of the domestic industry has improved.

R. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

84. In a review investigation, the Authority has to determine as to whether the subject goods are continuing to enter or likely to enter the Indian market at dumped prices and whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed. The Authority is examining the likelihood of continuation or recurrence of dumping and injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the AD Rules, which states as under:

“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would

cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter alia, such factors as;

a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

b. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.

c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely to increase demand for further imports and,

d. Inventories of the article being investigated.”

Submissions made by the Petitioners

85. Following submissions have been made by the Petitioners:

- i. In case of a sunset review, it is necessary to determine the likelihood of dumping and injury to the petitioning domestic industry. Thus, the following aspects need to be examined – (a) whether the dumping and/or injury is continuing; and if so, whether it is likely to continue in the event of cessation of the ADD; (b) in case dumping and/or injury did not continue, whether the dumping would recur in the event of cessation of the ADD.
- ii. The AD Rules do not prescribe any specific methodologies for examination of the likelihood of dumping or injury in a SSR investigation. However, if there are positive dumping margins in respect of exports of the subject goods over the POI, it is likely that dumping would continue leading to consequent injury in case the ADD in force is allowed to expire. In the absence of continued dumping and injury, likelihood of recurrence of dumping and injury needs to be seen. Given the facts of the present case, it can very well be said that dumping and consequent injury to the petitioning domestic industry is likely in the event of cessation of anti-dumping duties.
- iii. During the Original Investigation, the DA determined dumping margins for Turkey and Russia at 55-65% and 65-75% respectively. Consequently, in the First Review Investigation, the margins were found to be 25 – 35% for the Subject Countries. In the subsequent review investigation, the margins remained the same at 25-35% for both subject countries
- iv. Imports from subject countries will continue to be dumped in the event of cessation of ADD and are likely to cause injury to the Domestic Industry. This is established by the following – present and potential difference in the prices of imported product and domestic product is very significant and is therefore likely to increase demand for imports; significant price difference and consequent potential increase in imports is likely to have significant depressing effect on domestic prices; subject exporters are holding significant freely disposable capacity indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional steps. The ADD was imposed after an elaborate determination that dumping of the product was causing injury to the domestic

industry. The performance of the domestic industry started improving post imposition of ADD but has started to decline in the POI. In any case, absence of continued injury to the domestic industry in the investigation period is not sufficient to warrant cessation of ADD. If the injury suffered by the domestic industry in the past was due to dumping, improvement of performance or absence of injury is a natural result of imposition of ADD. Therefore, the DA must come to a conclusion that the injury to the Domestic Industry is not likely to continue or recur, if the ADD ceases to exist.

- v. Imports from subject countries have increased in the POI after declining till 2015-16. Imports from Turkey are highest in the POI. Further, there was a surge in imports in the post POI period. Increase in imports at dumped prices indicates that imports are likely to enter in significant volume at dumped price in the event of cessation of ADD. Imports for the POI on annualized basis were 51,668 MT and imports post POI in one quarter alone (Q1 2017-18) are 52,658 MT, thus registering 400% growth. Thus, the potential of imports from Turkey alone is sufficient to take away the legitimate market of the subject countries and cause injury to the domestic industry.
- vi. The imports over the injury period did not have suppressing or depressing effects on the Domestic Industry for the reason that the ADD was in force and new Turkish capacities had not been commercialized. However, import prices have started declining significantly and have started having a suppressing effect on the prices of the domestic industry as soon as new Turkish capacities have commercialized. Should the present ADD be allowed to cease, the domestic industry would be forced to reduce the prices almost immediately. Thus, cessation of ADD would cause significant depressing effect on the prices of the domestic industry in the market.
- vii. Exporters in subject countries have capacities far in excess of Indian demand. The subject foreign producers are holding huge surplus and significant production capacities. New 3 million MT of low cost Turkish capacity has already partially commenced production and remaining shall start shortly. ETI Soda has installed additional capacity of 6 lac MT with ongoing investments in February 2017. Ciner Group, of which ETI Soda is also a part, through its subsidiary Kazan Soda has come up with a new plant located in North-West of Ankara to produce 2.5 million MT of Dense Soda Ash. The demand supply gap in Turkey as per IHS Market 2017 World Soda Ash Report is 2.1 million MT. Moreover, the consumption growth of Turkey is declining whereas its production growth remains stable every quarter indicating further increase in demand supply gap in the near future.
- viii. The Bashkir Soda Company, one of the major Russian soda ash producers, producing 65% of domestic soda ash, has undergone large scale reconstruction, further enhancing the capacities by 50%.
- ix. Turkish producers are expanding their production in spite of the fact that there is a significant demand-supply gap prevalent in Turkey as their production is significantly more than the consumption in the country. The reason for expansion is to promote exports. Research also shows that the producers in Russia also cater to a global market. The sales Geography of Russian Producers indicates Europe, CIS countries, Asia, Latin American and Middle East as markets for their product. The domestic industry has also analysed

volume and value of exports from Subject Countries to various other countries and seen that majority of exports made by them are both at significantly dumped and injurious prices. Global expansion of capacities is further threatening increased imports into the domestic market with positive demand. Further, there is a huge demand-supply gap globally which indicates that exports are likely to get diverted to Indian markets in view of its consistent growth in demand.

- x. Even though the present investigation concerns Turkey and Russia, given that the global surpluses and capacity enhancement become relevant wherever the domestic market demand is less than the capacities, it is relevant to consider capacity expansions in other markets as well. Exporters from Pakistan are also expanding capacities. The capacity expansion appears to cater to export markets. Petitioners are able to get information of the demand-supply gap in Pakistan, as provided in the IHS Chemical Week, which indicates ICI Pakistan is entering expansion plans, along with Olympia Chemicals. IHS data shows that the market in Pakistan is oversupplied.
- xi. China also has capacity expansions lined up, despite existing significant surplus capacities and showing that the Chinese producers can afford such massive capacity expansions when they are already hugely surplus, defying any rationality for these investments barring the greed to export in large global market, taking advantages of lower costs as compared to producers in several countries.
- xii. The current volume of imports from Turkey is clear evidence that the exporters are actually misleading the DA in believing that there shall not be significant increase in imports. The governments and exporters of Russia and Turkey can give an undertaking that volume of exports shall not exceed past the volumes registered in the present POI, but if the exporters wish to enhance their exports to the extent what the Turkish producers have already done till June 2018 and what they are expected to do by December 2018, Petitioners submit that there is not even an iota of doubt that there shall be a flood of imports post cessation of ADD. Petitioners have consolidated information with regard to their sales volumes to the top 5 consumers of the goods and imports made by them. It will be seen that sales by domestic industry have declined from *** MT to about less than *** MT. This loss in itself provides a preview of the loss of market that the domestic industry is bound to suffer if the current duties are allowed to cease.
- xiii. Price undercutting without ADD is positive and significant. It is evident that if ADD is withdrawn at this premature stage, the imports would cause significant price undercutting which would cause injury to the Domestic Industry.
- xiv. The Indian market is highly price sensitive, with consumers deciding procurement on the basis of price. Availability of low priced imports from subject countries would thus cause an adverse impact on the domestic industry. Vulnerability of the domestic industry relates to whether the industry would be susceptible to material injury in the event of revocation of anti-dumping duty imposed. In the event of cessation of current ADD at premature stage, the domestic industry will have to either reduce selling price by the amount of ADD or lose sales volumes. In either case, the domestic industry would suffer. In the event of withdrawal of current ADD and if Domestic Industry is constrained to sell at import prices, the profitability of the Domestic Industry would

significantly decline. The return on investment and cash profit would also decline significantly. Therefore, cessation of ADD would have significant adverse effect on the prices in the market. The level of inventories available with the producers in subject countries could not be ascertained by the Domestic Industry. However, in view of the significant capacity available with the producers of the same, it can fairly be assumed that the foreign producers can scale up production in a short period.

- xv. The subject exporters should establish on the basis of their information that dumping is unlikely to continue, intensify or recur in the event of cessation of ADD.
- xvi. In a number of review investigations, the DA has examined whether cessation of ADD is likely to lead to recurrence of injury to the domestic industry. For this purpose, the DA is required to undertake the following tests – a) whether price undercutting and injury margin in respect of exports to India during POI is positive; b) whether price undercutting and injury margin in respect of exports to India during post-POI is positive; c) whether price undercutting and injury margin in respect of various third countries during POI is positive; d) whether price undercutting and injury margin in respect of various third countries during post-POI is positive; e) the volume of exports to third countries during POI which were at a price below selling price of the domestic industry and export price to India, and whether such volume of exports is significant having regard to Indian demand. Only in a situation where the DA has come to a conclusion that price undercutting in all above situations are negative, the DA can hold that the Indian Market is not attractive to the foreign producers and intensified dumping post cessation of ADD is unlikely to occur. Otherwise, the DA should hold that the cessation of anti-dumping duties is likely to lead to recurrence of injury to the Domestic Industry. When the injury margin principle has been applied by the DA in a number of investigations, the DA can no longer apply this principle as far as injury margin is concerned. However, a principle of price undercutting is required to be applied for the same purpose. The relevant determinations made by the Authority in the past investigations wherein the said principle of injury margin have been applied are – MTR Investigation in respect of the ADD imposed on imports of Acetone originating in or exported from Chinese Taipei; MTR Investigation concerning import of Phenol originating in or exported from Korea RP; MTR of ADD imposed in respect of imports of Phenol originating in or exported from the EU, South Africa and Singapore; SSR Investigation concerning imports of Ductile Iron Pipes originating in or exported from China PR; Final Findings in the SSR of ADD imposed on import of Zinc Oxide originating in or exported from China PR; SSR Investigation of ADD on imports of Polypropylene originating in or exported from Singapore; and SSR review of ADD imposed in respect of imports of Acetone originating in or exported from the EU, South Africa, Singapore and USA.
- xvii. The causal link has already been established in the original investigation. The DA has to examine whether injury to domestic injury is likely to continue or recur in the event of cessation of ADD. It is evident from earlier submissions that cessation of ADD is likely to lead to intensified injury to the domestic industry – (a) Volume Effect: price undercutting -> consumers preferring imported material -> domestic industry losing sales -> inventory increasing ->

decline in production -> decline in capacity utilization; (b) Price Effect: Price undercutting -> Domestic industry prevented from effecting price increases -> decline in profitability -> decline in gross profits earned in the product -> decline in cash profits -> decline in return on capital employed.

- xviii. In view of the same, injury to Domestic Industry is likely to be caused from dumped imports in the event of cessation of existing ADD. The Domestic industry submits that a) product under consideration is exported to India at dumped prices from subject countries. Dumping is likely to intensify from subject countries; b) there is likelihood of dumping and injury to the domestic industry in the event of cessation of ADD; and c) the ADD is required to be extended further for a period of five years.
- xix. The argument of interested party AIGMF implies that the parameters relevant for determination of continuation of injury are also relevant for determination of likelihood of injury. There is no legal and factual basis for such an assumption. On the contrary, the parameters relevant for actual injury or continued injury are different from the parameters relevant for threat or recurrence of injury. Therefore, it is inappropriate to consider the parameters of continued injury to determine likelihood of recurrence of injury. If potential decline in parameters is required to be considered as a parameter for determination of likelihood of recurrence of injury, then, the past data becomes entirely irrelevant and the authority must decide based on the potential data for the subsequent period. The primary parameter that forms the basis of an analysis in a SSR investigation is the analysis of likelihood of continuation or recurrence of injury to the Domestic Industry. Other interested parties have failed to appreciate the fact that if the ADD has had the desired effect there would be no obvious current injury to the domestic industry, the condition of the domestic industry is expected to have improved during the protective regime of the ADD. In the present investigation, the domestic industry agrees that there has been an improvement in various parameters of the domestic industry but that is the result of imposition of the existing ADD. Further, these parameters have started showing decline in the POI, with an increase in imports. While the absolute parameters would not show material injury, yet the condition of the industry is extremely fragile. However, since this is a SSR investigation what is to be primarily seen is the likelihood of continuation or recurrence of dumping/injury to the domestic industry in case of cessation/revocation of the existing duties.
- xx. The averment that if domestic industry supplies adequate volumes the imports are bound to go down further, simply does not hold any merit. Without prejudice to the settled position that demand supply gap does not justify dumping in the country, the Petitioners submit that only *** MT is the alleged demand-supply gap in the country, whereas imports from subject countries and other countries attracting ADD is almost 6 times more than the gap which exists. The Domestic Industry exports only when it does not get a favourable market. Considering the increase in capacity that was made in view of the increasing demand, the domestic industry was not able to gather the sales volume as should have been rightfully theirs. From the base year of the injury investigation till 2015-16, the volume of dumped imports from the subject countries declined but increased significantly in the POI. Further, since this is a SSR investigation, the movement of imports post POI may also be seen to

examine likely behaviour of exporters. Increase in imports at dumped prices indicates that imports are likely to enter in significant volumes at dumped price in the event of cessation of ADD.

Submissions made by other interested parties

86. Following submissions have been made by other interested parties:

- i. Petitioner is obliged to provide information on likelihood and has failed to supply the authority with even prima facie evidence in this regard. There must be evidence pertaining to relevant parameters while seeking initiation of investigation.
- ii. There is no causal relationship between the likelihood of continuation or recurrence of dumping and likelihood of continuation or recurrence of injury in the event of cessation of anti-dumping duty. The alleged increase in dumped imports has not impacted the production, capacity utilization and domestic sales of the Petitioners. As demonstrated earlier, any alleged price undercutting has had no impact on the financial performance of the domestic industry.
- iii. The Indian Industry has added close to *** lac tons of annual capacity and there are further plans to add *** lac tons of annual capacity, as recorded in the final findings dated 14/12/2018. The domestic industry's strong presence would impede the flow of any surplus capacities in the subject countries to India.
- iv. In case the price undercutting claimed by the domestic industry had any actual detrimental impact, the domestic industry would not have been able to maintain its domestic sales or increase them. The mere fact that the domestic industry managed to expand its domestic sales despite alleged price undercutting demonstrates the absence of injury and no likelihood of continuation or recurrence of injury.
- v. Selling price of the domestic industry continuously increased during the injury period, while profitability increased by more than three times during the POI when compared with the base year 2013-14, despite alleged dumping. The data on record does not show that the domestic industry was forced to lower its prices during the injury period.
- vi. With decline in imports of the subject goods, the domestic industry installed additional capacities and earned good returns on the same. The ROCE increased from 100 indexed points in 2013-14 to 167 indexed points during the POI.
- vii. The evidence on record shows that with increase in demand, the domestic industry added capacities, increased its production, domestic sales and profitability, despite alleged dumping. This is a trend that shall continue even if the anti-dumping duty lapses. Furthermore, there is no evidence that if the anti-dumping duty is revoked, customers would end up switching to imports.
- viii. The domestic industry's condition has improved exceptionally and now there is no further need of protection. In view of all of the above, this review should be terminated given the absence of evidence suggesting likelihood of continuation or recurrence of dumping causing any likelihood of injury to the domestic industry.

- ix. HUL submits that price attractiveness cannot be considered as a reason for likelihood of injury in the present instance. The difference in price between Turkey's exports to the three countries and to India is significant due to which the presence or absence of the anti-dumping duty would have no effect. Turkey's export prices to third countries are already at prices much lower than its price to India even after incorporating the presently levied anti-dumping duty. If India's market is price attractive, there should already have been a considerable increase in Turkey's exports to India irrespective of whether duties are allowed to expire or not. However, such an increase in exports to India has not been observed even though producers in Turkey could get much more remunerative prices on making sales to India even after absorbing anti-dumping duties. This implies that even if duties were to expire, there would be no significant change in price attractiveness for producers from Turkey, whereby there is no likelihood of a sudden increase in dumped imports to India.
- x. Further, Petitioners vide pages 33 and 45 – 46 of their Written Submissions have made submissions in respect of exports made by the subject countries to third countries at dumped prices and likely diversion of exports to third countries into India. HUL submits that, from the data provided by the Petitioners vide their Petition at pages 81 – 87, it can be seen that the main markets of Turkey are Italy, Egypt and Saudi Arabia and the main markets of Russia are Kazakhstan, Belarus and Ukraine. It can also be seen that not only the imports to these countries are significant but also are "not" at dumped prices (specifically at more than the export price to India). Hence, it can be concluded that the main markets of Turkey and Russia would remain as the above despite the existence or cessation of the anti-dumping duty in India. Therefore, the exports from Subject Countries to third countries becomes irrelevant while making a likelihood analysis in the present factual matrix.
- xi. Petitioners have not provided any post-POI data with respect to price suppression/depression, nor has it made any substantiated submissions with respect to the same. However, HUL has presented detailed submissions which evidences that no price suppression/depression has occurred during the POI. HUL thus submits that the depressing or suppressing selling price of the Petitioners could not be attributed to the price of the subject imports, whose alleged effect should have significant, as opposed to the non-existent effect in the present factual matrix.
- xii. The Petitioners have not provided any post-POI data with respect to inventory level in the Subject Countries, nor have they made any substantiated submissions with respect to the same.
- xiii. Vide para 75 of the Petition, Petitioners stated that there was significant dumping of the PUC in the domestic market in earlier investigations. However, it is submitted that the mere existence of dumping in previous investigations is not the crux of a SSR and there must be explicit evidence of an increase of dumped imports into India. The Petitioners have failed to conclusively prove a likelihood of recurrence or continuation of dumping of Subject Countries' imports, as highlighted in earlier submissions. Even if a likelihood of continued dumped imports is assumed (but not conceded), it is evident that the dumping in the injury period has absolutely no causal link to the performance of the Petitioners.

- xiv. There is no current dumping nor is there any likelihood of dumping in the future. The absence of current injury is a robust indicator that the injury is not likely to recur. It has been the opinion of the Authority in recent sunset reviews that even the existence of dumping is not enough when the same has not caused any material injury to the domestic industry. The same position emerges from various recently concluded investigations included caustic soda from Japan and Qatar in the sunset review final findings dated 10.01.2018 and Nylon Filament Yarn from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP in the sunset review final findings dated 05.01.2018.
- xv. In view of the above, it is submitted that the petitioners have failed to demonstrate any likelihood of injury in the absence of anti-dumping duties. The petitioners have also admitted that imports from the subject countries have not caused them any injury.

Examination by the Authority

87. The Authority has examined the likelihood of continuation or recurrence of injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the AD Rules. While considering the likelihood aspect under clause (vii) of Annexure II to the AD Rules, the Authority considered, inter alia, the following factors:

1. Present and continued imports

88. The Authority has undertaken analysis of the volume of imports of the subject goods into India from the subject countries during the injury period and post-POI period as well. The Authority notes that the volume of the imports from subject countries into India registered decline from 62,355 MT in the base year to 51,668 MT during the POI (A). The authority also notes that the import from subject countries have however increased to 2,20,791 MT in the post-POI period (October 2017 to September 2018). As established in earlier sections, the performance of the domestic industry improved in terms of production, sales volumes, market share, profit, cash profit, return on capital employed and inventory during the POI as compared to the base year. The domestic industry has also admitted in its submissions that it was not suffering injury during the injury investigation period. Selling price of the domestic industry has increased over the injury period and remains much higher than the cost of sales despite cost associated with addition of capacities. Despite present dumping, the domestic industry suffered no injury from imports of the subject goods. Further, subject imports only comprised 1.6% of the total demand in India during the POI (A). All these factors show that the likelihood of continuation or recurrence of dumping and injury is not established in the present case.

2. Surplus Capacities

89. This parameter for ascertaining the threat of material injury requires evaluation of existing surplus capacities and capacity addition, if any, to explore the possibility of diversion of disposable quantity to Indian market. Domestic industry has claimed that the producers in subject countries are already faced with significant surplus capacities and that these producers are exporting the product to a large number of countries, a very significant proportion of which is being exported at a price below the prices in respect of India, thus showing likelihood of diversion of these exports to India in the event of withdrawal of anti-dumping duty.

90. While participating producers/exporters and other interested parties have not provided any evidence and information with regard to existing surplus capacities, the domestic industry has furnished information from IHS Chemical journal and extracts from the annual report of certain producers in subject countries providing data/statements regarding Soda Ash manufacturing in the subject countries viz. existing capacity, existing production, unutilized capacity, capacity expansion, investments, etc. The information provided by domestic industry shows that there has been an expansion of capacity in subject countries. IHS Chemical Report extracts provided by the domestic industry shows that producers in Turkey are expanding capacities by around 25 Lakhs MT from July, 2018 to December, 2019 to cater to the global demand. However, it is not established that any such alleged surplus capacities in subject countries shall be diverted to India if anti-dumping duties were to be revoked.

3. Price Attractiveness

91. The domestic industry has provided Turkey Customs data in respect of exports by Turkey to rest of the world. WTA data is not available for post POI period. However, for the POI, the WTA export data from Turkey to the rest of the world (aggregate data as well as segregated data in regard to below- India price exports) is as under:

Export to rest of world-- Volume	Unit	POI Annualised	POI Annualised (As per WTA Data)	Post POI (Oct 2017- Sept 2018)
Total	MT	1,393,227	16,06,891	26,60,570
Price lower than India	MT	900,547	10,64,490	20,97,451
Price Higher than India		492,680	5,42,401	563,119
Export to rest of world-Price				
Total	\$/MT	181	180	176
Price lower than India	\$/MT	170	171	171
Price Higher than India	\$/MT	200	199	193

92. The domestic industry has claimed that exports from Turkey to world has increased significantly in post POI (Oct., 2017 to Sept' 2018) as compared to POI. They have submitted that exports from Turkey to world during the POI was 13,93,227 MT which increased to 26,60,570 MT in the post POI. They have further claimed that significant exports to rest of the world have been made at price lower than average price to India and that out of 26,60,570 MT of exports made by Turkey to rest of the world, 20,97,451 MT, i.e., almost 79% of exports have been made at price below the average price at which goods have been exported to India. The total demand in the country is to the 32,79,345 MT in the POI.

4. Price suppression and Price depression

93. The cost of sales of the domestic industry is claimed to have increased in the post-POI period (October 2017-March 2018) by 11% as compared to POI whereas selling price of DI during the same period increased by 3% only. However, it is also observed that the selling price of the domestic industry during POI has been much higher than its cost of sales.

5. Level of inventories

94. The level of inventories available with the producers in subject countries could not be ascertained in view of lack of sufficient cooperation.

6. Level of current margin

95. The Authority notes that dumping margin in the original investigation was positive. In the present sunset review, dumping margin is positive during the POI for imports from the subject countries.

96. However, after overall assessment of all parameters, the Authority holds that there is no likelihood of continuation or recurrence of dumping and injury in case anti-dumping duties are revoked.

S. POST DISCLOSURE COMMENTS

Submissions made by the Petitioners

97. Following submissions have been made by the Petitioners:

- i. Non-confidential version of the communications sent by the Authority, copy of the replies and submissions filed by the interested parties, and the normal value be disclosed in order to enable them to come to a meaningful conclusion.
- ii. Market share of subject imports declined to 0.8% and then again increased to 1.6% in the POI. With increase in imports post POI, the market share has increased further.
- iii. Import volumes declined till 2015-16 and increased significantly thereafter in the POI. Imports increased by almost 100%. Further, imports increased very significantly in the post-POI period after commencement of operation of additional capacities in Turkey.
- iv. Subject imports have started having suppressing effect on the prices of the domestic industry during the last six months of the POI. Even if there is no suppression/depression on overall basis over the injury period, the fact that the imports have started having suppressing/depressing effect is clearly indicative of the likely situation. Petitioners further submit that the end of POI situation is all the more important than overall situation particularly when the trend in the post POI shows a worsening position.
- v. Whereas the domestic industry's capacity increased by 37%, production increased only by 18% and sales increased only by 16%.
- vi. Even though the domestic industry is earning profit, it declined in the POI as compared to the previous year. Profits declined by almost 50 % in the last six months of POI as compared with 2016-17. The end of POI situation is more important than overall situation particularly when the trend in the post POI shows a worsening position.
- vii. Even though there is no current injury, performance of the domestic industry within the POI shows vulnerability of the domestic industry, which is a very important and relevant parameter for likelihood determination.

- viii. In regard to level of inventories available with the producers in subject countries, adverse inference is required to be drawn against the exporters in view of lack of sufficient cooperation.
- ix. Even if inventory levels are low, the same is immaterial, as the Turkish producers are exporting about 81% of Indian demand to third countries market at lower price and this volume is sufficient enough to cause injury.
- x. The Authority has rightly held that the petitioners satisfy the requirement of standing under the AD rules. Thus, the petitioners form eligible domestic industry.
- xi. The Authority rightly accepted the confidentiality claims of the domestic industry. However, petitioners believe that the foreign producers have resorted to excessive confidentiality.
- xii. In respect of non-cooperating producers/ exporters from Turkey, the dumping margins are very significant. The dumping margins for exporters from Turkey and Russia have increased as compared to the original investigation and mid-term review investigation. Dumping by these producers has in fact intensified.
- xiii. The domestic industry reiterates that transportation cost/freight cost should be considered while examining price undercutting and injury margin for the following reasons:
 - a) Transportation cost forms a very substantial portion of the cost of production in case of subject goods as production takes place mainly in Gujarat (due to availability of raw material) whereas sales have to be made throughout India.
 - b) The subject goods are a comparatively lower price product. Thus, the incidence of transportation cost per MT of the product works out to be very substantial when compared with the selling price of the product.
 - c) The issue of freight is very unfortunately wrongly being linked to NIP. This as an issue of fair comparison for injury margin.
- xiv. Demand has increased steadily throughout the injury investigation period. Anticipating the increase in demand for the PUC in India, the domestic industry has undertaken significant capacity addition.
- xv. The import price has declined significantly in the present POI whereas the cost of production increased globally. As the import price declined in H1, 2017-18, the import volumes increased significantly, showing 370% increase in imports as compared to 2016-17.
- xvi. The import volumes will increase further, given the kind of capacities that have been commercialized by the Turkish producers and the remaining capacities that shall be commercialized in future.
- xvii. Market share of the subject imports has increased in the POI. Nonetheless, what is to be seen is the likely effect of the imports on the market share in case the current duty is allowed to cease.
- xviii. The Authority may kindly consider only those transactions that were, in fact, undercutting the prices of the domestic industry while examining price undercutting as that alone will show the extent of actual undercutting.

- xix. The domestic industry's cost of production declined till 2016-17 and then increased thereafter in the last six months of the present investigation period; whereas selling price increased till 2015-16 and then declined thereafter in the POI. Import prices have also declined in the last six months of the POI. Thus, imports have started having suppressing effect on the domestic industry's prices during the last six months of the POI.
- xx. While investments of Rs. 3,225 crores have already been made, further investments of Rs. 10,000 crores are being planned. The impact of possible cessation of ADD on these investments should be considered while undertaking injury analysis. The likely effect on these investments in the event of cessation of duty would be significantly adverse.
- xxi. Interest and depreciation costs have declined despite increase in capacity. Thus, increase in capacity is not the reason for decline in profits. The profits have declined because of decline in import price from Turkey and increase in such dumped imports from Turkey.
- xxii. Thus, if the domestic industry has earned good profits, the same is only because of investments made by the domestic industry. As far as new investments are concerned, the domestic industry is likely to achieve a meagre ROI if the domestic industry maintains the current level of price and cost structures. However, post cessation of anti-dumping duty, the domestic industry is likely to reduce these prices, leading to further decline in ROI.
- xxiii. With expansion of capacities in the subject countries the market share of these countries has started showing increasing trend, even in the presence of anti-dumping duty. The market share of the petitioners has remained about the same while that of the other Indian producers shows a decline.
- xxiv. The average inventory of the petitioning domestic industry has increased very significantly in the POI, having almost doubled.
- xxv. Though wages have shown improvement in the injury period, employment and wages are not solely dependent on the subject goods performance. They are not reflective of the adverse effects of the dumping on the domestic industry, as these factors are governed by overall operations of the company and the economy.
- xxvi. The growth of the domestic industry in terms of production and domestic sales volume was positive. However, growth in terms of profits and return on investment was positive only till 2015-16 and became negative in the POI.
- xxvii. The parameters analysed by the Authority clearly establishes likelihood of continuation of dumping and recurrence of injury as can be seen below:
- a. The volume of subject imports has increased from 51,668 MT in the POI (Annualised) to 2,20,791 MT in the post-POI period which means an increase of 327%.
 - b. There has been significant expansion of capacity of producers in Russia and Turkey.
 - c. The Turkish producers are exporting about 81% of Indian demand in third countries market at lower price. If this volume is diverted to India even at

the prices at which Turkey is currently exporting goods to India, the domestic industry will incur losses.

- d. The domestic industry's cost of sales has increased in the post-POI period (October 2017-March 2018) by 11% as compared to the POI whereas the domestic industry's selling price during the same period increased by 3% only. Thus, imports have started having suppressing and depressing effects on the prices of the domestic industry.
 - e. Majority of exports made from the subject countries to third countries are both at significantly dumped and injurious prices.
 - f. Global expansion of capacities is further threatening to cause increased imports into the domestic market with positive demand. Further, there is huge demand supply gap globally which indicates that exports are likely to get diverted to the Indian market in view of its consistent growing demand.
 - g. Price undercutting without anti-dumping duty is positive and significant. Thus, it is evident that if anti-dumping duties are withdrawn at this premature stage, the imports would cause significant price undercutting which would cause injury to the Domestic Industry.
 - h. The Indian market is highly price sensitive. Availability of such low-priced imports from subject countries in the market is definitely causing an adverse impact on the domestic industry
 - i. In a situation where significant exports of the PUC from the subject countries to the rest of the world are below the domestic industry's selling price and export price from subject countries to India, the Authority is required to examine whether diversion of these low-priced exports to India is likely to cause injury to the domestic industry post cessation of anti-dumping duty.
- xxviii. Exporters are highly export oriented. Further there is a global demand supply gap which is further threatening increased imports into the domestic market with positive demand.
- xxix. There is definite likelihood of intensified imports in case existing anti-dumping duty ceases to exist.
- xxx. Anti-dumping duty should be imposed only as fixed quantum of anti-dumping duty expressed as US\$/MT.

Submissions made by other interested parties

98. Following submissions have been made by other interested parties:

- i. As per the UN Comtrade statistical data, exports of soda ash from the Russian Federation to India during the investigation period (April 2016 – September 2017) were only 2.8% of the total soda ash imported by India during that period. Such low import volumes from the Russia Federation should be regarded as insignificant in accordance with the provisions of Art. 5.8 of the AD Agreement, as the imports from the Russian Federation did not exceed 3% of the total amount of imports of Soda Ash to India. Such low imports cannot be considered as dumped under the provisions of Art. 2.1 of the AD Agreement.

- ii. The Russian Federation supports the opinion of the investigating body about the lack of injury to the domestic industry under the provisions of Art. 3 of the AD Agreement as there are stable positive dynamics of production and economic indicators of the domestic industry of India over the last few years.
- iii. During the period 2014 to 2017 (including the investigation period), the situation of the industry improved. The Russian side believes that there is no injury to the domestic industry under provisions of Art. 3.4 and 3.5 of the AD Agreement.
- iv. There is lack of evidence regarding any dumping and threat of resumed injury to the domestic industry. Thus, anti-dumping duty should be immediately cancelled under Art. 11.2 of the AD Agreement.
- v. There is no causal link between goods imported from the Russian Federation and expected injury to the domestic industry of India under provisions of Art. 3.4 of the AD Agreement, because the import volume of the goods originating from the Russian Federation were insignificant - during the investigation period it amounted to 2.8% of the total amount of imports of soda ash to India. Further, profitability of the domestic industry of India during the investigation period, as well as in 2014-15 and 2015-16 was more than twice higher than similar indicators of 2013-14, which confirms the lack of injury to the domestic industry of India and contradicts the assumption of resumed injury in case of cancellation of the current anti-dumping measure.
- vi. Considering the above, the anti-dumping measure against the Russian Federation should be cancelled in accordance with the provisions of Art. 11.1 of the AD Agreement.
- vii. It is apparent that the domestic industry has filed data on record for the post POI period in a partial and haphazard manner. Post POI data has not been made available in a consolidated manner to Soda Sanayii, Hindustan Unilever Limited and other interested parties. Non-provision of critical information is in violation of the obligation to disclose all essential facts and also in violation of the principles of natural justice. This is in clear breach of the judgment by the Hon'ble High Court of Gujarat in Nirma Ltd. v. Union of India, 2017 (358) ELT 0146 Guj.
- viii. Post POI data has been used partially and in favour of the petitioners. Only import volume has been disclosed for the post POI period, but there is no information on profitability, ROCE and other key performance parameters of the petitioners for the post POI period.
- ix. Petitioners have not substantiated that dumping and injury are likely to continue or recur if anti-dumping duty were to be revoked. There is no substantial information in the disclosure statement regarding likelihood of recurrence of injury on account of dumped imports from Russia. The Authority should allow the duty against Russia to expire.
- x. It is unclear whether the Authority has investigated why there was a sudden surge in imports during the post POI period, particularly when duties continue to be in force. There is no analysis of the impact of these increase imports on the domestic industry. There is no analysis whether the increased volume of imports in the post POI was at dumped prices.

- xi. There is no adverse impact on the performance of the petitioners as per the data on record. There is no causal link between alleged injury suffered and subject imports.
- xii. The Authority is requested to make available IHS Chemical report in non-confidential manner to the interested parties including Soda Sanayii. The expanding capacities in Turkey for most part of July 2018 to December 2019 is a projection and not existing capacities or data pertaining to the POI or post POI. Mere forecast of expansion of capacities or existence of surplus capacity does not mean that the additional capacity will be utilised towards exports to India.
- xiii. Even independent analysis of the market indicates that any additional capacity in Turkey is likely to be offset by rapidly growing demand.
- xiv. The difference in price between Turkey's exports to third countries and to India is significant due to which the presence or absence of the anti-dumping duty would have no effect. As observed from page 84 of the petition, Turkey's export prices to third countries are already much lower than its price to India even after incorporating the presently levied anti-dumping duty.
- xv. Petitioners have failed to provide information on price suppression, price depression and level of inventories. The Authority has not provided information on post POI data/trend for the factors relevant for determining price suppression or depression. Interested parties have been deprived of an opportunity to provide meaningful comments on the same.
- xvi. Even assuming there is continued dumping, there is lack of material injury or continued injury to the domestic industry – thus proving that even if dumping continues, the domestic industry will not be injured.
- xvii. Other than GHCL and Rohit Surfactants, even Nirma and Tata Chemicals have initiated substantial expansions in their capacities for the product under consideration. It seems counterintuitive to invest substantial capital into the production of the PUC if there is a serious likelihood of recurring injury from dumped imports. This is clearly indicative of the fact that the domestic industry is prospering in India, and there is no likelihood or threat of recurring injury from dumped imports in the foreseeable future.
- xviii. In respect of normal value for M/s. Soda Sanayii A.S., Turkey (Producer/Exporter), at paragraph no. 31 of the Disclosure Statement, the Authority has noted that it has taken into consideration the sales made only to unrelated customers for arriving at normal value. The Authority noted that the prices to related customers were lower than the prices to unrelated customers. In response, Soda Sanayii submits that, even if the prices to the related customers are lower than the prices to unrelated customers, the sales to such related customers have been made in the ordinary course of trade. Therefore, the Authority must consider both, sales made to related/affiliated and unrelated/unaffiliated customers in the domestic market of Turkey as reported in Appendix 4A and 4B (CONFIDENTIAL) of the questionnaire response filed by Soda Sanayii while calculating the normal value.

- xix. In respect of the observation made by the Authority on cost of production, and profitable sales in the confidential version of “Dumping Margin Calculation – Soda Sanayii - Turkey”, Soda Sanayii submits that it agrees with the same. Accordingly, the same may be recorded in the final findings.
- xx. In respect of foreign exchange gain/loss and billing adjustment as part of post factory expenses claims made by Soda Sanayii in the Appendix 4A and 4B (details of domestic sales), it is submitted that the Authority has not considered the claims as made by Soda Sanayii. The Authority is requested to take into consideration the said expense claims made by Soda Sanayii and determine the normal value accordingly.
- xxi. While determining the export price, according to paragraph no. 38 of the Disclosure Statement, the Authority has made adjustments only towards inland freight, credit cost, handling expenses, commission, insurance and overseas freight and rejected foreign exchange gain/loss. Soda Sanayii requests the Authority to take into consideration the foreign exchange/loss while making adjustments and re-determine export price accordingly.
- xxii. Soda Sanayii submits that the Authority has determined dumping margin combining the sales and costs for both forms of PUC i.e. Soda Ash Dense and Soda Ash Light. In this behalf, Soda Sanayii submits that, it has exported only Soda Ash Dense to India during the POI, whereas it has sold both, Soda Ash Dense and Soda Ash Light in its domestic market. Further, Soda Sanayii submits that it has provided the data for the sales and cost separately for both the grades of PUC. It may be noted that there is substantial price difference between both the grades of the PUC. In view of the same, the Authority is requested to determine margin of dumping for Soda Sanayii based on the domestic sales of Soda Ash Dense only for the purpose of fair comparison of the prices.
- xxiii. As per the confidential normal value calculation provided by the Authority, it can be seen that the Authority has considered the average exchange rate of TL (Turkish Lira) to USD at 0.31USD/TL. In this regard, Soda Sanayii submits that, the Turkish Lira has substantially fluctuated during the POI and considering an average exchange rate for the entire POI, will not depict the fair picture of the actual prices realized by Soda Sanayii. In view of the same, the Authority is requested to consider the daily exchange rate for each of the transaction for both domestic sales and exports to India.
- xxiv. Soda Sanayii agrees with the Authority’s observation made at paragraph no. 77 of the Disclosure Statement that the domestic industry’s performance improved in production, sales volume, market share, profit, cash profit, return on capital employed and inventory in POI in comparison to base year. Accordingly, Soda Sanayii requests the Authority to record the same vide its final findings.
- xxv. The Authority is requested to conclude that there is no material injury in the period assessed; injury, if any, is self-inflicted; there is no continued injury; there is no evidence on record that establishes a likelihood of continuation or recurrence of dumping and injury if duties are terminated; and accordingly, the Authority may kindly terminate the investigation. If at all duties must be continued, the lesser duty rule should be duly observed.

- xxvi. Pursuant to the orders of the Hon'ble High Court of Gujarat, the Director General of Trade Remedies initiated the present sunset review investigation. It is hereby submitted that with the same situation, same period of investigation, the judgment of the Authority cannot be ignored altogether. Earlier examination of the Authority may be relied upon in the present investigation that there is no injury to the domestic industry and the anti-dumping duty has served its purpose.
- xxvii. Imports from the subject countries are not causing any injury to the domestic industry. The average profit of the domestic industry was 41% of cost of sales during the POI, which was way above the one (i.e. 5%) permitted by the Director General while constructing normal value in an anti-dumping investigation. The ROCE of petitioner is 29% of NFA during POI whereas the Director General allows 22% while computing NIP in all anti-dumping cases. Therefore, there is no existence of injury to the domestic industry and thus question of its continuation does not arise.
- xxviii. It is hereby submitted that anti-dumping duty is not perpetual in nature and considering the facts of the case, there does not exist any special/exceptional circumstances calling for continuance of anti-dumping duty on the subject goods from subject countries. Thus, in view of the above, the anti-dumping duty shall not to be continued and present investigation should be terminated on the same grounds.
- xxix. From the disclosure statement, it is clear that there was no injury to the domestic industry during the POI and thus, present investigation should be terminated.
- xxx. A comparative analysis of the facts established in the sunset review final findings dated 14th December, 2018 concerning China PR, the EU, Kenya, Pakistan, Iran, Ukraine and USA with the facts disclosed in the present disclosure statement dated 8th February, 2019 in respect of the present investigation establish that anti-dumping duty should not be continued and the investigation should be terminated on this ground.
- xxxi. In the last three years, on many occasions, the Director General has found that there is no injury and no likelihood of recurrence of injury due to imports of Soda Ash from Turkey and Russia; and imports of Soda Ash from China PR, the EU, Kenya, Pakistan, Iran, Ukraine and USA. Considering all the various final findings and the present disclosure statement, it is clear that anti-dumping duty has served its purpose and there is no injury to the domestic industry. The domestic industry is making bumper profits as shown in their annual reports and as per the above final findings.
- xxxii. Joint Stock Company<<Bashkir Soda Company>> has not increased its capacity by 50% as has been claimed by the petitioners. Joint Stock Company<<Bashkir Soda Company>> and OJSC operate on a high rate and don't have further plans to expand capacities in the nearest future. Trade House Ltd. <<Bashkirian Soda Company>> sells 90% of Soda Ash in Russia CIS market and does not have free volumes and resources for export expansion.

- xxxiii. Basis of 22% ROCE was designed in the year 1987, when all parameters like interest rate and corporate tax were different, those cannot be termed as reasonable after 30 years in the year 2018. In 1987, the rate of interest was around 18% and corporate tax was 40%. Now both, interest rate around 10% and corporate tax (30%) have come down. Therefore, it is submitted that the DGTR is giving undue protection to the domestic industry by applying 22% ROCE to determine NIP. In *Bridge Stone Tyre Manufacturing & others v. Designated Authority*, 2011 (270) ELT 696 (Tri-Del.), the Hon'ble CESTAT has observed that the practice of 22% ROCE adopted by the Designated Authority was not correct as calculating the NIP by assuming such a high rate of return gives an inflated picture of price underselling. The EU practice establishes that the profit margin allowed by an investigating authority to the domestic industry should be the amount of profit that the domestic industry could reasonably count on under normal conditions of competition, in the absence of dumped imports. Adoption of 22% profit margin based on some hypothetical considerations is totally illogical and cannot be termed as reasonable.
- xxxiv. M/s Saint Gobain India Pvt. Ltd. is one of the major users of soda ash in the country. The current anti-dumping duties on imports of soda ash from Turkey and Russia are not justified and ought to be withdrawn as early as possible.
- xxxv. The Petitioners have intentionally not included profitable Indian producers in the petition. In the original investigation, four Indian producers comprised of domestic industry but in the present sunset review, only two Indian producers comprise as domestic industry.
- xxxvi. The Petitioners have intentionally not included Tata Chemicals as domestic industry on the logic that Tata Chemicals has a related producer in Kenya. The same logic should be applied to M/s Nirma Ltd., one of the Petitioners, as it has a related producer in USA.
- xxxvii. The domestic industry has admitted it is not suffering injury on account of the alleged dumped imports from the subject country. This fact also finds mention in the disclosure statement.
- xxxviii. The Authority's order dated 5.4.2018 demonstrates clearly that the domestic industry has been earning whopping profits to the tune of 58% (by Nirma Ltd.) and around 29% ROCE. Further, the Authority after considering all the facts and circumstances on record stated that there was no likelihood of injury to the domestic industry. The said observation of the Authority still holds true as there is no likelihood of any injury to the domestic producers even after withdrawal of the anti-dumping duties, as is evident from the disclosure statement.
- xxxix. It is a known fact that the selling prices of the subject goods in India are governed by the prices determined by the domestic producers. While the cost of sales of the domestic industry decreased by 15%, the selling price of domestic producers increased by around 7% during the POI.

- xi. The production of the domestic industry has increased by 18%. While capacity utilisation has marginally decreased, the same is solely on account of increase in the capacities of the domestic industry.
- xli. The domestic sales of the domestic industry increased by 16%, captive transfer increased by 70% and domestic sales value increased by 25%.
- xlii. Profit per unit of the domestic industry increased by 193%. Total profits increased by 241%. ROI on GFA basis increased by 41% and ROI on NFA basis increased by 62%. ROCE of the domestic industry increased by 67%. The share of imports from the subject countries decreased despite overall increase in demand.
- xliii. It is important to mention that soda ash has none or extremely low dependency on imported raw material. In effect, while the domestic producers enjoy the benefits of devalued Rupee in terms of the increased landed value, there is no effect on their costs due to the fact that domestic producers are using raw material which is abundantly available in India itself.
- xliv. It is reiterated that the soda ash industry will continue to reap the advantage of local raw material and import parity pricing with the increased value of Rupee. It is also a matter of fact that the Rupee has been over Rs. 65 per USD since 2016 which clearly establishes beyond an iota of doubt that there is no reason for continued imposition of the anti-dumping duties.
- xlvi. The Authority should examine parameters related to threat of material injury for the purpose of likelihood examination in the present review. This is consistent with the judgment of the Hon'ble High Court of Gujarat in Nirma Ltd. v. Union of India, judgment dated 23.02.2017.
- xlv. The imports of the subject goods declined from 62,103 MT in the base year to 51,668 MT in the POI(A). Even though the disclosure statement states that the volume of imports in the post POI period has increased, the same cannot be seen in alienation but has to be seen in light of the increase in demand of the subject goods. It is a known position that the demand of the subject goods has steeply increased in the past. This is the precise reason why the domestic industry kept on increasing its capacity throughout the injury investigation period.
- xlvii. Mere existence of excess or idle capacity cannot lead to the conclusion that the likelihood of dumping or injury to the domestic industry is imminent. It is important to note that the domestic industry is admittedly doing well despite the existence of capacities elsewhere in the world. Thus, the domestic industry has failed to make out a case with regard to surplus capacity.
- xlviii. The petition does not make any claim as regards inventories and no material has been presented to establish the same. It is clear from the above that there is no likelihood of recurrence of dumping and consequent injury to the domestic industry.
- xlix. All India Glass Manufacturers Federation ("AIGMF") is a responding interested party in this investigation and its submissions should be recorded and examined in the Final Findings.

- I. The Petitioners only technically satisfy the requirement of standing under Rule 2(b). However, injury data from only two producers grossly distorts and undermines the examination of injury and likelihood examination. Large profitable producers like GHCL have not been included in the petition, which has vitiated the injury information. The petition could not satisfy the requirements of Rule 2(b) in its actual meaning and thus, the examination of injury does not meet the essential standard set by the WTO in Russia – ADD on LCV from Germany and Italy.
- li. AIGMF requests the Authority to rule that the data submitted by the petitioners is not representative of the factual economic position of the domestic industry concerning soda ash and they do not have standing to be treated as domestic industry as envisaged under Rule 2(b) of the AD Rules.
- lii. Since the performance of DI on various injury parameters is very strong, the dumping figures are of no consequential effects.
- liii. Imports from subject countries declined significantly over the years whereas the landed price of imports did not decrease. This shows that dumping was not followed as any means to export more volume to India.
- liv. Had there been any exportable excess capacity available with the exporters which will be predictably diverted to India in the event of expiry of existing AD duties, the position of imports during the injury period would have been different. Such trend would have clearly reflected in the trend of import even though AD duties are in force and this point may kindly be considered by the Authority. Also, the post POI imports to India is not adduced and considered in the Disclosure Statement.
- lv. A minor decline in capacity utilization over the base year should be seen considering the significant capacity additions made during the injury period. In fact, imports declined significantly by about 10,687 MT in the POI vis-a-vis the base year whereas the landed price remained stable. The NSR of the DI increased over the years whereas the COP declined significantly leading to very high profits. This shows the DI is enjoying strong pricing power and in fact, the pricing behaviour is highly monopolistic. The imports are, thus, not creating any adverse effect on the price or volume of the DI. This is when dumping margin is claimed to be positive. The positive price undercutting is only on paper and such positive PU is the result of very high price charged by the DI. The Authority may conclude that landed price of imports did not create any adverse effects on the DI nor there is any likely injury from such imports in the future even if the duties are allowed to expire.
- lvi. Profitability of the DI moved from 100 basis point in the base year to 293 points in the POI and ROCE moved from 100 basis points in the base year to 177 points in the POI. Such increases should be seen as commendable growth. In fact, in a recent fresh matter concerning DMF, the Authority found no duty is warranted to be imposed when the profitability moved from 100 points in the base year to 15 points in the POI with less than 6% ROCE in the POI. Any continuation of duty in the facts of the present case is clearly not warranted when such yardsticks are applied.

- lvii. The ROCE earned by the DI though declined in the POI over the previous years on the trend line, the actual ROCE percentage still remains high rendering the fall in trend deceptive and meaningless. The Authority permits 22% ROCE for the purpose of NIP and in our understanding, the DI is earning an average ROCE in the range of 25% to 35%. These levels of ROCE and profit margin clearly show levels of profits earned by the DI. The DI is in no way vulnerable to further injury.
- lviii. The petitioner has relied upon WTA data to say that the exportability from Turkey is high. But the claims are flawed. The contention of the petitioner is that the export from Turkey to rest of the world doubled in the post POI and significant part of it is at a price lower than India. However, it needs to be noted that when Turkey was exporting more than 13 Lakh MT in POI as per the claim of the petitioner itself, their exports to India reduced from a 62,000 MT level in the base year to about 34,000 MT level and the landed prices also increased by about 2% over the base year. Thus, Turkey's export to India when they were exporting 13 Lakhs tons was continuously reducing with an increase in price. This shows that the claim of the petitioner that there is probability of increased export from Turkey has no truth. Turkish exporters enjoy larger favourable market elsewhere which is evident from the fact that exports from Turkey declined significantly and the prices were increasing. Also, the petitioner has not provided post POI export from Turkey to India. Also, the performance of the DI, as can be seen from published details of DCW (petitioner) and other companies, clearly show strong performance even in the post POI period. There is no adverse effect of imports taking place in the post POI period also on DI which conclusively rules out any likelihood of injury in the event of expiry of duties as well. AIGMF requests the Authority not to recommend continuation of anti-dumping duties on imports of subject goods from subject countries.
- lix. Detergent Manufacturers Association of India (DMAI) agrees with the Authority's fact finding in paragraph 63 of the disclosure statement that the cost of sales of the domestic industry decreased during the POI (A) as compared to the base year. Further, the Designated Authority is correct in finding that the selling price of the domestic industry also increased during the injury period. This shows that the selling price of the domestic industry moved independent of the landed price of imports of the subject goods and continued to increase during the POI as mentioned by us in our earlier submissions and explained again in the subsequent paragraphs.
- lx. Imports of the subject goods decreased even though there was a sharp gap in demand and supply of the subject goods in India. Cost of sales of the domestic industry declined from 100 indexed units to 85 indexed units during the injury period. Selling price of the domestic industry continuously increased during the injury period from 100 indexed units to 107 indexed units. The data on record does not show that the domestic industry was forced to lower its prices during the injury period. In fact, from the disclosure statement, we understand that the selling price of the domestic industry was significantly higher than the landed value of imports of the subject goods as well as the non-injurious price of the domestic industry. As a result, profitability of the domestic industry increased almost three-times during the POI (A) when compared with the base year 2013-

14. The claim of the domestic industry in paragraph 90 of the disclosure statement is incorrect that its cost of sales during post-POI period increased by 11% but selling price increased only by 3%. It is impossible for cost of sales to increase by 11% during post-POI period. We further submit that the selling price of the domestic industry rather increased by more than 10% in the post-POI period. A detailed note in this regard is enclosed as Confidential Exhibit 1. We submit that any anti-dumping duty will only lead to imports of finished goods, i.e. detergents, to India, thereby adversely impacting the domestic detergent industry.

- ixi. The domestic industry also failed to establish that if anti-dumping duty were to be revoked, consumers would switch to imports of the subject goods. The subject goods have users in detergent as well as glass industry, which use the subject goods on a large scale. With Indian Rupee continuously depreciating against the US Dollar during the POI and post POI period, it had become more and more expensive to import the subject goods. The user industry in India will continue to rely on local supplies of the subject goods and import the subject goods only when there is a shortfall in supply.
- ixii. We understand that in paragraph 87 of the disclosure statement, the Designated Authority has relied on the information provided by the Petitioners regarding surplus capacities in the subject countries, which is based on data taken from IHS Chemical journal. In paragraphs 88 and 89 of the disclosure statement, the Designated Authority has relied on the information provided by the Petitioners regarding the volume of exports and prices of the subject goods from Turkey to rest of the world, which is based on data taken from World Trade Atlas ("WTA"). We submit that this approach is inconsistent with the ruling of the Hon'ble Supreme Court in Secretary (Revenue), GOI v. Dyestuffs Manufacturers Association of India, 2015 (322) ELT 3 (SC). In this case, the Hon'ble Supreme Court had confirmed the Hon'ble CESTAT's ruling that trade journals cannot be relied upon in anti-dumping investigations. In the light of the Hon'ble Supreme Court's judgment, we submit that the Designated Authority ought to disregard information based on IHS Chemical journal and WTA in this case.
- ixiii. We would like to draw the Designated Authority's attention to the judgment by the Hon'ble CESTAT in the Truck and Bus Tires case. In this case, the Hon'ble CESTAT had annulled the imposition of anti-dumping duty on the basis that the injury findings of the Designated Authority were flawed.
- ixiv. In the present case, the domestic sales of the domestic industry increased to 115 indexed points over the injury period. In case the price undercutting claimed had any actual detrimental impact, the Petitioners would not have been able to maintain their domestic sales or increase them. The mere fact that the Petitioners managed to expand their sales in India despite the alleged price undercutting demonstrates the absence of injury.
- ixv. We submit that if at any stage before the final findings, the Designated Authority revises the essential facts under consideration disclosed in the present disclosure statement including but not limited to constructed normal value, ex-factory export price, dumping margin, methodology in arriving at the dumping margin, non-injurious price, landed value, price underselling/injury margin, price undercutting, price suppression, price depression, any parameters on volume

effects and price effects of the domestic industry, injury determination, causal link examination, likelihood determination or any other observation in the disclosure statement dated 8 February 2019, DMAI requests the Designated Authority to inform about such changes in the essential facts under consideration pursuant to Rule 16 of the AD Rules and also provide it with an opportunity to comment on such changed essential facts under consideration.

Examination by the Authority

99. The examination of post-disclosure comments is as under:

- i. As regards the comments received from the Russian Federation on the disclosure statement, it is noted that the same were received by the Authority after the timeline stipulated in the disclosure statement. However, the Authority has taken a lenient view of this and has examined the comments of the Russian Federation.
- ii. As regards the submission that there was no price suppression and price depression because anti-dumping duty was in force during the injury period, it is observed that the Authority had conducted such analysis without addition of anti-dumping duty in the landed value of imports and still found no price suppression and price depression.
- iii. As regards the submission that due concern should be given to the submissions of the domestic industry, it is observed that the Authority has examined the submissions of the domestic industry and other interested parties and dealt with them at appropriate places in the present findings.
- iv. As regards the submission that transportation cost should be taken into account for determination of injury margin, it is noted that the Authority has determined NIP as per Annexure-III to the AD Rules and the comparison between NIP and the landed value for determination of injury margin has been done at the same level of trade as per the consistent practice of the directorate.
- v. As regards the submission that imports of the subject goods have increased in the post POI period and shall further increase in the event of cessation of anti-dumping duty, it is observed that analysis of economic parameters of the domestic industry do not show injury due to the dumped imports. Further, it is not established that injury is likely to continue or recur due to dumped imports if the anti-dumping duty on the subject goods were to be revoked.
- vi. As regards the submission that price undercutting is positive and significant for subject countries, it is observed that in a sunset review, price undercutting is not the only determinative factor. The Authority has holistically examined all the relevant economic parameters of the domestic industry for volume effects and price effects, as well as examined the dumping margin and injury margin in this case. The analysis indicates that the Petitioners have performed well financially during the injury period including the POI in terms of profit, ROCE, capacity expansion, production and sales. There is absence of price suppression and price depression. The Petitioners have not been able to establish that dumping caused injury or that injury is likely to continue or recur in the event anti-dumping duty were to be revoked on the subject goods. In fact, fresh capacities are added/ being added by Nirma, GHCL and other Indian producers, as has

been admitted by the Petitioners. Petitioners have further conceded that capacity enhancements are being planned at this stage because the Indian market for the product has remained viable. ROCE of the Petitioners has remained high despite significant cost incurred in capacity expansion.

- vii. As regards the submission that the Authority has not carried out sufficient analysis on likelihood or recurrence of dumping and injury, it is observed that the Authority has carried out detailed analysis in this regard at appropriate places of the present findings.
- viii. As regards the submission that the Authority should consider the submissions filed by various interested parties, it is observed that the Authority has recorded such submissions and examined the same at appropriate places in the present findings.
- ix. As regards the submission that interested parties have not been provided with post POI data, it is observed that as per the procedure prescribed by the DGTR, interested parties can request for post POI import data. No interested party has approached the Authority with regard to procurement of post POI import data as per the prescribed procedure.

T. Conclusions and Recommendations

100. Having examined the contentions of various interested parties and on the basis of the above facts, circumstances, and analysis, the Authority concludes as under:
- i. The financial and economic parameters of Domestic Industry (both volume and price) are stable and not evidencing deterioration requiring continuation of anti-dumping duty.
 - ii. The Petitioners have performed well financially during the injury period including the POI in terms of profit, ROCE, capacity expansion, production and sales.
 - iii. There was no price suppression and price depression.
 - iv. The Petitioners have not been able to establish that dumping caused injury during the injury period.
 - v. The Petitioners have not been able to establish that dumping is causing injury or that the injury is likely to continue or recur in the event anti-dumping duty were to be revoked on the subject goods.
 - vi. The factors submitted by the Petitioners on likelihood of recurrence of injury on withdrawal of anti-dumping duty are not supported by the price realisations and price trends of the subject goods during the POI.
 - vii. Due to improvement in the performance of the Petitioners, fresh capacities are either added or being added by Nirma (one of the constituents of the domestic industry) and other Indian producers.
 - viii. ROCE of the Petitioners has remained high despite incurring significant cost in capacity expansion.
101. The Authority on account of the aforesaid concludes that continuation of anti-dumping duty is not warranted and hereby recommends no further extension of anti-dumping duty on the subject goods from the subject countries.

U. FURTHER PROCEDURE

102. An appeal against this notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 and the decision of the Hon'ble High Court of Delhi in M/s Jindal Poly Film Ltd. v. Designated Authority, W.P. (Civil) No. 8202/2017.

(Sunil Kumar)
Additional Secretary and Director General