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F. No. 7/12/2017-DGAD
Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF TRADE REMEDIES)
4th Floor Jeevan Tara Building, 5, Parliament Street, New Delhi-110001

Dated 30th July, 2018

NOTIFICATION

FINAL FINDINGS

Subject: Mid-Term Review investigation concerning imports of “Sodium Nitrite” originating in or exported from the European Union.

No. 7/12/2017-DGAD – Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. BACKGROUND OF THE CASE

The Original Investigation

1. Whereas, having regard to the Act and the Rules, the original investigation concerning imports of Sodium Nitrite (hereinafter also referred to as the subject goods or product under consideration or PUC) originating in or exported from European Union and Taiwan, was initiated by the Designated Authority (hereinafter referred to as the Authority) vide Notification No. 54/1/2001-DGAD dated November 02, 2001. The Preliminary Findings were notified on February 01, 2002 and the provisional duties were imposed by the Ministry of Finance vide Notification No. 34/2002-Customs dated March 28, 2002. The Authority notified final findings on October 28, 2002 recommending definitive antidumping duty on the subject imports of the subject goods. The definitive anti-dumping duties on the subject goods imported from the subject countries were imposed by the Department of Revenue vide Notification No. 132/2002-Customs dated November 29, 2002.

The First Sunset Review

2. Subsequently, the Authority initiated sunset review investigations vide Notification No.15/6/2005—DGAD dated March 06, 2007 concerning imports from European Union (hereinafter also referred to as “subject country”). The Authority recommended continued imposition of definitive anti-dumping duties on the subject imports from the subject country vide notification No.15/6/2005-DGAD, dated March 03, 2008 and Ministry of Finance extended definitive anti-dumping duty vide notification No.49/2008-Customs, dated the April 11, 2008 on imports of the subject goods from the subject country.

The Second Sunset Review

3. Subsequently, the Authority initiated second sunset review investigations vide Notification No. 15/1009/2012- DGAD dated March 23, 2013. The Authority again recommended continued imposition of definitive anti-dumping duties on the subject imports from the subject country vide Notification No. 15/1009/2012-DGAD, dated May 12, 2014 and the Ministry of Finance extended definitive antidumping duty vide notification No.37/2014- Customs, dated August 08, 2014 on imports of the subject goods from the subject country.

Present Mid-term Review investigation

4. M/s Deepak Nitrite Limited has submitted an application requesting for initiation of a review of the anti-dumping duties imposed on the imports of the subject goods from the subject country in accordance with section 9A of the Customs Tariff Act 1975 read with Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The applicant commands a major proportion in Indian production of the like article. The applicant has claimed that the circumstances that were prevalent during the period of investigation of the previous investigation have changed significantly leading to a situation where the existing anti-dumping duties are no longer effective and that there is need of enhancement of the quantum of the anti-dumping duty in force.
5. The applicant has claimed that the existing measures are insufficient to counteract the dumping which is causing injury as a result of which significant volume of imports at dumped prices is claimed to be entering into India in spite of anti-dumping duty being in force. The applicant has further submitted that the subject imports are causing significant price undercutting even at the existing levels of antidumping duty and that the current injury margin is substantially higher than the current anti-dumping duty in force.

6. Based on prima facie examination of facts the Designated Authority initiated the Mid Term Review vide Notification No. 7/12/2017-DGAD dated 11th December, 2017.

B. PROCEDURE

7. The procedure described herein below has been followed with regard to the subject investigation:

8. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Petitioner. The Authority notified the Embassies of the subject country in India about the receipt of the application before proceeding to initiate the investigation in accordance with Sub-Rule 5(5) of the AD rules. Initial petition was filed considering July, 2016 to June, 2017 as the POI. Based on the data provided by the petitioner, the case was initiated. However, since the data submitted in the application was not recent one for investigation purpose the period from October, 2016 to September, 2017 was taken as the POI for conducting the investigation. The petitioner accordingly updated the data.

9. The Authority forwarded a copy of the public notice to all known exporters, importers and industry associations (whose details were made available by the applicant) and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules. They were advised to reply within forty days from the date of the letter.

10. The Authority provided a copy of the non-confidential version of application to the known exporters and the Embassy of subject country in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.

11. The Authority sent questionnaires to elicit relevant information to the following known producers/exporters in the subject country in accordance with Rule 6(4) of the AD Rules:

- a. BASF Aktiengesellschaft, Germany
- b. Terra Nitrogen (UK) Ltd, UK

12. None of the producers/exporters from the subject country has filed the exporter's questionnaire response. However the European Commission has raised certain objections to the petition and initiation of the subject investigation.

13. Questionnaires were also sent to the following known importers, users and associations of the subject goods in India seeking necessary information in accordance with Rule 6(4) of the AD Rules:

- a. M/s Ahmedabad Chemicals
- b. M/s Asiatic Industries
- c. M/s Aries Dyechem Inds.
- d. M/s Bakul Aromatics & Chemicals Limited
- e. M/s B. I. Mehta
- f. M/s Caffil Pvt. Ltd.
- g. M/s Dintex Dyechem Limited
- h. M/s Dynamic Industries Limited
- i. M/s EnzelChem (I) Pvt. Ltd.
- j. M/s Farmson Pharmaceuticals
- k. M/s Indocol Chem Ltd.
- l. M/s Island Veerchemie
- m. M/s Jansons Limited
- n. M/s KetulChem Pvt. Ltd.
- o. M/s Metrochem Industries,
- p. M/s Manish Chemicals
- q. M/s Parsin Chemicals Limited
- r. M/s Prabava Exports
- s. M/s Ravi Dyewear Co. Ltd.
- t. M/s Roha Dyechem
- u. M/s Savakashi Dye – O – Fab
- v. M/s SU – Vi Chemicals Ltd.
- w. M/s Suven Pharmaceuticals Limited

14. In response to the initiation notification, none of the above mentioned importers, users and associations have responded and filed the questionnaire response.
15. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
16. 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 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.
17. Further information was sought from the Petitioner and other interested parties to the extent deemed necessary.
18. Verification of domestic industry was conducted to the extent considered necessary for the purpose of the present investigations.

19. The Non-injurious Price (hereinafter referred to as 'NIP') based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
20. Investigation was carried out for the period starting from October, 2016 to September, 2017 (12 months) (hereinafter referred to as the 'period of investigation' or the 'POI'). The examination of trends, in the context of injury analysis, covered the period from 2014-15, 2015-16, 2016-17 and the POI.
21. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the details of imports of subject goods during last three years, including period of investigation, and the same was received by the Authority. The Authority has used the DGCI&S imports data for computation of the volume and value of imports and injury analysis.
22. In accordance with Rule 6(6) of the Anti-Dumping Rules, the Authority provided opportunity to the interested parties to present their views orally in hearing held on 10th April, 2018. However, apart from the domestic industry, none of the other parties attended the oral hearing.
23. The submissions made by the interested parties to the extent considered relevant by the Authority have been addressed in this notification.
24. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded its observation on the basis of the facts available.
25. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
26. Exchange rate considered for the POI for conversion of USD to Indian Rupees is 1USD=Rs 66.70.

C. Product Under Consideration And Like Article

C.1 Views of the Domestic Industry

27. The domestic industry has made following submissions with regard to the scope of product under consideration and the like article:

- i. The instant investigation being a mid-term review investigation for examination of request for enhancement of the Anti-dumping duty in force, the product under consideration remains the same as has been defined in the previous investigations.
- ii. The product involved in the previous investigations and the present review investigation is 'Sodium Nitrite' in all its forms. Sodium Nitrite is an inorganic chemical and is oxidizing and reducing agent. It is a white crystalline powder mostly used in pharmaceuticals industries, dye industries, lubricants, construction chemicals, rubber blowing agent, meat processing, textiles, etc. The subject goods are produced by using nitric acid obtained from nitrous oxide or ammonia at high temperature in presence of catalysts. The nitrous oxide is further absorbed in caustic soda/soda ash to get sodium nitrite. The product is odourless and soluble in water.
- iii. Sodium Nitrite falls within Chapter 28 of the Custom Tariff Act, 1975 under custom sub-heading 28.34.10 of the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.
- iv. There is no known difference in subject goods produced by the domestic industry and subject goods imported into India. Sodium Nitrite produced by the domestic industry and imported into India are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. And the goods produced by the domestic industry and imported from the subject territory are like articles in accordance with the Rules.
- v. Hence the goods produced by the domestic industry and imported from the subject territory are like articles in accordance with the Rules.

C.2 Views of the Opposing Interested Parties

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

C.3 Examination by the Authority

29. The Authority notes that the present investigation is a mid-term review investigation and the scope of the PUC under the present investigation is the same as the scope of product against which the anti-dumping duty is currently in force.

30. The product under consideration for the purpose of present investigation is Sodium Nitrite in all its forms as it was in the previous investigations including the second sunset review investigation.
31. Sodium Nitrite is an inorganic chemical and is oxidizing and reducing agent. It is a white crystalline powder mostly used in pharmaceuticals industries, dye industries, lubricants, construction chemicals, rubber blowing agent, heat transfer salts, meat processing, textiles etc. The subject goods are produced by using nitric acid obtained from nitrous oxide gas or ammonia at high temperature in presence of catalysts. The nitrous oxide is further absorbed in caustic soda/soda ash to get sodium nitrite. The product is odourless and soluble in water.
32. The product is classified under Customs Tariff heading 28.34.10 of Chapter 28 of the Customs Tariff Act. This classification is, however, indicative only and in no way binding on the scope of the present investigation.
33. With regard to like article, Rule 2(d) of the Anti-Dumping Rules provides as under:
"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation"
34. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject country and the product produced by the Indian industry. The product under consideration produced by the Indian industry and imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions, uses and product specification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the similarity in manufacturing process and substitutability, the Authority holds that subject goods produced by the Domestic Industry are like article as per Rule 2(d) of the Rules to the 'product under consideration'.

D. Scope Of Domestic Industry & Standing

D.1 Views of the Domestic Industry

35. The domestic industry has made following submissions with regard to domestic industry and standing:
- i. The applicant is an interested party as defined in Rule 2(c) of the Rules as it is a producer of the like article in India. In the relevant sunset review investigations Deepak Nitrite Ltd., was the petitioner and was found eligible as domestic industry by the Authority as it accounted for a major proportion of the production of the 'Like Article' in India.

- ii. M/s Deepak Nitrite Ltd has filed the application for review for enhancement of anti-dumping duty. There are three other producers of Sodium Nitrite in the country, apart from the petitioner, namely, Punjab Chemicals & Pharmaceuticals Limited, National Fertilizer Limited and Rashtriya Chemicals and Fertilizers Limited. The Applicant however continues to be a major producer of the subject goods in India and commands 92.26% share in the Indian production in the POI and, therefore, constitutes domestic industry.
- iii. The petitioner has not imported the subject goods during the period of investigation, and further, is not related to any exporter or producer of the subject goods in European Union or any importer of the product under consideration in India within the meaning of Rule 2(b).
- iv. Therefore, for the purposes of this review, the Applicant satisfies the standing requirement and constitutes domestic industry within the meaning of the AD Rules.

D.2 Views of the other Interested Parties

- 36. None of the exporters, importers, consumers and any other interested parties has filed any comment or submission with regard to standing of the domestic industry.

D.3 Examination by the Authority

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

"(b) "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"

- 38. The application was filed by M/s Deepak Nitrite Limited and was supported by Punjab Chemicals & Pharmaceuticals Limited (PCPL) and Rashtriya Chemicals and Fertilizers Limited (RCFL) . Further, there is one other producer of the subject goods apart from the applicant and supporter, namely, National Fertilizers Ltd.
- 39. As per the Anti-dumping Rules, the Authority is required to examine whether (a) domestic producers expressly supporting the application account for more than

twenty five percent of the total production of the like article by the domestic industry; and (b) the application is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. The applicant alone constitutes 92.11% of the total domestic production and with support of PCPL and RCFL, 96.10% of the total Indian production. Further, the petitioner has not imported the subject goods during the period of investigation, and, is not related to any exporter or producer of the subject goods in subject country or any importer of the product under consideration in India.

Statement of Indian Production

| Particulars | UOM | 2014-15 | 2015-16 | 2016-17 | POI |
|---------------------------------------|-------|---------|---------|---------|--------|
| Petitioner | MT | *** | *** | *** | *** |
| | Index | 100 | 121 | 122 | 129 |
| Supporter's Production | MT | *** | *** | *** | *** |
| Punjab Chemicals | MT | *** | *** | *** | *** |
| Rashtriya Chemical & Fertilizers Ltd. | MT | *** | *** | *** | *** |
| Supporter's Production | Index | 100 | 32 | 29 | 61 |
| Petitioner including supporters | MT | *** | *** | *** | *** |
| | Index | 100 | 114 | 114 | 123 |
| Other Indian Producers (NFL) | MT | *** | *** | *** | *** |
| | Index | 100 | 121 | 122 | 129 |
| Total Indian Production | MT | 51,922 | 59,088 | 59,334 | 64,143 |
| | Index | 100 | 114 | 114 | 124 |
| Share in % | | | | | |
| Petitioner Share | % | *** | *** | *** | *** |
| Supporter's Share | % | *** | *** | *** | *** |
| Punjab Chemicals | % | *** | *** | *** | *** |
| Rashtriya Chemical & Fertilizers Ltd. | % | *** | *** | *** | *** |
| Petitioner including supporter | % | *** | *** | *** | *** |
| Other Indian Producers | % | *** | *** | *** | *** |
| Total Indian Production | % | 100.00 | 100.00 | 100.00 | 100.00 |

40. In view of the above, the Authority holds that the applicant satisfies the standing requirements and constitutes domestic industry under Rule 2(b) and Rule 5(3) of the AD Rules.

E. Issues Relating to Confidentiality

E.1 Views of the Domestic Industry

41. The domestic industry has made following submissions with regards to confidentiality:
- i. Sufficient non-confidential information with good cause has been provided in this regard. The practice adopted by the petitioner is consistent with the Designated Authority' past practice as well.
 - ii. In response to the changed POI via initiation notification no. F.No.7/12/2017-DGAD dated 11th December, 2017 in the subject matter, the petitioner had filed the updated annexures on January 20, 2018 and the relevant information with respect to injury margin and price undercutting has also been put on record.
 - iii. The petitioner has provided indexed information of selling price both in the petition and the updated annexures. The actual figures are business sensitive information and cannot be disclosed to other parties.

E.2 Views of the other Interested Parties

42. Various submissions made by the European Commission during the course of the present investigation with regard to transparency and confidentiality are as follows:
- i. Information provided in the non-confidential version of the petition is not sufficient to understand the dumping margin and the undercutting calculations and to fully exercise its right of defence.
 - ii. No information has been provided with respect to injury margin and price undercutting as the relevant annexures are missing in the non-confidential version of the petition.
 - iii. The petition does not contain any information on the selling price of the domestic industry, not even in the form of indexes/ranges.

E.3 Examination by the Authority

43. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7).

44. Various submissions made by the interested parties during the course of the present investigation with regard to confidentiality were examined. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has 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 was directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.
45. It is noted that disclosure of the commercially sensitive and confidential information provided by the interested parties to the Designated Authority to facilitate the investigation, will not be in order. The disclosure of confidential information relating to the selling price of the domestic industry is not warranted as it will provide undue advantage to its domestic as well as overseas competitors.

F. Miscellaneous Issues

F.1 Views of the Domestic Industry

46. The domestic industry has made following submissions with regard to various miscellaneous issues:
- i. None of the European exporters has responded with prescribed questionnaire response. Thus, the Authority may consider the subject producers and exporters non-cooperative and decide the matter as per Rule 6(8) and may record its finding on the basis of facts available to it.
 - ii. These producers are very well aware that the actual dumping margin as per their data is materially higher than the “small” dumping margin claimed by the petitioner and that shall be determined by the Authority.
 - iii. The European Embassy had submitted certain objections prior to public hearing which has been duly filed. Since neither the embassy nor any other interested party were present during the public hearing, the Authority should not accept any written submissions filed by them.
 - iv. The Petitioner requests that the methodology adopted by the petitioner for allocation and apportionment of expenses must be accepted by the Authority

and not modified suo-motu. Methodology adopted by the petitioner for apportionment of expenses has been put on record. The applicant has been consistently providing costing information following the methodology adopted in the present case. There have been various cases related to the product concerned wherein the Authority had accepted company's methodology. However, in the past few cases, the Authority has deviated from its past practice without any reason and resultantly the non-injurious price computed has been lower than justified. The Applicant has the apprehension that the same might happen in the present case as well. The applicant humbly requests the authority to direct the domestic industry to justify the methodology adopted giving reasons as to why the present justification is insufficient in case the Authority considers that the methodology adopted by the petitioner is inappropriate, instead of outrightly rejecting the claims of the domestic industry.

- v. Anti-dumping measures are not anti-competitive. The domestic industry is trying to eliminate unfair practice of dumping. Dumping is unfair and seeking redressal against such dumping cannot be considered unfair. The imports from the named countries are at dumped prices and therefore are subject to anti-dumping measures. In fact, anti-dumping measures promote fair competition only. Anti-dumping is required to provide a "level playing field".
 - vi. The present investigation being a mid-term review is limited to only review of the changed circumstances which justify the enhancement of quantum of anti-dumping duty. By its very nature, the review inquiry would be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is need to enhance the quantum of duty. The injury margin and dumping margin have increased as compared to the previous investigation due to the decline in landed price of subject goods and the same is a sufficient ground to enhance the quantum of anti-dumping duties as the present dumping as well as injury margin is higher than the anti-dumping duty in force.
47. The domestic industry has made following submissions with regard to grounds of review:
- i. Existing measure is insufficient to counteract dumping which is causing injury as the performance of the domestic industry has not improved to the extent it should have after imposition of ADD due to intensified dumping from EU.
 - ii. The DI has much more capacity than the total demand in India but still is not able to fetch a good market share. The inventories are also piling up.
 - iii. The current landed price is lower than the landed price prevailing in the base year. The selling price and cost of sales of the domestic industry in the POI for the purpose of present application are more than the landed value.
 - iv. The imports from European Union have continued to enter the country in significant volumes at dumped prices and that the imports have increased significantly in absolute terms in the proposed POI even after existing measures.

- v. Market share of the subject imports in total imports entering India has also shown an increase.
- vi. The current imports from European Union are at significant dumped prices. Dumping margin increased from *** % to ***% as compared to the last sunset review investigation of the European Union.
- vii. The price undercutting is significant and positive in the period of investigation. Price undercutting became positive to *** % in POI of the current investigation from (*** %) , which was in the POI of the last sunset review investigation.
- viii. As per the proforma of mid-term review issued by the Designated Authority, change in non-injurious price/landed value in itself is sufficient to constitute changed circumstances as required for a mid-term review.
- ix. In the present case, the NIP and landed price, both, have changed.
- x. The anti-dumping duty was recommended by the Authority in May, 2014 and the same was imposed by the Ministry of Finance in August, 2014. The import price has been declining since then except a small increase in the POI as compared to the preceding year but the same is much lower than the base year. Further, the import volume is increasing since 2014-15. While the import volume has increased by *** MT, the import price has decreased by Rs. *** per MT. Also, the landed value has decreased by *** US\$/MT since the POI of the last sunset review investigation.
- xi. The non-injurious price of the domestic industry has also decreased.
- xii. However, the decrease in landed price is higher than the decrease in the non-injurious price of the domestic industry. As a result, injury margin increased from *** % (USD *** per MT) to *** % (USD *** per MT), which is higher than the anti-dumping duty already in force, and is insufficient to counteract dumping. Thus, there is need to enhance the quantum of ADD in force.
- xiii. The above facts constitute sufficient grounds for enhancement of quantum of duty as a result of changed circumstances.
- xiv. If this scenario is allowed to remain, the performance of the domestic industry will be adversely affected.

F.2 Views of the Other Interested Parties

- 48. The various submissions made by the European Commission during the course of the present investigation with regard to miscellaneous submissions are as follows:

The Domestic Industry is trying to create a dominant market position and artificially exclude competition as there is already duty in force on the subject goods from EU and China and investigation against Russia is ongoing. Further, increase of duties on EU imports would only restrict the source of supply and consumer choice.
- 49. None of the exporters, importers, consumers and any other interested party has filed any comment or submissions with regard to scope of the present midterm review investigation.

F.3 Examination by the Authority

50. As regards the monopoly issue raised by some interested parties, the authority notes that purpose of anti-dumping duty is to ensure fair trade and provide a level-playing field to the domestic industry. It is neither a measure to restrict import nor to cause an unjustified increase in the selling price of the products. The Authority notes that the purpose of anti-dumping duty is to provide a level playing field to the domestic industry against the unfair trade practice of dumping adopted by the exporters from the subject country.
51. The issues raised by the domestic industry have been addressed elsewhere in this notification at appropriate places.

G. Assessment Of Dumping – Methodology and Determination of Normal Value, Export Price and Dumping Margin

G.1 Views of the Domestic Industry

52. The following are the submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:
- i. The domestic industry has not been able to get the information about cost and prices of subject goods prevailing in the subject country despite its best efforts. This information is not publicly available.
 - ii. The petitioner has determined Normal Value in EU on the basis of cost of production in India, considering the best utilisation norms of raw materials and utilities of the domestic industry
 - iii. The applicant has considered raw material price of Caustic Soda and Ammonia as per DGCI&S data regarding imports into India from the world and the domestic industry's price for Nitric Acid. The rates of power as prevailing in the subject country have been adopted. All other conversion cost is based on cost of the domestic industry, duly adjusted for selling, distribution and administrative expenses. Profit of 5% has also been added.
 - iv. Export price has been determined on the basis of the average import price from subject country and thereafter making due adjustments based on the best available information with the industry so as to make it comparable with normal value.
 - v. The dumping margin is not only more than de-minimis, but also significantly high. The same is higher by *** % as compared to the last sunset review investigation.
 - vi. As regards the argument that evidence regarding dumping does not support the contention that dumping from EU has increased and that the present duty

does not remove the injury caused by the same, the petitioner submits that under the law, in order to ascertain increase in dumping, reference to volume of imports or dumping margin is considered. The import volume has increased significantly even after the existing anti-dumping duty in force.

- vii. As regards dumping margin, while the petitioner has established increase in dumping margin, it is for the European Producers to show otherwise.

G.2 Views of the Other Interested Parties

53. The European Commission has submitted that the evidence produced by the domestic industry regarding dumping does not support the argument that dumping from EU has increased and that the present duty does not remove the injury caused by the same.

G.3 Examination by the Authority

54. According to Section 9A(1)(c) of the Customs Tariff Act, 1975, following can form the basis for determination of normal value in the exporting country:
- a) The price of the like article in the domestic market of the exporting country in the ordinary course of trade,
 - b) Comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country,
 - c) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling & general costs and for profits.

G.3.1 Normal Value

55. As provided under the law, the Authority is required to consider selling price of the product when meant for consumption in the domestic market of EU for determining normal value in EU. The petitioner has claimed that they could not get any evidence regarding the actual selling price prevailing in the domestic market of the EU. None of the exporters in EU has cooperated with the Authority by submitting questionnaire response. The Authority notes that in the absence of response from any EU producer, the normal value cannot be determined on the basis of the actual selling price of like article in the domestic market of EU. The Authority has, therefore, constructed normal value by considering the estimates of cost of production, duly adjusted to include selling, general & administrative costs and profits. The normal value so determined is *** US\$/MT

G.3.2 Export Price

56. None of the exporters from the subject country has provided any information/details of export price. The Authority has, therefore, determined the export price for producers/exporters of European Union on the basis of the DGCI&S import data. Further, the net export price at ex-factory level in respect of all exporters from European Union has been determined after making due adjustments for Ocean Freight, Marine Insurance, Commission, Bank Charges, Port Expenses and Inland Freight Charges on the basis of best available information . The net export price so determined is US\$ ***/ MT

G.3.3 Dumping Margin

57. On the basis of the normal value and export price so determined at ex-factory level; the dumping margin during the POI for all exporters/producers from the European Union determined is shown in the Dumping Margin Table below.

| SN | Particular | Unit | POI |
|-----------|-------------------|-------------|------------|
| 1 | Exchange Rate | USD/INR | 66.70 |
| 2 | Normal Value | US\$/MT | *** |
| 3 | Net Export Price | US\$/MT | *** |
| 4 | Dumping Margin | US\$/MT | *** |
| 5 | Dumping Margin | % | *** |
| 6 | Dumping Margin | % Range | 25 – 35 |

H. Methodology for Injury Assessment, Examination of Injury and Causal Link

H.1. Injury Determination

H.1.1 Views of the Domestic Industry

58. The following are the injury related submissions made by the domestic industry during the course of the present investigation :
59. The domestic industry had filed duly documented petition considering POI to be July, 2016 to June, 2017. However, the Authority initiated the investigation considering October, 2016 to September, 2017. Accordingly, the applicant filed the updated annexures which inter alia demonstrate the following :

- i. The imports from the subject country have substantially increased in absolute terms, despite anti-dumping duty being in force.
- ii. The landed value has decreased over the injury period.
- iii. Market share of the subject imports in total imports entering into India has also shown an increase.
- iv. Imports are significantly undercutting the domestic prices despite current anti-dumping duties.
- v. Landed price of imports is substantially below the non-injurious price of the domestic industry. The imports are, thus, resulting in significant price underselling in the market.
- vi. Average Inventory of the domestic industry has increased from *** MT to *** MT.
- vii. Despite the fact that the anti-dumping duty on the imports from the subject country has been in force for quite some time, the domestic industry has suffered continued material injury, thus establishing the need for continuation of anti-dumping duty at enhanced rate.
- viii. The injury would be likely to continue in the event of revocation or reduction in the quantum of duties.
- ix. The existing measure is not sufficient to counteract the dumping which is causing injury.
- x. Despite existing anti-dumping duties, the product under consideration continues to be exported to India below its normal value resulting in dumping.
- xi. The current duty is no longer sufficient to address the injury to the domestic industry; the non-injurious price of the domestic industry has substantially increased; and therefore the quantum of anti-dumping duty is required to be modified/enhanced,
- xii. Since the present investigation is for review and modification of antidumping duty, the Designated Authority is required to consider whether the dumped imports are preventing the domestic industry from improving its performance to the level allowed in determination of NIP by the Authority. While the trends in some parameters may be positive, the domestic industry is still earning sub-optimal level of return on investment ("ROI") and is almost stagnating itself which shows continued injurious effect of the present dumping. There are other factors which witnessed a negative trend. The import volume have increased significantly, price undercutting is positive and significant, the landed price has been declining since the extension of anti-dumping duty in 2014 except minor increase in the POI as compared to the preceding year. Resultantly, the injury margin has increased which is now more than the anti-dumping duty in force.
- xiii. The applicant also referred to the EU regulation 3.5 which provides consideration of the fact of past dumping and the fact that the domestic industry is in the process of recovering from the past ill effects of dumping while assessing injury.
- xiv. As regards argument of unit price of EU being higher than the other countries, the petitioner submits that the import price of the subject goods from EU is lesser than the import price from China and Russia. Price undercutting being positive and significant justifies the same.

- xv. As regards the claims that there should be no increase in the current level of anti-dumping duty, the petitioner submits that currently the price underselling is higher than the anti-dumping duty in force which demonstrates the need for enhancement of quantum of the anti-dumping duty in force.
- xvi. The European Commission has not highlighted the presence of any other factor which led to the injury to domestic industry. Injury to the domestic industry is solely on account of the dumped imports from the European Union.
- xvii. The increase in capacity was undertaken keeping in view the increase in demand in India. The same is a sound business decision. The petitioner holds a capacity of *** MT as against established Indian demand of 70,800 MT in the POI.

H.1.2 Views of the Opposing Interested Parties

- 60. The opposing interested party made submissions as under :
 - i. Capacity, capacity utilization, production, sales volumes and sales values and profits of the domestic industry all show increase.
 - ii. There is no negative effect on the price of domestic industry caused by the allegedly dumped EU imports as the unit price has always been higher than the price of both Chinese and Russian imports and also higher than the average unit price of all imports. This combined with the ability of the domestic industry to increase its selling price demonstrate absence of any negative effect.
 - iii. Keeping in perspective the positive economic indicators of the domestic industry, there should be no increase in the current level of anti-dumping duty.
 - iv. Injury, if any, is on account of other factors attributable to the domestic industry and not due to the dumped imports from the European Union.
 - v. The Domestic Industry made investments in 2015-2016 to increase their capacity when there was already enough, if not more, to satisfy the domestic demand.

H.1.3 Examination by the Authority

- 61. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices of the like article in the domestic market and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or

prevent price increases, which would have otherwise occurred to a significant degree.

62. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury. The issues raised by various interested parties have been dealt with in the relevant paragraphs of this notification.
63. As regards the impact of the dumped imports on the domestic industry, Para (iv) of Annexure-II of the AD Rules states as follows:

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

64. For the purpose of assessing the state of injury, the Authority has examined the volume and price effects of dumped present imports of the subject goods from subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between the dumping and injury, if any. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties. Accordingly the volume and price effects of dumped imports have been examined as follows.

A. Volume Effect of Dumped Imports on the Domestic Industry

a) Assessment of Demand and Market Share

65. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed and presented in the Table given below shows increase over the injury period.

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|---|------|---------|---------|---------|-------|
| Domestic Industry Sales | MT | *** | *** | *** | *** |
| Captive Consumption of DI | MT | *** | *** | *** | *** |
| Sales of Other Indian Producers | MT | *** | *** | *** | *** |
| Imports from Subject country-EU | MT | 1,706 | 1,869 | 5,746 | 3,696 |
| Import from country attracting ADD-China PR | MT | 11,432 | 12,688 | 5,683 | 7,925 |

| | | | | | |
|--|----|--------|--------|--------|--------|
| Import from country undergoing ADD Investigation- Russia | MT | - | 192 | 4,034 | 4,152 |
| Imports from Other Countries | MT | - | 21 | 24 | 24 |
| Total Demand/consumption including Captive | MT | 55,265 | 62,772 | 63,763 | 68,515 |
| Domestic Industry Sales | % | *** | *** | *** | *** |
| Captive Consumption of DI | % | *** | *** | *** | *** |
| Sales of Other Indian Producers | % | *** | *** | *** | *** |
| Subject country- EU | % | 3.09 | 2.98 | 9.01 | 5.39 |
| Import from country attracting ADD-China PR | % | 20.69 | 20.21 | 8.91 | 11.57 |
| Import from country undergoing ADD Investigation- Russia | % | - | 0.31 | 6.33 | 6.06 |
| Import from other Countries | % | - | 0.03 | 0.04 | 0.04 |
| Total Share | % | 100.00 | 100.00 | 100.00 | 100.00 |

66. The authority notes that:

- i. The demand for the product under consideration has shown an increase throughout the injury period.
- ii. Import from the subject country has increased throughout before registering decline in POI. There was significant jump in imports during 2016-17 (i.e. the year immediately preceding to the POI). The market share of the imports from subject country has gone up from 3.09% to 9.01% before declining to 5.39% in the POI.

b) Import Volumes and Market Share

67. Annexure-II (ii) of the AD Rules provides that with regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. The information regarding imports and market share is provided in the table below:

| Particular | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|----------------------------------|------|---------|---------|---------|--------|
| Imports from Subject country- EU | MT | 1,706 | 1,869 | 5,746 | 3,696 |
| Country attracting ADD-China PR | MT | 11,432 | 12,688 | 5,683 | 7,925 |
| On-going Investigation-Russia | MT | - | 192 | 4,034 | 4,152 |
| Imports from Other Countries | MT | - | 21 | 24 | 24 |
| Total Imports | MT | 13,138 | 14,770 | 15,488 | 15,797 |
| Imports in relation to | | | | | |
| Total Imports | % | 12.98 | 12.65 | 37.10 | 23.40 |

| | | | | | |
|-------------------------|---|------|------|------|------|
| Total Indian Production | % | 3.29 | 3.16 | 9.68 | 5.76 |
|-------------------------|---|------|------|------|------|

68. The Authority notes from the above that the volume of imports from EU has increased to about 217% in the period of investigation as compared to the base year. Similarly, the share of imports from subject country in total imports has increased from 12.98% in base year to 23.40% in POI after reaching a high of 37.10% in 2016-17. The volume of dumped imports from subject country witnessed an increase from 3.29% in the base year to 5.76% in the POI during the same period in relation to production in India.

B. Price Effect

69. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules states as under:

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

70. The impact on the prices of the domestic industry on account of the dumped imports from 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 landed price of imports of the subject goods from the subject country.

a. Price Undercutting

71. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed value of the product and the average selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex-factory level.

72. It would be seen that the price undercutting from the subject country is positive in 2015-16 and POI.

| Particulars | Unit | 2013-14 | 2014-15 | 2015-16 | POI |
|-------------------------|---------|---------|---------|---------|--------|
| Landed price of imports | Rs/MT | 39,876 | 39,192 | 35,743 | 36,819 |
| Net Selling Price | Rs/MT | *** | *** | *** | *** |
| Price Undercutting | Rs/MT | (***) | (***) | *** | *** |
| | Range % | (5-10) | (0-5) | 5-10 | 5-10 |

b. Price Suppression and Depression

73. In order to assess as to whether imports from subject countries were suppressing/depressing the prices of the domestic industry and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority has compared the cost of production and net selling price of the domestic industry over the injury period along with the landed price of imports over the injury period, and shown in the table below:

| Particular | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|------------------------|---------|---------|---------|---------|--------|
| Cost of domestic Sales | Rs/MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 98 | 96 | 101 |
| Net Selling Price | Rs/MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 104 | 102 | 108 |
| Landed value | Rs/MT | 39,876 | 39,192 | 35,743 | 36,819 |
| Trend | Indexed | 100 | 98 | 90 | 92 |

74. The Authority notes that the landed price of imports is below the level of cost of production and selling price of the domestic industry for the product concerned during POI. The price depression and suppression effect though are not visible.

c. Price Underselling

75. The non-injurious price (NIP) of the domestic industry has been determined and compared with the landed value of the subject goods to arrive at the extent of

price underselling. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The analysis shows that during the period of investigation, the landed price of subject imports were below the non-injurious price of the domestic industry, as can be seen from the table below, demonstrating positive price underselling effect:

| Particulars | Unit | POI*(INR) | POI* (USD) |
|---------------------------|--------|-----------|------------|
| Landed Price | Per MT | 36,819 | 552.01 |
| Non-Injurious Price (NIP) | Per MT | *** | *** |
| Price underselling | Per MT | *** | *** |
| Price underselling | % | *** | *** |
| Price underselling | Range | 0-5 | 0-5 |

* Oct'16-Sep'17

76. The Authority notes that the dumped imports from subject country are coming to India at prices below the non-Injurious price/fair price of the domestic industry, thus resulting in positive price underselling.

C. Economic Parameters of the Domestic Industry

77. As per Annexure II to the AD Rules, the determination of injury shall involve an objective examination of the consequent impact of the imports of subject goods on domestic producer(s) of the subject goods. The relevant extract of the said Rule is reproduced herein below-

“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.”

78. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

a) Production, Capacity, Capacity Utilization and Sales

79. The volume of domestic production and effects of dumped imports on the domestic operation of the domestic industry have been examined in terms of total production, capacity utilization and domestic sales of the domestic industry. Capacity, production, capacity utilization and sales volumes of the domestic industry have been as under:-

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|----------------------------|---------|---------|---------|---------|-----|
| Capacity | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 111 | 111 | 111 |
| Production- Sodium Nitrite | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 121 | 122 | 129 |
| Production-Plant (SNI+SNA) | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 117 | 118 | 126 |
| Capacity Utilization | % | *** | *** | *** | *** |
| Trend | Indexed | 100 | 106 | 107 | 114 |
| Sales Domestic | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 122 | 122 | 130 |

80. From the data in the table above, the Authority notes that:

- i. The domestic industry has enhanced its capacity in 2015-16 and since then the capacity has remained at the same level. The production of the product concerned has increased throughout the injury period.
- ii. The capacity utilization of the domestic industry has also increased throughout the injury period.
- iii. The domestic sales of the domestic industry have also increased over the injury period.

b) Profitability, Return on Investment and Cash Flow

81. The return on investment, profit/loss before and after interest, return on investment and cash profit during the injury period is as indicated in the table below:

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|---------------|---------|---------|---------|---------|-----|
| Cost of Sales | Rs/MT | *** | *** | *** | *** |
| Indexed | Indexed | 100 | 98 | 96 | 101 |
| Selling Price | Rs/MT | *** | *** | *** | *** |
| Indexed | Indexed | 100 | 104 | 102 | 108 |

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|----------------------------|---------|---------|---------|---------|-----|
| Profit/ Loss | Rs/MT | (***) | *** | *** | *** |
| Indexed | Indexed | -100 | 237 | 233 | 282 |
| Profit/ Loss | Rs.Lacs | (***) | *** | *** | *** |
| Indexed | Indexed | -100 | 289 | 283 | 366 |
| Profit before Interest | Rs.Lacs | *** | *** | *** | *** |
| Indexed | Indexed | 100 | 671 | 608 | 814 |
| Cash Profit | Rs.Lacs | *** | *** | *** | *** |
| Indexed | Indexed | 100 | 782 | 816 | 941 |
| Return on Capital Employed | % | *** | *** | *** | *** |
| Indexed | Indexed | 100 | 608 | 516 | 636 |

82. From the examination of the data in the table above the Authority notes that the domestic industry has come out from the situation of financial losses and has been earning profits. Consequently, profit before Interest, cash profits and return on investment have shown increase.

c) Market Share in Demand

83. Market share of the domestic industry in demand for the product under consideration is given in the table below:

| Particular | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|---|------|---------|---------|---------|--------|
| Market Share in Demand including Captive | | | | | |
| Domestic Industry Sales | % | *** | *** | *** | *** |
| Captive Consumption of DI | % | *** | *** | *** | *** |
| Sales of Other Indian Producers | % | *** | *** | *** | *** |
| Subject country- EU | % | 3.09 | 2.98 | 9.01 | 5.39 |
| Country attracting ADD-China PR | % | 20.69 | 20.21 | 8.91 | 11.57 |
| Country undergoing ADD investigation - Russia | % | - | 0.31 | 6.33 | 6.06 |
| Other Countries | % | - | 0.03 | 0.04 | 0.04 |
| Total Share | % | 100.00 | 100.00 | 100.00 | 100.00 |

84. It is noted from the above table that while the market share of domestic industry has marginally increased after the base year and has thereafter remained more or less same, the share of imports from European Union has increased from 3.09% in base year to 5.39% in POI, rising to a high of 9.01% in 2016-17

d) Employment, productivity and wages

85. The analysis of the number of employees employed by the domestic industry, its productivity and wages paid show as follows:

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|---------------------------|----------|---------|---------|---------|-----|
| Employment | Nos | *** | *** | *** | *** |
| Trend | Indexed | 100 | 103 | 101 | 101 |
| Wages | Rs. Lacs | *** | *** | *** | *** |
| Trend | Indexed | 100 | 126 | 135 | 137 |
| Productivity per employee | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 117 | 121 | 128 |
| Productivity per day | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 121 | 122 | 129 |

86. The Authority notes that:

- The employment with the domestic industry has remained more or less same over the injury period.
- The wages have increased throughout the injury period.
- Productivity per employee and per day has improved throughout the injury period.

e) Inventories

87. Inventory position with the domestic industry over the injury period is given in the table below:

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI |
|---------------|---------|---------|---------|---------|-----|
| Average stock | MT | *** | *** | *** | *** |
| Trend | Indexed | 100 | 198 | 217 | 385 |

88. Average inventories with the domestic industry increased throughout the injury period.

f) Growth

89. The Authority notes from the data given in the Table below that the growth of the domestic industry in terms of production, domestic sales, selling price, profitability and return on investment has increased in POI as compared to 2015-16.

| Particulars | Unit | 2014-15 | 2015-16 | 2016-17 | POI* |
|-------------|------|---------|---------|---------|------|
|-------------|------|---------|---------|---------|------|

| | | | | | |
|-----------------------|---|---|-------|-------|-------|
| Growth (year to year) | | | | | |
| Production | % | - | *** | *** | *** |
| Domestic Sales | % | - | *** | *** | *** |
| Cost of Sales | % | - | (***) | (***) | *** |
| Selling Price | % | - | *** | (***) | *** |
| Profit/ Loss per unit | % | - | *** | *** | (***) |
| Return on investment | % | - | *** | (***) | *** |

g) Ability to Raise Capital Investments

90. The domestic industry has claimed that their ability to raise capital investment will be adversely impacted if the injury suffered by the domestic industry remains unaddressed.

h) Factors affecting domestic prices

91. The Authority notes that prices of imported material is below the net sales realization and also below the non-injurious price of the domestic industry, causing price undercutting and price underselling in the Indian market. However, import from the subject country does not seem to have affected domestic price since the net sales realization by the domestic industry is more than the non-injurious price of the domestic industry.

i) Magnitude of dumping margin

92. The Authority notes that the dumping margin determined against the subject country is not only more than de-minimis but also significant despite anti-dumping duty being in force.

| SN | Particular | Unit | POI |
|----|------------------|---------|---------|
| 1 | Exchange Rate | USD/INR | 66.70 |
| 2 | Normal Value | US\$/MT | *** |
| 3 | Net Export Price | US\$/MT | *** |
| 4 | Dumping Margin | US\$/MT | *** |
| 5 | Dumping Margin | % | *** |
| 6 | Dumping Margin | % Range | 25 – 35 |

Magnitude of Injury and Injury Margin

93. The Authority has determined Non Injurious Price for the domestic industry on the basis of principles laid down in anti-dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports from the subject territory to determine injury margin. The injury margin has thus been worked out as follows:

| Particular | Unit | Oct'16-Sep'17* |
|---------------------------|-------------|-----------------------|
| Non-Injurious Price (NIP) | US\$/MT | *** |
| Landed Price | US\$/MT | 552.01 |
| Injury Margin | US\$/MT | *** |
| Injury Margin | % | *** |
| Injury Margin | % Range | 0-5 |

I. Conclusion on injury

94. Considering various parameters relating to material injury provided under the Anti-Dumping Rules, the Authority concludes as follows
- i. The import of subject goods from the subject country at dumped prices has increased throughout before registering decline in POI. There was significant jump in imports during 2016-17 (i.e. the year immediately preceding to the POI). The market share of the imports from subject country has gone up from 3.09% to 9.01% before declining to 5.39% in the POI.
 - ii. Price undercutting is positive and dumping margin as well as injury margin have also increased.
 - iii. The import from the subject country however has not impacted the domestic industry adversely in terms of price parameters since their net sales realization is more than the non-injurious price of the domestic industry.
 - iv. The performance of the domestic industry has improved in terms of production, sales volumes, market share, capacity, profit, cash profit and return on capital employed.
 - v. Despite the landed price of imports being below the level of cost of production of the domestic industry these imports have not caused price depression and/or suppression.

J. Causal Link and other factors

95. Annexure-II to the Rules provides as follows with regard to Causal Link:

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the Designated Authority. The Designated Authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.”

96. The Authority examined whether other factors listed under the Rules caused injury to the domestic industry.

Volume and value of imports not sold at dumping prices:

97. The imports from china are also attracting anti-dumping duty. The domestic industry has already filed a petition seeking imposition of anti-dumping duty on imports from Russia. The Authority is separately investigating the matter. Imports from other countries are not significant in volume and hence cannot be considered as the cause of the injury claimed to be suffered by the domestic industry.

Contraction in demand or Changes in the pattern of consumption:

98. Demand for the product under consideration has not registered any negative growth. Instead, it has increased and shown a positive growth. Thus, contraction in demand is not a factor contributing to the injury to the domestic industry. Moreover, the pattern of consumption with regard to the product under consideration has also not undergone any change. Change in the pattern of consumption is thus not a factor that could have contributed to the injury claimed by the domestic industry.

Trade restrictive practices of and competition between the foreign and domestic producers:

99. There is no trade restrictive practice which could have contributed to the injury claimed by the domestic industry.

Developments in technology:

100. Technology for production of the product has not undergone any change nor is any change likely in the foreseeable future. Developments in technology is therefore, not a factor of injury claimed by the domestic industry.

Export performance:

101. The petitioner exports the product under consideration. The export volume has increased only over the injury period and therefore it could not be the factor responsible for injury claimed by the domestic industry.

Productivity of the domestic industry

102. Productivity per day as well as productivity per employee has improved consistently over the injury period and therefore could not be the cause of injury claimed by the domestic industry.

Any Other factors

103. The capacity expansion from *** MT to *** MT undertaken by the domestic industry during 2015-16 is one of the factors responsible for higher injury margin as compared to the one in the last sunset review investigation.

104. The essential facts of the investigation gathered by the Designated Authority during the course of the investigations and analyzed by the Authority in the present disclosure statement was disclosed to the interested parties in order to enable these interested parties to offer their comments on these facts.

K. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES

105. The post disclosure submissions have been received from the interested parties. Majority of the issues raised therein have already been raised earlier during the investigation and also addressed appropriately. Additional submissions have been analysed as under:

Submissions made by the Domestic Industry

106. The following comments on Disclosure statement are submitted by domestic industry:

- i. The scope of the present investigation is limited only to re-determination of dumping margin and injury margin as it is midterm review investigation.
- ii. Extending the scope of the present investigation to a complete analysis of injury as if it was a petition for fresh imposition of ADD and assessment of whether or not the domestic industry has suffered material injury is without any legal and factual basis.
- iii. The normal value has been calculated by the Authority considering normated cost of the domestic industry, which is inconsistent with the law. The Authority is required to adopt actual cost of production and not normated cost of production. Without prejudice, the NIP itself is understated thus leading to understated normal value. The resultant dumping margin proposed by the Authority is significant low.
- iv. The non-injurious price determined is too low. The NIP has been inappropriately reduced by modifying apportionment methodology and excluding a number of elements of expenses. It would be inappropriate to change the methodology that was fixed at the time of original investigation. The Designated Authority has earlier conducted investigations in the matter of Sodium Nitrite from China and Europe and has determined NIP.
- v. The imports from the subject country have substantially increased in absolute terms and the market share of the subject imports in total imports entering India has also shown an increase.
- vi. Dumping margin, price undercutting and injury margin have increased as compared to the last SSR investigation.
- vii. The price undercutting has become 9.55% from -3.13% which was in the POI of the last sunset review investigation. The landed price of imports is below the level of cost of production and selling price of the product concerned during POI. Landed value has decreased by 97.71 US\$/MT since the POI of the last sunset review investigation.
- viii. The NIP of the domestic industry has also decreased. However, the decrease in landed price is higher than the decrease in the non-injurious price of the domestic industry. The imports are, thus, resulting in significant price underselling in the market.

- ix. Injury margin has increased and it is higher than the anti-dumping duty already in force. Thus, the injury margin has undergone a considerable change to the extent of undermining the remedial effects of anti-dumping duty imposed.
- x. The petitioner compared the conclusions drawn between the present MTR investigation and the last China SSR investigation dated 19th July 2017 vide Notification No. 15/06/2016/DGAD. It would be seen that with the same set of facts, the conclusions drawn by the authority are totally different.
- xi. There are certain parameters in respect of which the injury is more prominent in the present MTR investigation as compared to the SSR investigation. Imports are continuously increasing, as against decline in imports in the SSR investigation. In the SSR investigation the selling price had continued to increase with increase in costs. However, the Authority upon reviewing the overall performance of the domestic industry concluded continued dumping and continued injury.
- xii. The Authority has not even examined likelihood parameter while undertaking injury analysis. While the Authority has examined likelihood in all past MTR investigations in the injury analysis, petitioner has not understood the reason for ignoring the same in the present case.
- xiii. Likelihood of intensified dumping and consequent injury is imminent as volume of imports has remained significant since inception and even in the present investigation. European producers have significant surplus capacities and the percentage of exports in total turnover of PUC in the subject country is massively high. If these ADD are not enhanced, the imports shall have significant suppressing and/or depressing effect on the prices of the domestic industry.
- xiv. The imports are significantly undercutting the domestic prices even when the anti-dumping duty is in force. It is likely that due to price attractiveness of Indian market; the same will continue and will force the Domestic Industry to reduce its prices further if the anti-dumping duty is allowed to be continued without any enhancement in its quantum.
- xv. Regarding the concern of the Authority that the performance of the domestic industry has improved in terms of production, sales volumes, market share, capacity, profit, cash profit and return on capital employed and that the Net sales realization is more than the Non-Injurious price of the domestic industry; it is submitted that since the present petition is for review and modification of antidumping duty, the Authority is required to assess whether the dumped imports are preventing the domestic industry from improving its performance to optimum levels.
- xvi. As regard the argument on capacity expansion during 2015-16, it is submitted that increase in capacity was taking into consideration the increase in demand in India. Further, present investigation being a review investigation, the causal link is not required to be seen. Further, per unit cost structure of the domestic industry has not increased in a manner so as to show that the capacity expansion undertaken by the domestic industry is responsible for the claimed injury.

- xvii. The Authority seems to have proceeded on a premise that the sole cause of the injury to the domestic industry must be dumped imports and seems to overlook the legal requirements that dumping need be only one of the causes of injury to the domestic industry.
- xviii. The circumstances prevailing during the previous sunset review have undergone a major change justifying the need for enhancement of quantum of current anti-dumping duty in force.

Submissions made by Other Interested Parties

107. The following comments on Disclosure statement are submitted by other interested parties:

- i. As assessed by the Authority, imports from the EU have increased in volume until 2016-17, but then they registered a significant decline (***) in the POI, together with a decline in market share.
- ii. As regards the effect of EU imports on domestic prices, while it seems that the undercutting margin became positive in 2015-16 and the POI (although it is rather low), the Authority has found that EU imports didn't cause any price depression nor price suppression to the domestic industry. In fact, the domestic industry was even able to increase its selling price, thus invalidating the claim that the low price of EU imports has forced them to reduce their domestic price.
- iii. As confirmed by the Authority, capacity, capacity utilisation, production and domestic sales of the domestic industry have increased during the period considered.
- iv. Likewise, profitability turned positive and increased significantly. In particular, the Authority notes that "the domestic industry has come out from the situation of financial losses and has been earning profits. Consequently, profit before interest, cash profits and return on investment have shown increase".
- v. As regards market share, the market share of domestic industry has increased and has remained stable since then.
- vi. Employment didn't decrease either. On the contrary, wages have increased, showing that EU imports have no negative effect on the domestic job market.
- vii. From the parameters and trends summarised above, it is clear that the existing AD duties have proved effective in remedying the injury caused by dumped imports by lifting the domestic industry from a past situation of financial losses to the present profitable condition.
- viii. As rightly underlined by the Authority, injury to the domestic industry, if any, can be attributed to the capacity expansion it undertook in 2015-16.
- ix. It is submitted that the European Commission had already raised the point about the need to separate the injury, if any, attributable to dumped imports from that which is caused by other factors, as provided for in Art. 3.5 of the WTO ADA.
- x. The European Commission considers that there is no element that would justify

an increase in the current level of AD duties, which have proved effective in removing the injury to the domestic industry, as shown by its improved performance.

- xi. Increasing the current duty level under these circumstances would therefore be in breach of Article 11.1 of the WTO ADA.
- xii. The European Commission trusts that the Indian authorities will terminate the present mid-term investigation without any change in the level of AD duty already in force on EU imports.

EXAMINATION BY THE AUTHORITY

108. The Authority notes that most of the submissions by parties are repetitive in nature and were already addressed earlier in the disclosure statement. The findings above deal with these arguments of the parties. Further, the Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere.

i. The Authority notes that the methodology adopted for NIP determination in this investigation is the same as the one adopted consistently in previous investigations. It is noted that in the manufacture of PUC, significant proportion of costs consists of cost of raw material costs and utilities, which have been allowed on actuals as claimed by the DI. It may be added that the DI has number of products under anti-dumping investigation for last several years. It was noticed during the anti-dumping investigation on imports of Sodium Nitrite, originating in or exported from European Union vide notification No. 15/1009/2012-DGAD dated 12.05.2014 that the company had adopted different methods of allocation for two different joint products namely Sodium Nitrate and Sodium Nitrite. Since, the domestic industry had not adopted the consistent method as required under Annexure-III of AD Rules, a uniform methodology has been applied for allocation of others costs since then in respect of both products namely Sodium Nitrate and Sodium Nitrite. There has been no change in methodology thereafter.

ii. In regard to comparison of two different investigations by the domestic industry, it is noted that the objective of the Authority is to ensure fairness and justice to all the interested parties.

L. CONCLUSION

109. After examining the submissions and contentions of interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

- a) The product under consideration has been exported to India from the subject country below normal value. Even injury margin is higher as

compared to the anti-dumping duty in force. The increase in the injury margin however is partly attributable to the capacity expansion undertaken during 2015-16.

- b) The market share of the imports from subject country has increased in the POI as compared to the base year of the injury period. The import from the subject country however has not impacted the domestic industry adversely in terms of price parameters since their net sales realization is more than the non-injurious price of the domestic industry
- c) There is overall improvement in the health of the domestic industry. Its production, sales, market share, profit and return on capital employed have registered consistent growth.

M. RECOMMENDATION

110. Taking a holistic view of the conclusion drawn above, the Authority does not recommend enhancement of anti-dumping duty. The authority however recommends continuation of anti-dumping duty imposed vide Customs Notification No. 37 /2014-Customs (ADD) dated 08.08.2014 on imports of subject goods from the subject country.

N. FURTHER PROCEDURE

111. An appeal against the order of the Central Government that may arise out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Sunil Kumar)
Additional Secretary & Director General