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**F.No. 7/5/2017-DGAD**

**Government of India**

**Ministry of Commerce & Industry**

**Department of Commerce**

**(Directorate General of Trade Remedies)**

**4<sup>th</sup> Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

Dated 14<sup>th</sup> December, 2018

**NOTIFICATION**

**FINAL FINDINGS**

**Sub: Anti-dumping Sunset Review Investigation concerning imports of “Soda Ash”, originating in or exported from China PR, European Union, Kenya, Pakistan, Iran, Ukraine and USA.**

**A. BACKGROUND OF THE CASE**

1. Whereas, having regard to the Customs Tariff Act, 1975 as amended and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as “AD Rules”), the Designated Authority (hereinafter referred to as the “Authority”) had notified its final findings vide Notification No.14/17/2010-DGAD dated 17<sup>th</sup> February, 2012, recommending imposition of definitive anti-dumping duties on the imports of “Soda Ash” (hereinafter referred to as the “subject goods” or “product under consideration”), originating in or exported from China PR, the European Union, Kenya, Pakistan, Iran, Ukraine and USA (hereinafter referred to as the subject countries). The definitive anti-dumping duties were imposed by the Central Government vide Notification No. 34/2012-Customs (ADD) dated 3rd July, 2012.
2. And whereas, the Authority having completed a mid-term review recommended withdrawal of anti-dumping duty on the subject goods vide Final Findings No. 15/28/2014-DGAD dated 22 July 2017, and accordingly annulled the sunset review vide Notification No. 7/5/2017-DGAD dated 22 July 2017 too simultaneously.
3. And whereas, the Petitioners challenged the aforesaid mid-term review Final Findings and sunset review annulment order before the Hon’ble High Court of Gujarat at Ahmedabad. In pursuance of order dated 11 June 2018 in Special Civil Application Nos. 14202 to 14207 of 2017 and Misc. Civil Application No. 2 of 2018 in Special Application No. 14202 of 2018; and final order dated 15 June 2018 in Misc. Civil Application No. 3 of 2018 in Special Civil Application No. 14204 of 2018, the Hon’ble High Court of Gujarat set aside the aforementioned mid-term review Final Findings and the sunset review annulment order. The Hon’ble High Court also extended the timeline to complete the sunset review by six months and directed the Authority to complete the sunset review as per procedure.

4. Whereas in terms of Section 9A(5) of the Customs Tariff Act 1995 as amended, the anti-dumping duty imposed shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
5. Whereas, M/s Nirma Ltd. and M/s DCW Ltd. (hereinafter referred to as Petitioners) had jointly filed a petition in accordance with the Act and the Rules, seeking initiation of a sunset review of 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 China PR, the European Union, Kenya, Pakistan, Iran, Ukraine and USA.
6. The Designated Authority initiated sunset review vide Notification No. 7/5/2017-DGAD dated 16 June 2017 published in the Gazette of India, Extraordinary, to examine whether the expiry of anti-dumping duty would lead to continuation or recurrence of dumping or injury. The initiation of sunset review however was subject to the final outcome of the mid-term review which was underway.

## **B. PROCEDURE**

7. The procedure described below has been followed with regard to the investigation:
  - i. The Authority sent copies of the initiation notification dated 16 June 2017 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 the letter 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 petition filed on behalf of the Petitioners 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 sunset review 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 AD Rules:

Shandong Haihua Group, Shandong Haihua Group Co., Ltd. Develop Zone of Haihua Weifang City, Shandong, China
Qinghai Alkali Plant (Zhejiang Glass China's Qingtai Alkali Plant (Zhejiang Glass China's Qinghai Delingha Industrial Park Zip:817000 – China

Jinshan chemical co. China's Zhengzhou City in Henan Province, Zhengzhou City Fushoushan Street 87,China
Hebei Tangshan Sanyou Al kali Industry Company Nanpu Development Area,TangShan,Hebei,China
Tianjin Soda Ash Plant No. 87Xinhua Road Tanggu District Tianjin China
SIMAN LTD Pob 29 Kazanlak SL Zagora Bulgaria 6103
Solvay Sodi AD Zip Code: 9160 Bosnia and Herzegovina Brunner Monday Winnington Lane Mond House, Northwich, Cheshire, UK, CW8 4DT
SPIN INTERNATIONAL 13 RUE DE PASSY Paris 75016
BELVEDERE SRL ROMANIA Cetatianu Ioan GALATI, Romania 800198
Asha Trade Import Export Mangaliei Nr 71 BL PIS SC D Apt 36 Constanta 900116Romania
GHCL Romania Ghcl Upsom Ocna Mures Alba County Romania 515700
Sisccam Sode Lukavac, The first street 1 75300, Lukava Bosnia and Herzegovina
Magadi Soda Company P O Box 1 - 00205, Magadi, Kenya.
ALLIED NETWORKX COMPANY LTD Asili Co-Op House Moi Avenue Nairobi Kenya 72964 00200
FMC Industrial Chemicals 1735 Market Street Philadelphia, PA 19103 USA
OCI Chemical Corporation 1800 West Oak Commons Court Suite 100 Marietta, GA 30062
SOLVAY SODA ASH Headquarters 5333 Richmond Ave., Houston, TX 77098 Mailing address: P.O. Box 27328, Houston, TX 77227
General Chemicals Industrial Products 120 Eagle Rock Avenue East Hanover, New Jersey, USA.
ANSAC 15 Riverside Avenue 2nd Floor Westport, CT 06880 USA
FMC Corporation Wells Fargo Bank N.A. Shareowner Services P.O. Box 64854 St. Paul, MN 55164-0854 Or161 N. Concord Exchange South it. Paul, MN
Soda Ash

Soda Ash Business ICI Pakistan Limited 63-Mozang Road Lahore, Pakistan
Olympia Chemicals Ltd. 23-Davis Road, Lahore, Pakistan
Syrina Trade Co., Arum s.88 office 251a Donetsk, Ukraine

- v. In response to the initiation of the sunset review, no producer/exporter from the subject countries filed any response to the questionnaire or made any submission.
- 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 Plnt L&C-MFG, Plot No.182, Mandideep, Madhya Pradesh
Advatecg Industries Pvt Ltd, Dhanali, Village –Dhanali, Al-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 Unilive Ltd., Party Address Dakshina Building, 8th Floor, Plot No-2 Sector-11, CBD Belapur, Navi Mumbai
Albright Morarji & Pandit Ltd, Ambernath, 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 <sup>st</sup> 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 <sup>th</sup> 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, Lower Parel, Mumbai – 13

- vii. In response to the above notification, no importer/user filed any response to the questionnaire or made any submission.
- viii. Questionnaires were also sent to the known domestic producers of the subject goods in India for necessary information and response.

S.NO.	Name of domestic producer
i.	M/s GHCL Ltd.
ii.	M/s Tata Chemicals Ltd.
iii.	M/s Saurashtra Chemicals Ltd.

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

S.NO.	Name of association
i.	Detergent Manufacturers Association (Delhi Region)
ii.	Indian Chemical Merchants & Manufacturers Association
iii.	Bulk Drug Manufacturers Association(India)
iv.	Indian Glass Manufacturers' Association
v.	The Dyers & Chemical Merchants Association
vi.	All India Glass Manufacturer's Federation
vii.	Alkali Manufacturers Association of India
viii.	Indian Soap & Toiletries Maker's Association

- x. The following parties made submissions during the course of this investigation:
- i. Embassy of Ukraine
  - ii. Detergent Manufacturers Association of India
  - iii. All India Glass Manufacturers Federation
  - iv. Saint Gobain India Pvt. Ltd.
  - v. Hindustan Unilever Ltd.
  - vi. Olympia Chemicals Ltd., Pakistan
- xi. Exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- 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, including the period of investigation. The Authority has, therefore, relied upon the DGCI&S data for computation of the volume of imports and analysis of other parameters.
- 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 NIP has been determined by the Authority in terms of the principles laid down under Annexure III to the AD Rules.
- xiv. Investigation was carried out for the period starting from April 2016 – March 2017 (hereinafter referred to as the "POI"). However, injury examination covered the periods 2013-14, 2014-15, 2015-16 and the POI.
- xv. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to the interested parties to present their views orally in the oral hearing held on 5 November 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.

- xvi. The submissions made by the interested parties during the course of the investigation have been considered by the Authority, wherever found relevant, in the present findings. Verification to the extent deemed necessary was carried out in respect of the information and data submitted by the domestic industry.
- xvii. 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.
- xviii. 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 present findings on the basis of available facts.
- xix. The Authority disclosed essential facts under consideration to all parties vide disclosure statement dated 27.11.2018. 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.
- xx. \*\*\* represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxi. The average exchange rate of 1US\$ = Rs. 67.95 prevailing during the POI has been adopted by the Authority.

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

### **Submissions made by the Petitioners**

- i. The product under consideration is Disodium Carbonate, also known as Soda Ash, having chemical formula  $\text{Na}_2\text{CO}_3$  in all its form and produced through any process.
- ii. Soda Ash is produced in two forms- Light Soda Ash and Dense Soda Ash.
- iii. It is produced through synthetic process as also extracted from natural sources.
- iv. The scope of investigation is the same as the original investigation.
- v. Soda Ash is classified under customs sub-heading No. 2836.20 under the Customs Tariff Act, 1975 and includes the tariff headings 28362010, 28362020, 28362090.
- vi. There is no known difference in subject goods produced by the domestic industry and subject goods exported from subject countries.
- vii. Subject goods produced by the domestic industry and imported from subject countries are having comparable characteristics in terms of parameters such as physical and chemical characteristics, manufacturing process, technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the

goods. Soda Ash produced by the domestic industry and that imported from the subject countries are thus treated as Like Articles.

### **Examination by the Authority**

8. The product under consideration in the original investigation as well as in the present sunset review is 'Soda Ash'. In the original investigation, the product scope was defined as under:

*"i. The product under consideration in the present investigation is Disodium Carbonate, also known as Soda Ash having chemical formula  $\text{Na}_2\text{CO}_3$ . 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."*

9. No interested party has raised any issue regarding the scope of product under consideration and like articles.
10. The authority confirms that the product under consideration in this sunset review investigation is the same as defined in the original investigation. The authority also holds that the product produced by the domestic industry is a like article to the product under consideration.

### **D. Scope of Domestic Industry and Standing**

#### **Submissions made by the Petitioners**

- i. Barring GHCL and Tata Chemicals, none of the companies have themselves imported the subject goods during the POI.
- ii. Tata Chemicals has related producers in Kenya, US and Europe. The Kenyan and US Companies are subsidiaries of Tata Chemicals which has exported goods to India. In view of the decision of the Authority in the original investigation, the petitioners have treated Tata Chemical as ineligible domestic industry.
- iii. GHCL has imported the product under consideration from amongst subject countries. However, the details of this are publicly unavailable to the petitioners. GHCL may be considered as ineligible domestic industry if it is deemed fit.
- iv. M/s Nirma has a related producer in USA, which has exported Soda Ash to India upto March 2016. No exports have been made by this company in the POI.
- v. It has been submitted that standing is not a mandatory requirement in a sunset review investigation. Rule 23 specifically excludes Rule 5.
- vi. The request for extension of ADD is based on likelihood of recurrence of injury.

- vii. Since no injury has been claimed, there is no reason to require analysis of data for all domestic producers.
- viii. The production of the petitioning companies constitutes a major proportion in Indian production.
- ix. The petitioners cannot be denied relief just because other Indian producers have not produced relevant information.

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

- i. M/s Nirma Ltd. has a related producer in subject country i.e. USA and that there were no exports made by the said related producer to India during the POI.
- ii. Mere existence of imports does not automatically render a domestic producer ineligible under Rule 2(b) of the AD Rules. The Authority has the discretion to determine the scope of Domestic Industry.
- iii. It is submitted that the domestic industry may be excluding GHCL merely because of its positive performance in the past few years.
- iv. M/s Nirma Ltd. has a related company in USA that is involved in manufacturing and export of the subject goods to India. This related company has exported the subject goods during the entire injury period. As per Rule 2(b) of the AD Rules, the domestic industry should not compromise of producers that are related to exporters of the subject goods.
- v. The production of the Petitioners does not constitute a major proportion in the total Indian production in terms of Rule 2(b) of the AD Rules.
- vi. On comparison of the production data with the sales data of the Petitioners and Other Indian Producers, there is a gross mismatch in the annual production of Other Indian Producers and their domestic sales.
- vii. While the domestic industry's production is more than its domestic sales, on the other hand, annual production of other Indian producers seems almost half of their annual domestic sales.
- viii. There is gross mismatch on the annual production data of other Indian Producers and annual domestic sales' data of other Indian Producers.
- ix. The data produced has been skewed by the domestic industry solely for the purpose of falsely establishing standing in this case under Rule 2(b) of the AD Rules.
- x. If the correct production data of other Indian Producers is used, the Petitioners will no longer have major proportion in the total Indian production, thus failing to qualify as domestic industry in terms of Rule 2(b).
- xi. M/s Tata Chemicals Ltd. has a related company in Kenya and M/s GHCL had imported the subject goods and have been claimed to be excluded from the domestic industry by the Petitioners. Applying the same logic, M/s Nirma Ltd. should also be excluded since it has a related company in USA.
- xii. Tata Chemicals Ltd and M/s GHCL Ltd. have not been mentioned in the List of Importers, in Annexure 1.4 of the Petition.

## Examination by the Authority

11. 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”.*

12. 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.

13. The Authority notes that in the original investigation, the domestic industry constituents 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 in the final findings no. 14/17/2010-DGAD dated 17.02.2012 had noted as below:

*“49. The Authority considers that the domestic producers who import an insignificant quantum of the dumped goods or whose related exporter exports the dumped goods or whose related importer imports the dumped goods do not unduly benefit from dumping practices, if these imports do not represent a significant part of their sales or market size. Indeed, no advantage occurs to such domestic producers because of the competition from other suppliers in the market. The Authority also notes that another distinction drawn by the Investigating authorities of other countries, while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? The Authority considers that in the latter case, such company should be excluded from the scope of domestic industry. Another element which can be considered is whether or not the domestic producer in question is committed to production in the country of imports.*

*50. In view of the above, the Authority holds that the only relevant issue for determination is whether or not GHCL, Nirma, SCL and Tata Chemicals should be treated as eligible domestic industry. In the instant case, there is no allegation that any of the domestic producers is related to an importer. The arguments of the interested parties are that SCL, Nirma and GHCL should be treated as ineligible domestic industry in view of their relationship with foreign producers/exporters in subject countries or, in case of Nirma, additionally because of imports made by Nirma.*

*51. The Authority has examined the issue of eligibility of the applicant companies by applying the aforesaid principles to the facts and circumstances of the present case. The facts of the instant case are as follows in so far as the issue of relationship and eligibility of the applicant companies is concerned.*

- i. The application was filed by Alkali Manufacturers’ Association of India (AMAI). AMAI is an association of producers of caustic soda (including chlorine) and*

soda ash.

- ii. *DCW, GHCL, Nirma and Saukem have provided information relevant to injury to the domestic industry and have requested to be considered as “domestic industry” for the purpose of the present investigation. These companies are being treated as “participating companies”. The petition has express support of all Indian Producers of soda ash during POI, except Tata Chemicals. Tata Chemicals has neither supported nor opposed the imposition of anti-dumping duties. It is however noted that Magadi Soda Company, Kenya (renamed as Tata Chemicals Magadi Ltd) is a 100% subsidiary of Tata Chemicals and the company is participating in the present investigations by filing exporters’ questionnaire response.*
- iii. *Post initiation and after holding of 1<sup>st</sup> oral hearing, Tuticorin Alkali Chemicals (TAC) has filed its written submissions vide their letter dated 23rd May, 2011 supporting the application and requesting the Designated Authority to impose anti-dumping duties. It is noted that TAC has not participated in the proceedings by way of filing response to the initiation notification. It is also noted that they were not producing the subject goods during POI. The Authority has, therefore, not considered the submissions of TAC at this belated stage.*
- iv. *None of the petitioner companies are related to any of the importers of the product under consideration in India;*
- v. *DCW Ltd. does not have any related producer-exporter outside India. The company has not imported the product under consideration, nor is the company related to any exporter or importer. There is no dispute that DCW is an eligible domestic producer constituting ‘domestic industry’. Petitioner has strongly contended that in the event the Authority holds that GHCL, Nirma and SCL are ineligible domestic industry, DCW alone shall constitute domestic industry, as the production of the company in that event shall constitute 100% of the “production by the domestic industry’.*
- vi. *SCL and Nirma are undisputedly related companies.*
- vii. *Nirma has imported soda ash from its related supplier in USA. Barring Nirma, none of the petitioner companies have themselves imported the material from any of the subject countries during the entire injury period.*
- viii. *GHCL has a related company in Romania, namely S.C. GHCL Upsom. The related exporter of GHCL has exported Soda Ash to India over the current injury period. GHCL has also provided details of their related company in Romania regarding production and exports to India (volume information only). Details of exports made by related exporter over the injury period show that (a) these exports have been directly made by the Romanian company to unrelated Indian customers during the POI, and (b) the volume of exports by the company steeply declined over the injury period. Table below shows the volume of exports from Romania, exports by GHCL Upsom and other relevant details.*

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
A	(a) Exports by S.C. GHCL Upsom	MT	17,356	51,353	6,489	4,101
B	Exports to related parties	MT	11,082	-	-	-
C	Exports to unrelated Indian parties	MT	6,274	51,353	6,489	4,101
D	(b) Total imports from Romania	MT	46,594	67,121	7,652	47,148
2	Exports made by S.C. GHCL Upsom in relation to	MT	17,356	51,353	6,489	4,101
A	Indian production		0.85%	2.54%	0.32%	0.20%
B	Indian Consumption		0.80%	2.33%	0.29%	0.17%
C	Production of GHCL		3.31%	8.68%	1.05%	0.61%
D	Imports made by GHCL in relation to					
A	GHCL's production		2.11%	0.00%	0.00%	0.00%
B	Indian production		0.54%	0.00%	0.00%	0.00%
C	Indian consumption		0.51%	0.00%	0.00%	0.00%
3	Gross imports from Romania	MT	46,594	67,121	7,652	47,148
A	• Exports by GHCL Upsom	MT	17,356	51,353	6,489	4,101
B	• Exports by Other exporters	MT	29,238	15,768	1,163	43,047
C	Share of GHCL Upsom in total exports from Romania		37.25%	76.51%	84.80%	8.70%

52. The Authority holds that:

- (i) GHCL Upsom is not the majority exporter of soda ash from Romania. Other exporters from Romania constitute majority exports from Romania.
- (ii) Exports by GHCL Upsom declined significantly in absolute terms as also in relation to imports from Romania.
- (iii) Exports by GHCL Upsom are quite insignificant when compared with total imports of soda ash in India, production of soda ash by GHCL and consumption of soda ash in India.
- (iv) The imports were not made by GHCL, India. The imports were made directly by unrelated consumers.
- (v) The volume of exports by GHCL Upsom is not so significant as to have caused or provoked injury to the domestic industry.
- (vi) Focus of GHCL continues to be on production. The company has not turned trader. Nor the company has unduly benefited from dumping. In fact, imposition of anti-dumping duty would imply imposition of anti-dumping duty

on exports made by GHCL Upsom as well. The injury determination shall not get distorted by including GHCL within the scope of the domestic industry.

- (vii) None of the opposing interested parties have advanced any justification for exclusion of GHCL from the scope of the domestic industry, barring the fact of relationship itself.

53. SCL & Nirma have related producer in USA, namely Searles Valley Minerals. Details of exports made by related exporter over the injury period show that (a) these exports have been made only during the POI, (b) the exports have been made to Nirma, (c) Nirma has used this material for self-consumption. Table below shows the volume of exports from US, exports by Searles Valley Minerals (related producer of Nirma and SCL in USA) and other relevant details:

S. No.		Unit	2006-07	2007-08	2008-09	2009-10
1	(a) Exports by Searles Valley Minerals	MT	-	-	-	2,700
	Exports to Nirma	MT	-	-	-	2,700
	Exports to unrelated Indian parties	MT	-	-	-	-
	(b) Total imports from USA	MT	123	629	830	32,679
	Direct	MT	123	629	830	17,852
	Transshipments	MT	-	-	-	14,827
2	Exports made by Searles Valley Minerals (USA) in relation to					
	Indian production		0.00%	0.00%	0.00%	0.13%
	Indian Consumption		0.00%	0.00%	0.00%	0.11%
	Production of Nirma		0.00%	0.00%	0.00%	0.58%
	Imports made by Nirma in relation to					
	Nirma's production		0.00%	0.00%	0.00%	0.58%
	Indian production		0.00%	0.00%	0.00%	0.13%
	Indian consumption		0.00%	0.00%	0.00%	0.11%
3	Imports from USA in India	MT	123	629	830	32,679
	Exports by affiliated parties of Nirma/ Saukem	MT	-	-	-	2,700
	Exports by Other Parties from USA	MT	123	629	830	29,979
	Share of exports by Nirma's affiliated producer in total exports from USA		0.00%	0.00%	0.00%	8.26%

54. The Authority notes that –

- (i) *Searles Valley Minerals (related company of Nirma and SCL in USA) is not the majority exporter of soda ash from USA during the POI. Other exporters (non-related) from USA have a majority and much larger share in exports from USA.*
- (ii) *Exports by Searles Valley Minerals are insignificant when compared with total imports of soda ash in India, production of soda ash by Nirma and Saukem and consumption of soda ash in India.*
- (iii) *The volume of exports by Searles Valley Minerals is not so significant as to have caused or provoked injury to the domestic industry.*
- (iv) *The imports from the related company in USA by Nirma have not been used for trading in the domestic market. The same has been used for captive consumption by Nirma and the volume thereof is insignificant compared to the total production of Nirma.*
- (v) *Focus of Nirma (or Saukem) continues to be on production. It can be reasonably stated that the company has not shifted to trading in imported goods. Nor the company can be said to have unduly benefited from dumping. In fact, imposition of anti-dumping duty would imply imposition of anti-dumping duty on exports made by Searles Valley Minerals as well. The injury determination shall not get distorted by including Searles Valley Minerals within the scope of the domestic industry.*
- (vi) *None of the opposing interested parties have advanced any justification for exclusion of Searles Valley Minerals from the scope of the domestic industry, barring the fact of relationship itself.*

55. *Tata Chemicals (one of the domestic producers of subject goods) has a related producer in Kenya as per information available on record and the Authority notes that there are significant imports from Kenya during POI. The present investigation includes Kenya as one of the subject countries. Details of exports made by related exporter in Kenya over the injury period show that (a) the Kenyan company is a subsidiary of Tata Chemicals, (b) records do not show any other producer of soda ash in Kenya, (c) these exports have been made throughout the injury period (d) petitioner claimed and other interested parties have not disputed with cogent reasons that Tata Chemicals should be treated ineligible domestic producer under Rule 2(b) to qualify as a domestic industry. Table below shows the volume of exports from Kenya, exports by Magadi Soda Ash (renamed as Tata Chemicals Magadi Ltd) and other relevant details*

S. No.		Unit	2006-07	2007-08	2008-09	2009-10
1	(a) Exports by Magadi Soda	MT	85,797	1,15,520	1,17,572	1,06,585
	Exports to related parties	MT	-	-	-	2,005
	Exports to unrelated Indian parties	MT	85,797	1,15,520	1,17,572	1,04,580
	(b) Total imports from Kenya	MT	85,797	1,15,520	1,17,572	1,06,585
2	Exports made by Magadi Soda (Kenya) in relation to	MT	85,797	1,15,520	1,17,572	1,06,585

<i>Indian production</i>		<i>4.19%</i>	<i>5.72%</i>	<i>5.79%</i>	<i>5.13%</i>
<i>Indian consumption</i>		<i>3.97%</i>	<i>5.24%</i>	<i>5.33%</i>	<i>4.32%</i>
<i>Production of TCL</i>		<i>11.33%</i>	<i>16.57%</i>	<i>16.91%</i>	<i>15.32%</i>

56. From the above, the Authority notes that-

- (i) *Magadi Soda, Kenya (renamed as Tata Chemicals Magadi Ltd) is the sole exporter of soda ash from Kenya.*
- (ii) *Exports by Magadi Soda (Kenya) are quite significant when compared with total imports of soda ash in India, production of soda ash by Tata Chemicals and consumption of soda ash in India.*
- (iii) *The volume of exports by Magadi Soda (Kenya) is significant so as to have caused or provoked injury to the domestic industry.*
- (iv) *Focus of Tata Chemicals continues to be on production. The company has not turned trader. However, the undue benefit to the company from dumping by related company cannot be ruled out, given the volume of exports by the related company from Kenya during POI.*
- (v) *While the petitioner has argued that Tata Chemicals should be treated ineligible domestic industry, none of the opposing interested parties have sought inclusion of Tata Chemicals within the scope of domestic industry.*

57. It is, thus, seen that –

- (i) *85% of exports from USA and 93% of exports from Romania are by producers unrelated to Indian producers. However, 100% of exports from Magadi are by the producer related to one of the Indian producers.*
- (ii) *As regards Tata Chemicals, the exports made by Magadi Soda are quite significant. Magadi Soda is the sole producer of soda ash in Kenya, the volume of exports has not declined. Magadi Soda has low domestic demand and the focus of the company is on exports (exports by the company are almost 90% of its total sales). The Authority holds that even though Tata Chemicals is a domestic producer, the company must be considered ineligible to be treated as “domestic industry” for the purpose of the present investigations.*
- (iii) *As regards GHCL, the Authority notes that the exports made by related exporter have significantly declined over the injury period, 93% of the exports from Romania are by unrelated producers in Romania, focus of GHCL has not shifted from manufacturing to trading, nor any undue benefit can be said to have accrued either to related exporter or to GHCL. The Authority holds GHCL as eligible to be treated as “domestic industry” for the purpose of the present investigations.*
- (iv) *As regards Nirma and Saukem, the Authority notes that the exports made by related exporter were only in the investigation period. 85% of the exports from USA are by unrelated producers in USA. Focus of Nirma has not shifted from manufacturing to trading, as the relevant figures would indicate. Exports made by the related producer in USA cannot be said to have resulted in undue benefit to the domestic producer in India, namely, Nirma or Saukem. Rather, the insignificant quantity of the material has been imported for internal*

consumption. In view of the above position, the Authority holds Nirma and Saukem as eligible to be treated as “domestic industry” for the purpose of the present investigations.

58. Thus, the Authority is of the view that it is appropriate to consider GHCL, Nirma, Saukem and DCW Limited as the domestic industry under Rule 2(b) of the Anti-dumping Rules. Accordingly, the Authority considers GHCL, Nirma, Saukem and DCW Limited, the constituent applicants as “domestic industry”, satisfying the requirements of Rule 2(b) read with Rule 5(3) of the Anti-dumping Rules.”

14. In the present investigation, M/s DCW Ltd. has neither imported subject goods from the subject countries nor is related to either importers or exporters of subject goods from the subject countries. M/s Nirma Ltd. also has not imported the subject goods from the subject countries. Their related company in USA however has exported the subject goods to India during 2014-15 (\*\*% of total imports of PUC from subject countries and \*\*\* % of production of PUC by Nirma Ltd. ) and 2015-16 (\*\*% of total imports of PUC from subject countries and \*\*\* % of production of PUC by Nirma Ltd.). M/s Nirma Ltd’s related company in USA though has not exported the subject goods during the POI. None of other Indian producers has opposed the standing of the petitioners. The Authority notes that the focus of M/s Nirma Ltd. remains on domestic production of the subject goods.

15. The production position of the constituents of the domestic industry in the present investigation is as given below:

Particular	UOM	2013- 14	2014- 15	2015-16	POI
Production of Petitioners	MT	925,479	940,319	1,017,741	1,042,246
Other Indian Producers (comprising of GHCL, Tata Chemicals Ltd. and Tuticorin Alkalies)	MT	1,410,117	1,477,012	1,492,907	1,568,253
Total Indian Production	MT	2,335,596	2,417,331	2,510,649	2,610,499
Total Indian Production (excluding Tata Chemicals Ltd.)	MT	1,611,777	1,693,439	1,786,756	1,886,607
Share of Petitioners	%	40%	39%	41%	40%
Share of Other Indian Producers	%	60%	61%	59%	60%
Share of Petitioners (if Tata Chemicals Ltd. is not considered is part of Indian producers)	%	57%	56%	57%	55%

16. The Authority holds that the petitioners satisfy the requirement of standing in terms of Rule 2(b) and Rule 5(3) of the Indian AD rules.

## **E. Confidentiality**

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

- i. The Petitioner has claimed confidentiality on several information and data in the Petition which impairs the ability of the Respondents to defend their interests since essential facts are not known to them.
- ii. The Petitioners have failed to provide good cause for claiming confidentiality on certain essential facts as required under Rule 7 of the AD Rules and Article 6.5 of the AD Agreement.
- iii. The confidential treatment of export sales volume, exports of the subject goods to India during the injury period by the related company of M/s Nirma Ltd. in USA, captive consumption, inventory and employment is in violation of Rule 7(1) of the AD Rules and Article 6(5) of the AD Agreement.
- iv. The aforementioned information would not give a significant competitive advantage to the Respondent, nor have any significantly adverse effect upon the Petitioners, and therefore this information cannot be regarded as 'confidential in nature'.
- v. The Petitioners have shown no good cause to treat the above information and data in confidence.
- vi. There is an absence of non-confidential summaries of the information made confidential, especially for costing information. This is in violation of Rule 7 of the AD Rules and Article 6.5 of the AD Agreement.
- vii. As per Trade Notice 1/2013 dated 9 December 2013, the non-confidential version of the Petition is required to contain an indexation and/or a summary of the confidential data.
- viii. The non-confidential summary must be in sufficient detail so as to permit a reasonable understanding of the substance of the information furnished on confidential basis.
- ix. As per the Trade Notice, no submission made without a meaningful non-confidential version on confidentiality shall be taken on record by the Authority.
- x. In Argentia-Ceramic Tiles, it was seen that the purpose of the non-confidential summaries is to inform the interested parties so as to enable them to defend their interests.
- xi. The Petitioners have failed to provide sources of the information relied on by them.

### **Examination by the Authority**

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

*Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule (2),(3) (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.*

18. 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.

## **F. Miscellaneous Submissions**

### **Submissions made by the Petitioners**

- i. The cessation of present ADD is likely to lead to continuation or aggravation of the continued dumping and likelihood of recurrence of injury to the domestic industry.
- ii. Imports of Soda Ash are at present subject to ADD despite which they are being exported to India from the subject country at dumping prices.
- iii. The subject exporters are exporting the product to a number of other countries at a price below fair price for the domestic industry.
- iv. By way of a Notification dated 3.7.2012, the Central Govt. earlier imposed ADD on imports of Soda Ash from the Subject Countries. Upon an application filed by an interested party, a review (Mid Term Review) was initiated on 21.7.2015. This Mid Term Review resulted in the issuance of Customs Notification dated 21.12.2016 withdrawing the duty. The Mid Term Review was kept in abeyance on account of pendency of Special Civil Application No. 16426 of 2016 filed by the domestic industry challenging the said Customs Notification along with the preceding Disclosure Statement dated 14.9.2016 and Final Findings dated 23.9.2016. They were quashed and set aside by way of Judgement and Order dated 23.2.2017 passed by the Hon'ble High Court of Ahmedabad.
- v. A fresh Disclosure Statement was ordered to be issued within 60 days. The Authority issued the said Disclosure Statement on 7.6.2017, while the expiration of the 60 day period was on 30.5.2017. The Authority initiated a Sunset Review with respect to imports of Soda Ash from present Subject Countries vide Notification dated 16.6.2017. It has been submitted that while disclosing essential facts, which are nothing but final

set of facts on which the Authority would make final determination, showing continued dumping and position likelihood of recurrence of dumping and injury and initiating Sunset Review to consider further imposition for five years, the Authority vide Final Findings dated 22.7.2017 recommended withdrawal of ADD in Mid Term Review. On the same day, the Authority also issued an order withdrawing the Sunset Review.

- vi. Since the 5-year period of the Notification dated 3.7.2012 was ending on 2.7.2017, and since the Mid Term Review was not completed by the Authority while Sunset Review was already initiated, the period of ADD was extended by one year i.e. upto 2.7.2018 under Section 9A(5) of the Customs Tariff Act, 1975 by way of Notification dated 30.6.2017 issued pursuant to Order dated 30.6.2017 passed by the High Court in Special Civil Application No. 12249 of 2017.
- vii. The Petitioners challenged the Final Findings dated 22.7.2017 and Annulment Order dated 22.7.2017 by way of Petition and allied matters. The High Court vide Order dated 31.7.2017 restrained the Central Govt. from acting upon the Final Findings dated 22.7.2017 and Annulment Order dated 22.7.2017. Thus, by virtue of the Order dated 31.7.2017, the withdrawal order of the present case was “no longer in operation” and the investigation was de facto restored.
- viii. The Authority was required to undertake the investigation for completing the Sunset Review.
- ix. The domestic industry requested for completing investigation vide letters 26.4.2018 and 2.5.2018.
- x. Since the subject writ petitions were pending and the Authority did not take further steps for completion of investigation before 22.7.2018, i.e. the day on which extended period of duty was to expire, the domestic industry filed I.A. No. 1 of 2018 in the subject Petition.
- xi. The High Court vide Judgement and Order dated 11.6.2018 allowed the subject writ petition quashing and setting aside the Final Findings dated 22.7.2017 in Mid Term Review and Order dated 22.7.2017 annulling Sunset Review.
- xii. In order to comply with the directions of the Court it was necessary for the Authority to seek an extension under First Proviso to Rule 17(1)(a) of the Rules.
- xiii. Alkali Manufacturers’ Association of India, vide letter dated 12.6.2018 informed the Authority about the Judgement and order dated 11.6.2018 and requested the Authority to complete the Sunset Review.
- xiv. The Petitioners, vide email dated 13.6.2018 drew the kind attention of the Authority to this fact with a request to seek extension.
- xv. On seeing that there was no compliance, the domestic industry approached the High Court by way of Misc Civil Application No. 3 of 2018 for appropriate orders. This was allowed by Judgement and Order dated 15.6.2018 and the High Court extended the period for concluding the Sunset Review Investigation by 6 months in terms of the first proviso to Rule 17(1)(a) of the Rules.
- xvi. A Review Investigation must be completed within a period not exceeding 12 months, but can be extended by 6 months, as per Rule 23.

- xvii. After the expiration of the said months, there is no further period mandated in law for completion of the Sunset Review. Such period is expiring on 15.12.2018.
- xviii. The same was informed to the Authority by Alkali Manufacturers' Association vide letter dated 17.7.2018.
- xix. The domestic industry further drew the attention of the Authority vide letter dated 19.10.2018.
- xx. After the cessation of duty on 2.7.2018, imports of Soda Ash in India from the subject countries have increased significantly.
- xxi. The import in the months of August 2018 and September 2018 have seen an increase of 23% from July 2018.
- xxii. China has increased the exports of the subject goods by 1718% in August, as compared to 54% in July.
- xxiii. USA has increased the volume of imports by 796%.
- xxiv. The alleged findings of the mid-term review were found incorrect, and the Hon'ble High Court intervened.
- xxv. Interested parties' submissions shows disrespect towards the orders of the Hon'ble High Court.
- xxvi. The soda ash industry has had a history of dumping in the country.
- xxvii. Dumping Margins determined in previous investigation and previous investigation and proposed in the present investigation are significant and clearly show likelihood of dumping and consequent injury in the event of cessation of ADD.
- xxviii. In the event of cessation of ADD, these exporters will get a greater opportunity to dump the product under consideration into India, taking away the domestic industry's market share.
- xxix. The import volumes have increased in the POI and at dumped prices. The imports are likely to enter in significant volumes at dumped price in the event of cessation of ADD.
- xxx. Suppression/depression effects of the imports were not seen in the Indian market because of the existence of the ADD. Import price 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 which is threatening the global demand supply scenario.
- xxxi. The domestic industry could not ascertain the levels of inventories with the subject producers. In view of the immense capacities available with the subject countries, it can be fairly stated that production can be ramped up as and when market is available.
- xxxii. USA and China have remained the first and second biggest exporters of the subject good respectively.
- xxxiii. The Turkish exporters have capacities to the tune of \*\*\* million metric tonnes of which their demand is around \*\*\* million metric tonnes, which leaves \*\*\* metric tonnes fit for exports. These goods are sent to Europe, and then are pushed to India.
- xxxiv. There is an existence of dumping even in third countries by China, EU, Ukraine and the USA. Transaction wise analysis has been undertaken for last one-decade imports.

- xxxv. The volume of dumped exports was very high throughout.
- xxxvi. The volume of injurious exports was very high earlier. The share declined till 2015-16 and increased thereafter.
- xxxvii. The volume of price attractive exports is quite high in the present POI in comparison to the consumption in India and the proportion increased thereafter in the post POI.

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

- i. For a non-importing industrial user, there are no questionnaire formats applicable. It is only applicable to initiations that took place after February 2018.
- ii. The complex history of the present case has added ambiguity to any timelines in the investigation.
- iii. There are no duties in existence, as the Authority did not apply to the Central Government to extend the period of duties. There is no occasion for the Authority to give its recommendation to the Central Government.
- iv. The Department of Revenue cannot extend the duties in terms of the judgement of *Forech India Ltd. v. The Designated Authority & Ors* since there are no existing duties. No Authority can extend the duties if there is a break in the period under Rule 18(1). The said judgement has not been stayed, and is therefore binding on the Authority
- v. The Designated Authority has annulled the sunset review investigation after 36 days of the investigation.
- vi. No interested party has opportunity to even participate or provide its submissions as the Designated Authority had closed the investigation before expiry of 40 days from the initiation.
- vii. The Authority has after expiry of more than 16 months conducted hearing without giving opportunity to any interested party to provide its responses or submission.
- viii. No interested party has got any time to respond nor has the Authority intimated interested parties about the revised timeline for submitting responses or their submissions.
- ix. The domestic industry, by seeking excessive judicial scrutiny, was able to extend the duties in an uninterrupted manner though the factual findings by the competent authority showed that that there are no ADD warranted the present case.
- x. The Soda Ash industry is a well-organized sector which has been enjoying the benefits of ADD for a very long period of time.
- xi. GHCL and Tata Chemicals have been excluded to hide the factual position of soda ash industry.
- xii. The soda ash industry has been performing in an outstanding manner for the past several years which shows that the domestic industry is not vulnerable to any material injury.
- xiii. Over the past 8 financial years it can be seen that the domestic industry was able to maintain robust capacity utilization above 80% (avg about 83%). This shows fundamentally strong position of the domestic industry and the domestic industry does not face any threat.

- xiv. The domestic industry shows consistent production and sales situation with reasonable increases.
- xv. The Indian producers have been holding 80% share in the Indian market and what has been getting imported to India was only to the tune of 20%. That's a huge gap in market share. Continuation of ADD may block out all imports, which appears to be the intention of the domestic industry such that they can enjoy absolute monopoly.
- xvi. The profitability of the domestic industry has been high in terms of profits and ROCE and has been growing, unaffected by imports.
- xvii. The landed prices of imports were not creating any price suppression or depression effect including price underselling to the domestic industry for quite some time. Such price behaviour clearly shows that expiry of duty is not going to create any adverse effect on prices of the domestic industry.
- xviii. Positive price undercutting is only the result of very high price charged by the domestic industry and does not suggest any adverse price situation per se.
- xix. There are large number of user industries and segments in India for whom soda ash is the major raw material and the unrealistically high prices charged by the domestic industries using the ADD in force have rendered such industries uncompetitive against its global players and are suffering heavily.
- xx. Profiteering by soda ash industry with the help of ADD has killed competition in the trade of soda ash in India which was not the intended purpose of ADD.
- xxi. The domestic industry is trying to propagate that the performance is good because of ADD in force. This connotes the demand for perpetual continuation of duties by citing likelihood.
- xxii. Import volumes into India have been at a level to fulfil the demand supply gap. The landed prices of imports were not creating any price effects on the domestic industry.
- xxiii. Any continuation of ADD on imports of soda ash from subject countries shall be a gross misuse of ADD scheme. It has become a tool for profiteering. The ADD is in force due to the technicalities involved in the judicial proceedings and there is no merit in the continuation of the present duties.
- xxiv. As per the legal position established by the Hon'ble Delhi High Court in WP 4886/2014, even if the Authority completes the present sunset review as per the directions and recommends continuation of duty, duty cannot be extended further as the same has already lapsed on 2.7.2018.
- xxv. The domestic industry did not make any foreign party respondents in their petition in the Hon'ble Gujarat HC which has prevented such parties from making its views known, making them non-cooperative.
- xxvi. GHCL has been excluded from the domestic industry with a purpose since it makes huge profits. The injury data from GHCL should also be examined. The inclusion and exclusion of a producer is at the discretion of the Authority.
- xxvii. Imports of Soda Ash are no longer subject to ADD, as the duty lapsed on 2nd July 2018.

- xxviii. The Hon'ble High Court of Delhi in *Forech India Limited v. Designated Authority & Ors.* has held that- i) the gap between one year ADD extension pending the sunset review and the five-year duty imposed pursuant to sunset review is illegal; and ii) the five year extension of ADD pursuant to the sunset review that is imposed after the gap is also illegal.
- xxix. Any prospective levy of ADD would run afoul of the aforesaid judgement and thus, would be illegal.
- xxx. Petitioners 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.
- xxxi. In order to establish recurrence or continuation of injury, it is pertinent to analyse the post-POI data which has not been provided. In the absence of this data, likelihood of substantially increased importation cannot be determined.
- xxxii. There is no causal link between the alleged injury suffered by the Petitioners and the subject imports. Even if there is continued dumping, there is an absence of continued injury, which implies that there is no longer a causal link between dumping and injury.
- xxxiii. The year of the IHS Report is unclear and is not verifiable if it is indeed an IHS Report.
- xxxiv. Petitioner's reference to Turkey, which is not a subject country, is unnecessary. The averment that excess capacity in Turkey would lead to outflow of subject goods from Turkey to EU, which in turn would lead to outflow to India, is mere conjecture and not duly substantiated.
- xxxv. No verifiable evidence has been produced by the Petitioners to establish the expanding capacities of the subject countries. The evidence provided at Annexure 4.3 of the Petition is also not verifiable.

### **Examination by the Authority**

19. 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.*

20. The Authority has recorded the issues raised by the interested parties and domestic industry and notes that Rule 23 of the AD Rules obligates the Authority to review the need for the continued imposition of an anti-dumping duty.
21. The Authority notes that the interested parties have raised the following relevant issues:
- a. Hon'ble High Court of Delhi in WP(C) No. 4886/2014 has held that there should be no gap in 5-year extension of anti-dumping duty pursuant to the sunset review and the 1-year extension of anti-dumping duty while the sunset review is pending completion.
  - b. The aforesaid judgment has been challenged before the Hon'ble Supreme Court in SLP(C) No. 15859-15861/2018. The Hon'ble Supreme Court issued notice in the aforesaid SLP by order dated 9 July 2018 but did not grant any stay on the judgment of the Hon'ble High Court of Delhi in WP 4886/2014.
  - c. The Hon'ble High Court of Gujarat extended the timeline to complete the sunset review by six months vide order dated 15 June 2018 in Misc. Civil Application No. 3 ;of 2018 in R/Special Civil Application No. 14204 of 2017.
  - d. The anti-dumping duty on the subject goods lapsed on 2 July 2018. Interested parties now argue that the Authority does not have any jurisdiction to recommend further extension of anti-dumping duty for five years pursuant to this sunset review. They argue that any prospective levy of anti-dumping duty would run afoul of the Hon'ble High Court of Delhi's judgment in WP(C) No. 4886/2014.
  - e. User industry in India will suffer if anti-dumping duty is continued.
22. As regards the submission that the Authority cannot legally recommend continuation of anti-dumping on the subject goods, it is observed that under the Customs Tariff Act, 1975 and AD Rules, the final decision to impose or not to impose anti-dumping duty lies with the Central Government. 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.
23. The Authority further notes that the interested parties had sufficient time to respond to the questionnaire and participate in the investigation by making submissions.

24. Issues regarding dumping, injury, causal link and likelihood of continuation or recurrence of dumping and injury shall be addressed in appropriate places of this final findings.

## **G. Determination of Dumping Margin**

### **Market Economy Claims, Normal Value, Export Price and Dumping Margin**

#### **Submissions made by the Petitioners**

- i. The dumping margin has been determined by considering individual import transactions for the last 10 years.
- ii. While the current POI is relevant for establishing continuation of dumping, the historical data is relevant for establishing likelihood of dumping. It has been submitted that if the POI itself shows that the dumping continued, the same may be sufficient. However, if dumping can be shown throughout the past decade, it is likely to continue on the cessation of ADD.
- iii. The weighted average may be an appropriate yardstick for considering weighted average dumping margin for the current POI.
- iv. Behaviour of individual exporters, as shown through different export transactions, is relevant, appropriate and necessary to be examined for establishing likelihood of dumping.
- v. If the Authority concludes that the weighted average dumping margin is de-minimis, then there arises a need to examine dumping margin separately for each import transaction. In case of significant exports at dumped prices, it is evident that exports are likely to happen at dumped prices in the event of cessation of ADD.
- vi. Article 15 shall be applicable to the present POI, in the case of China PR, since a part of the POI is within the period of December 2016. China should be treated as non-market economy. The normal value in China should be determined on the basis of Para-7 of Annexure-I.
- vii. The normal value in China should be determined on the basis of price payable in India, since petitioners could not determine normal value in China on the basis of price or constructed value in a market economy third country for the reason that the relevant, complete and exhaustive verifiable information is not publicly available and could not be procured. The normal value can be determined on the basis of selling price of domestic industry itself, as this price is unsuppressed and constitutes price payable in India.
- viii. Domestic industry has considered prices for USA and EU as per prices reported in IHS Chemical Global Soda Ash. Since the journal mentions high and low prices, domestic industry has adopted average price. Normal value and dumping margin have also been determined considering the average price.
- ix. Normal value for Pakistan has been calculated on the basis of an Annual Report of ICI Pakistan Ltd., a listed company in Pakistan.
- x. Normal value for Kenya has been constructed on the basis of the details given in the Annual Report for the plant in Magadi, Kenya, owned by Tata Chemicals Ltd.

- xi. Normal value for Iran has been determined on the basis of the prices published in IHS Chemical Soda Ash for Middle East/North Africa considering it a comparable representative price. No other information/evidence of price of subject goods in the domestic market of Iran were available.
- xii. Export price has been determined as the weighted average import price of soda ash from respective subject countries. It has been calculated at CIF level.
- xiii. Export price has been adjusted for ocean freight, marine insurance, port expenses, commission, inland freight and indirect taxes (VAT difference only in case of China) which may have been incurred by the exporter for exporting material to India, in order to put normal value and export price at the same level of trade.
- xiv. Export price has been determined in US\$ considering average exchange rate for the proposed investigation period.
- xv. The normal value and export price for the product have been determined at ex-factory level, pertain to the same period, with no known difference in the terms and conditions of sale, and free of taxes. Thus, the comparison made is a fair comparison.
- xvi. Dumping margins are not de-minimis, but substantial.
- xvii. All exporters and foreign producers must be considered as non-cooperative. None of them filed the questionnaire response in the present case. The Authority should not let the non-cooperation adversely impact the case of the domestic industry. It has been submitted that the Authority should draw adverse inference against exporters, holding that the exporters have preferred non-cooperation.
- xviii. Transaction wise details of exports to third countries is a mandatory requirement for sunset review cases and the purpose is to undertake an analysis for the purpose of examining recurrence of injury.
- xix. The aforementioned is the single most important information at the stage of sunset review and particularly in a case where the request for extension is based on recurrence of injury.

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

- i. The dumping margin must be calculated on the basis of the information filed by the cooperating producers/exporters in the present investigation.
- ii. Dumping margin should be determined based on total exports during the POI and not based on selective transactions.
- iii. The determination of dumping margin on weighted average basis alone is legal.
- iv. The domestic industry has tried to present an inflated NV and squeezed EP to show a higher dumping margin, which is baseless.
- v. The case of Secretary (Revenue), GOI v. Dyestuffs Manufacturers Association of India confirmed that trade journals cannot be relied upon as facts available for the purpose of determining normal value on best judgement assessment principle.
- vi. The Petitioners have relied on IHS Chemical, which is a trade journal, to determine normal value. This normal value should be disregarded.

- vii. The normal values for Pakistan and Kenya have also been determined by looking at Company Annual Reports, which is not the correct approach.
- viii. The Petitioners have not provided any source for the adjustments made with regard to ocean freight, marine insurance, port expenses, commission, bank charges, inland freight, indirect taxes to compare the export price and the normal price at the same level of trade.
- ix. No information has been provided pertaining to how the adjustments were computed for the purposes of the Petition.
- x. The import data presented in the Petition by the Petitioners is also questionable. Multiple sources have been relied on by the Petitioner for import data. Up to March 2015, the Petition relies on DGCI&S import data for all subject countries. For April 2015-March 2016, the Petition relies on the secondary source IBIS for import data for China, the EU, Kenya, Iran, Ukraine and USA, but for Pakistan, the Petition relies on DGCI&S import data.
- xi. The multiplicity of data sources in the Petition leads one to believe that the data is skewed and has produced incorrect dumping and injury analysis results in this case.
- xii. The producers/exporters may not have known of the developments pertaining to the review and investigation, which is why they could not participate in the review.
- xiii. Authority may consider intimating to the producers/exporters in the subject countries about this ongoing review and direct them to submit relevant information in their defense.
- xiv. Turkey is not a subject country and its capacity is not relevant.
- xv. The domestic industry has made no determination for normal value for Ukraine in their written submissions, and therefore it has no legal basis to claim injury from imports of the subject goods from Ukraine.
- xvi. The domestic industry's claim that producers in the subject countries are dumping in third countries is without any evidence.
- xvii. Domestic industry's condition has improved substantially, and it does not need any protection now.
- xviii. Ukraine has only one producer of Soda Ash, the PJSC "Crimean Soda Plant" which is out of Ukrainian control due to the occupation of Crimea by the Russian Federation. The producer has illegal Russian registration now. There is no export of Ukrainian Soda Ash to the world, including India.
- xix. Reference has been made to the United Nations Comtrade Database and State Statistics Service of Ukraine, which show no export of the product under investigation to India from Ukraine since 2014 till date. Ukraine stopped to export its product to other countries as well. The ADD Sunset Review Investigation concerning imports of Soda Ash was initiated on 16 June 2017. On 22 July 2017, it was annulled, following a Court decision.

## **Examination of Market Economy Claims by the Authority**

### **China PR**

25. The Authority sent copies of the MET questionnaire to all the known producers/exporters in China PR for rebutting presumption of non-market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the AD Rules. The Authority also requested embassies of respective countries in India to advise the producers/exporters in their country to provide the required information. As per Paragraph 8, Annexure I to the AD Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) provide information and sufficient evidence on the basis of the criteria specified in sub-paragraph (3) in Paragraph 8 and establish to the contrary. However, none of the producers/exporters in China PR have cooperated and filed response to the exporter's questionnaire and MET questionnaire in the present review. In view of the above position and in absence of rebuttal of non-market economy presumption, the Authority considers it appropriate to proceed with para-7 of Annexure-I to the AD Rules for determination of normal value for China PR.

## **H. DETERMINATION OF NORMAL VALUE**

26. In respect of producers/exporters from the respective subject countries, the Authority has determined normal value on the basis of best available information as per the AD Rules.

### **China PR**

27. Article 15 of China's Accession Protocol provides as follows:

*"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*

*(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*

*(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

*(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*

*(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*

*Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”*

28. Article 15 implies that provisions of one of the sub-paragraph shall expire 15 years from the date of China's Accession. The provisions of this paragraph expired in 11 December 2016. Since the factum of dumping causing injury to the Domestic Industry is based on the investigation period, the conditions prevalent during the investigation period alone are relevant, appropriate and necessary for the purpose of the present review. The POI for the purpose of the present review is April 2016 – March 2017. Since the subparagraph of Article 15 was in existence during the major part of the POI, the Authority may use a methodology that is not based on a strict comparison with domestic prices or costs in China PR if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
29. The Authority notes that in the past three years, China PR has been treated as non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or its individual exporters in terms of the AD Rules.
30. However, none of the exporters/producers from China PR has filed market economy questionnaire response. In view of the above position and in the absence of rebuttal of non-market economy presumption by any Chinese exporting company, the Authority considers it appropriate to treat China PR as a non-market economy country in the present investigation and proceed with para-7 of Annexure-I to the AD Rules for determination of normal value in case of China PR

31. Further, in view of non-cooperation by the Chinese producers/exporters, the Authority considers it appropriate to proceed with the provisions of para-7 of Annexure-I to the AD Rules for determination of normal value. Para 7 of Annexure I of the AD Rules provides that:

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

32. Accordingly, in the absence of any reliable price and cost details for the subject goods in any market economy third country, the Authority constructed the normal value for China PR in terms of para-7 of Annexure I to the AD Rules. Accordingly, the normal value for exports from China PR has been constructed for the subject goods and the same is shown in the Dumping Margin Table below.

#### **European Union (EU)**

33. The Authority notes that none of the producers/exporters from the EU have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of the EU. The normal value so determined for the EU has been mentioned in the dumping margin table given below.

#### **USA**

34. The Authority notes that none of the producers/exporters from USA have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of USA. The normal value so determined for USA has been mentioned in the dumping margin table given below.

#### **Iran**

35. The Authority notes that none of the producers/exporters from Iran have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of Iran. The normal value so determined for Iran has been mentioned in the dumping margin table given below.

#### **Pakistan**

36. The Authority notes that none of the producers/exporters from Pakistan have submitted

exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of Pakistan. The normal value so determined for Pakistan has been mentioned in the dumping margin table given below.

### **Kenya**

37. The Authority notes that none of the producers/exporters from Kenya have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of Kenya. The normal value so determined for Kenya has been mentioned in the dumping margin table given below.

### **Ukraine**

38. The Authority notes that none of the producers/exporters from Ukraine have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for the determination of normal value in respect of Ukraine. The normal value so determined for Ukraine has been mentioned in the dumping margin table given below.

## **I. EXPORT PRICE**

### **China PR, the EU, USA, Iran, Pakistan, Kenya, Ukraine**

39. The Authority notes that none of the exporters/producers of the subject goods from China PR, Ukraine, the EU, USA, Iran, Pakistan and Kenya have responded to the Authority in the form and manner prescribed. In the absence of exporter's questionnaire response from the producers/exporters from the aforesaid countries, the Authority has determined the export price in respect of these countries on the basis of best available information in terms of Rule 6(8) of the AD Rules. The Authority has relied upon DGCI&S import data for the purpose of arriving at the weighted average CIF value of imports from the aforesaid countries during the POI. Appropriate adjustments on account of ocean freight, insurance, commission, port expenses, inland freight and bank charges have been considered to arrive at the net export price in respect of each of these countries. Accordingly, the proposed export price at ex-factory level for all exporters of China PR, Ukraine, the EU, USA, Iran, Pakistan and Kenya has been respectively determined as given in the dumping margin table given below.

## **J. DUMPING MARGIN**

40. Comparing the aforesaid normal values and export prices as determined, the dumping margin determined for the subject countries during the POI are as follows:

### POI

Country	Exporter/ Producer	Normal Value US\$/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin % Range
China PR	All	***	181.64	***	***	Negative
EU	All	***	183.08	***	***	Negative
Kenya	All	***	162.68	***	***	De- minimis
Pakistan	All	***	212.01	***	***	Negative
Iran	All	***	149.75	***	***	Positive
Ukraine	All	***	167.75	***	***	Negative
USA	All	***	150.11	***	***	Positive

### **K. Methodology for Injury Determination and Examination of Injury and Causal link**

#### **Submissions made by the Petitioners**

- i. The improvement in the performance of the Domestic Industry is largely due to the ADD in force and injury is likely in the event of cessation of ADD.
- ii. Individual import transactions for the past 10 years have been considered to determine likelihood of injury.
- iii. The net sales realization has been determined by considering the selling price of the entire domestic sales volume, excluding taxes and duties, rebates, discounts and commissions. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. On comparison of the net sales realization and landed price of imports, it was observed that price undercutting is significantly positive in the event of cessation of ADD.
- iv. The selling price of the domestic industry should be compared with the landed price of imports only after adding transportation costs, since they form a substantial portion of the cost of production in case of the subject goods.
- v. The Rules do not provide the methodology of how the Authority must determine whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India. It has been submitted that there is no fixed methodology for determining price undercutting.
- vi. For fair comparison, the domestic price is compared with import price at the same level of trade. The price of the like product cannot be ex-factory price when the objective is to compare it with the import price. Price undercutting should be determined after adding freight. India's position at the WTO also states that the comparison of the prices must be at a point closest to consumption.

- vii. The adoption of the Product type wise and month or quarter-wise determination of price undercutting and the adjustment of post sales expenses- warranty, guarantees, mandatory square parts, Indian office expenses, by the Authority in a couple of dozen cases clearly establish recognition and acceptance of the principles of fair comparison.
- viii. Price undercutting and injury margins should be determined by considering only those transactions that were undercutting or injuring the prices of the domestic industry. Reliance is made on the WTO Report in the matter of EC-Anti Dumping Duties on Malleable Cast Iron Tube, where it is established:
  - 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 which might have had 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- (i) the number of sales at undercutting prices, and (ii) the extent of the undercutting of such sales. The former is particularly important since it provides an indicator of the likely number of sales lost by the domestic industry.
  - 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 limited the ability of the investigating authority independently to examine these two variables.
- ix. The weighted average export prices to India are grossly insufficient to determine whether injury to the domestic industry is likely to recur.
- x. Non-Injurious Price and injury margin is not required to be determined in a sunset review case where extension request is based on likelihood of recurrence of injury to domestic industry. These can be determined in order to examine the behaviour of the exporters in different export transactions. For this purpose, the Authority is only required to ascertain whether particular export transaction occurred at a price below or above NIP.
- xi. In a sunset review case, Rule 11 does not get extended, and the Authority is required to examine only the likelihood of continuation or recurrence.
- xii. Annexure-II cannot be applied to the present case on 'as it is basis' since these rules are inconsistent with the Act and the WTO ADA. These rules must be imposed 'after necessary modifications' to the fact that these rules are being considered in a case where ADD is in place and where the petition is for the extension of ADD on the grounds of likelihood of recurrence of injury to the domestic industry.
- xiii. It is submitted that the legal provisions must be applied to the following effect:

- a. The element of present injury to the domestic industry must be translated to a probable future injury;
  - b. The effect of the imports must be determined; and
  - c. A significant rate of increase of dumped imports from third countries must also be taken into consideration.
- xiv. A list of parameters adopted by various countries to determine likelihood has been submitted, and they all differ in nature. It is therefore submitted that the parameters listed in the Rules cannot be strictly applied either as the 'upper limit' or as 'strict prescription' and are merely indicative.
  - xv. The demand for the product under consideration has increased throughout the injury investigation period, be it with inclusion of captive consumption or not.
  - xvi. The imports occupy a significant volume in the Indian market and have increased significantly throughout the injury period. The imports started showing a significant rise when the ADD ceased in July 2018 as per current notification.
  - xvii. Imports in relation to production and the consumption in the country increased in 2014-15 as compared to 2013-14 levels. It declined in 2015-16 but increased again in the POI. The import in relation to production and consumption have increased over the injury investigation period despite existing ADD being in force.
  - xviii. The landed price of the dumped imports is significantly below the selling price of the domestic industry and the same implies high levels of price undercutting from the subject countries in the event of cessation of ADD.
  - xix. Comparison of cost of production, selling price and landed price of imports shows that while cost of production and selling price of the domestic industry has shown positive trend and the imports were not causing any price suppression or depression effect with the ADD in force, should the present ADD cease, the dumping would cause significant depressing effect on the prices of the domestic industry in the market.
  - xx. After the imposition of ADD in 2012, the domestic industry gradually improved and soon the market became viable to invest in capacity extensions and have planned expansion. Post-imposition of ADD, a fresh capacity to the tune of \*\*\* lac MT has been commissioned, with another \*\*\* lac MT being planned. M/s Gharhi has commissioned a new green field plant of a production capacity of \*\*\* lac MT at an investment of Rs. \*\*\* crores. Viability of these fresh investments is at stake.
  - xxi. The profitability of the domestic industry has improved by and large but has declined over the POI. Cash flow and return on capital employed increased over the injury period, and price parameter have shown improvement due to the imposition of ADD. Cessation of ADD will create price pressure on the domestic industry and will lead to a decline in these parameters of the domestic industry.
  - xxii. The demand for the product under consideration is increasing at a reasonable rate, which creates a justification for expansion of capacities further. The expansion of the capacity, as stated before, required huge amounts of investment, which are at stake.
  - xxiii. The market share of the subject countries in the domestic demand of the product under consideration has increased whereas market share of the domestic industry has

declined over the injury period. Imports from subject countries will further capture the market in India, in case the ADD in force is not extended further.

- xxiv. The inventories with the domestic industry have increased over the injury period.
- xxv. Wages, productivity and employment level has increased over the injury period.
- xxvi. The growth of the petitioning domestic industry in terms of various parameters was positive.
- xxvii. Domestic industry has not claimed continued injury.
- xxviii. The visible increase in performance of the domestic industry is only a result of the remedial effects of the ADD.
- xxix. Even though absolute performance levels do not show material injury, the situation of the domestic industry is clearly fragile, which is evident by the deterioration of profits post-POI.
- xxx. The performance has further declined post-POI.
- xxxi. No evidence has been provided showing that the downstream industries have been rendered uncompetitive because of the alleged high prices.
- xxxii. Performance of consumers has improved instead of deterioration during the period of ADD, as is established by the profits achieved by HUL.
- xxxiii. Detergent manufacturers, which are major users of subject goods, have increased their selling price far more than the costs. Thus the claim of downstream industries becoming uncompetitive is baseless.
- xxxiv. Domestic industry's performance has improved largely because of the existence of ADD.
- xxxv. There is no basis to say that there is a fair demand and supply balance. There is a clear demand supply gap in the world.
- xxxvi. No evidence has been produced by the interested parties to rebut the high likelihood of continuation/recurrence of dumping.
- xxxvii. Significant imports are being made to India at a significantly dumped price.
- xxxviii. Turkey is becoming a threat to every country, and Indian market has become even more vulnerable.
- xxxix. The existence of ADD has led to increase in production and sales by the domestic industry.
- xl. The import volumes increased significantly from 2013-14 to 2014-15 and showed decline in 2015-16, only to increase back to the levels they occupied in 2014-15.
- xli. Despite the existence of ADD for the duration of the entire injury period, the import volumes have shown an exponential increase.
- xlii. Imports have already started showing significant increase since July 2018.
- xliii. The import in the months from July 2018 to September 2018 itself shows an increase of 37%.
- xliv. The volume of imports has increased to 796% as compared to previous month.

- xliv. The excessive ROI is because of the fact that the Authority is determining return on capital employed by considering investments made by the domestic industry which are largely depreciated.
- xlvi. The ROI should be determined considering the net present value of the investigations and not net depreciated book value of the investment. It is grossly inappropriate and even unfair to the domestic industry that the ROI is determined considering depreciated value of the investments.
- xlvii. The ROI of the new investments at the current level of prices would be only 14%. This is not a good return.
- xlviii. The inventories of the domestic industry too have almost doubled over the period. The market share of the subject countries, as the additional capacities in the countries attracting ADD became effective, shows an increasing trend while that of the domestic industry remained about the same. The market share of the other Indian producers declined over the period.
- xlix. The fresh investments made by the domestic industry as a result of the imposition of the ADD require a minimum reasonable return in order to be reasonably viable. The average return earned by the domestic industry over the injury period was much lower. At this rate, the cost of investment will be recovered only after the life of the assets.
  - I. Imports were not causing any price suppression or depression effect with the ADD in force. If the present ADD ceases, the dumping would cause significant depressing effect on the prices of the domestic industry in the market. The likelihood of price suppression/depression must be examined, and not price suppression/depression itself.
  - li. Increased ROC and profitability can be no grounds for products to be dumped by the subject countries.
  - lii. The profits being earned are being reinvested in capacity creation.
  - liii. The analysis has been undertaken to examine the likely effect of cessation of duties and clearly establishes that significant exports were made in this period at prices below normal value, selling price and NIP of the domestic industry.
  - liv. No evidence has been brought forward to show that customs are clearing goods without collection of ADD. There are several cases in the past wherein the sunset review findings were issued after completion of 18 months. This argument raised by other interested parties renders all these findings and duties illegal. Investigation is being undertaken as per the High Court's direction vide Judgement and Order dated 15.6.2018. Petitioners are not seeking retrospective duty. Further, the decision of the Delhi High Court is under challenge, and a stay application has also been filed against the order. The Central Govt. has not withdrawn the ADD till date.
- lv. There is de facto only one investigation conducted after original investigations. MTR findings were not based on adequate analysis of likelihood of injury.
- lvi. Responding exporters must also show that there will be no continued dumping or is unlikely to continue.
- lvii. The Authority has prescribed SSR Questionnaire Part II which seeks information from the exporter on their capacities, capacity expansion, transaction wise third country

exports, domestic sales, etc. for examination of likelihood of recurrence of dumping and injury.

- lviii. The responding parties have produced no evidence to prove otherwise.
- lix. The domestic industry has filed details regarding import volumes from subject countries. The data filed pertains not only to injury investigation period but is also an analysis of import volumes from 2006-07 till 2018-19.
- lx. Imports have seen significant surge in the post-POI with decline in import price.
- lxi. Injurious transactions have risen significantly and represent close to 90% of total volumes.
- lxii. Further detailed and concrete evidence have been provided by the domestic industry.
- lxiii. Imports are at present undercutting the prices of the domestic industry. Imports are likely to undercut the prices of the domestic industry even when duties will not be in place.
- lxiv. All necessary evidences substantiating price attractiveness of Indian market in terms of export by subject countries to other countries at dumped and injurious price have been elaborated on.

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

- i. The Petitioners have not suffered continued injury and the performance of the domestic industry has improved in the current period due to ADD in force.
- ii. The Authority has given due weightage to the fact that the domestic industry therein had grown significantly and performed well and that the ADD had served its intended purpose.
- iii. The Petitioners have been able to perform well in a market that is fair, on account of ADD achieving its intended objective of providing/restoring fair market situation for domestic products in India.
- iv. Considering that there is no continued injury and the performance of the Petitioners is satisfactory, there is no likelihood of recurrence of injury.
- v. There is no legal obligation to consider any other data except the injury period including POI and post-POI when determining any form of likelihood of recurrence of dumping/injury.
- vi. The Petitioners have submitted that the selling price should be compared to the landed price after adding transportation costs. HUL submits that such a claim is erroneous and is contrary to the Authority's practice of comparing selling price and landed price at ex-factory level.
- vii. NIP is determined based on the principles laid down in Annexure III of the AD Rules.
- viii. The Authority allows a 22% rate of return on the capital employed.
- ix. NIP is also calculated at ex-factory level, i.e. without giving the effects of post factory expenses, since landed price is considered at the place of importation. Net Sales Realisation follows the same principle. It is unreasonable for the Petitioner to ask for a deviation in the established methodology. The fair comparison aspect of this lies in the

fact that both prices are calculated after making the necessary adjustments from both prices.

- x. The subjective methodology of price undercutting demanded by the Petitioners is untenable in light of the fact that there must be set precedent over which future participants in such investigation may rely and formulate their submissions.
- xi. As long as the prices are compared after making adjustments to both prices, there is no need for subjective methodology for any consideration of freight and other transport costs being added to the determination.
- xii. The request to reassess price underselling after including freight and transportation costs is a ruse by the Petitioners to manipulate the determination of price underselling to their benefit and not in interest of fairness and equity.
- xiii. The WTO proposal regarding transport costs is a mere proposal and has not been accepted or crystallised into law in the WTO. The proposal does not indicate inclusion of freight/transportation costs. It reaffirms the need to compare prices at the same level of trade and does not call for any particular change.
- xiv. The transaction-based approach to determining undercutting is akin to zeroing which has been held to be unreasonable and in violation of the AD Agreement.
- xv. While the parameters of likelihood are not explicitly defined in the AD Rules, Para (vii) of Annexure II of the AD Rules has been interpreted as the governing provision on factors for likelihood.
- xvi. The parameters analysed by the Authority in the past are: (a) Increase of subject imports indicating a likelihood of increased importation; (b) Evidence to demonstrate spare capacities in a subject country which are likely to be diverted to India if duties are removed; (c) Evidence that proves the existence of depressing/suppressing effect; (d) Evidence on inventories of the article being investigated; (e) Dumping margin in previous investigation; (f) Price attractiveness of the Indian Market; (g) The vulnerability of the domestic industry in terms of price sensitivity of the product and Indian market.
- xvii. To establish whether there is an increase in dumped imports, it is pertinent to analyse the post POI data which the Petitioners have not provided. Without Post-POI data, the likelihood of substantially increased importation cannot be determined. The Petitioners have not provided any evidence of likely undercutting of prices in the event of cessation of ADD.
- xviii. It is not the purpose of ADD to protect the investments/prospective investments of the domestic industry.
- xix. Domestic industry is performing at an adequate level and the subject imports are not affecting their performance in the least.
- xx. If the Petitioners were suffering alleged injury due to the subject imports, the Petitioners should have experienced a decline in its market share and a similar increase in the market share for the subject countries. However, that is not the case in the present factual matrix.
- xxi. The market share of the Petitioners has increased in the POI, while the market share of the imports has remained the same.

- xxii. The claim that inventories with the domestic industries have increased over the injury period is inconsistent with the data provided by them in the Petition as their sales volume have been steadily growing throughout the injury period as well as the POI.
- xxiii. Petitioners have been able to perform well to significantly increase the wages, productivity and employment throughout the injury period.
- xxiv. The dumping margin must be based upon the normal value and export price as provided by the participating exporters/producers from Subject Countries.
- xxv. Positive economic parameters should be sufficient to determine lack of recurrence of injury and the present investigation must therefore be terminated.
- xxvi. The domestic industry has not suffered any continued injury. The performance of the domestic industry has been extraordinary on all parameters and such outstanding performance clearly shows that the expiry of the present duties will not lead to any recurrence of injury.
- xxvii. There was no consistent increase in imports and the movement in imports can be linked to the demand supply situation for the product in the country.
- xxviii. The Indian producers continued to hold 80% of the market share as a whole, which is a substantial market share.
- xxix. The Petitioners are trying to eliminate fair competition by banning imports.
- xxx. The domestic industry has not suffered any volume or price injury. Their absolute sale figure and production has gone up significantly. Capacity utilization also increased during the POI, despite increased capacity.
- xxxi. There has been no injury on price front since imports have not forced them to reduce the prices. The domestic industry has continued to increase the price much more compared to increase in cost of sales resulting into exponential growth in their profits.
- xxxii. The price increases achieved by the domestic industry clearly show that there is no price suppression/depression effect in the present case.
- xxxiii. The domestic industry could increase its wages and every parameter was significantly positive in terms of growth as well.
- xxxiv. The import price from subject countries showed an increase of about 6% by the POI over the base year. The NSR of the domestic industry also increased by about 7% in this period but the cost was reduced by about 17%. The domestic industry was able to increase its prices significantly which shows no price effects from imports and also the pricing behaviour of the domestic industry.
- xxxv. The fact that the import prices increased when there was a significant reduction in cost signifies the exporters also looked at a higher price for the product and there was no reduction in import prices in line with reduction in cost to India. If the exporters were under pressure to export more, they would have reduced the prices.
- xxxvi. The comparison of cost of production of domestic industry and sales price shows that the domestic industry has earned a return on their investment which is much higher than 22% allowed by the Authority.

- xxxvii. The comparison of cost of production of domestic industry and landed price of imports shows that domestic industry sold its goods at par with landed price of imports during the POI.
- xxxviii. The domestic industry has not been suffering injury for years now and such performance suggests that injury is not likely to recur in case of expiry of present duties. The duty cannot be perpetual.
- xxxix. The domestic industry reported a higher volume at the time of petition.
- xl. The domestic industry increased their prices significantly, earned very high ROCE and also suffered no injury on any injury parameters. This could not have been achieved if the price undercutting was having some consequences on them.
- xli. Annexure III deals with the inclusion of outward freight in the calculation of landed price. The argument that their case is about fair comparison which is different from treatment of freight as per Annexure III is frivolous. The attempt of the domestic industry is only to show an inflated picture of injury.
- xlii. The product has a demand of about 3262577 MT during the POI. The written submission by the domestic industry shows about 155781 MT, which is less than 5% of the total demand, which has been imported at an injurious level, if seen without ADD. This level is negligible and cannot make any significant impact on the performance of the domestic industry.
- xliii. Injury margin and price undercutting should be determined on the basis of total imports from subject countries during the POI and not based on selective transactions as proposed by the domestic industry. This amounts to zeroing, which is banned by WTO.
- xliv. The import data provided as part of the domestic industry's written submission and in the petition are not the same. In the absence of a correct import data, discussions on these parameters are irrelevant.
- xlv. Imports are very minimal. The market share enjoyed by the Indian producers is about 80%.
- xlvi. The imports are merely covering the demand supply gap at non-injurious price.
- xlvii. The domestic industry has not been suffering any injury and has also been in a position to increase the capacity.
- xlviii. The performance is not vulnerable to imports at all, owing to its high standard.
- xlix. The paradigm shift in the performance of imports shows that there is no requirement for continuation of ADD at all.
- I. Future investments are beyond the scope of any protection by way of ADD, and the continuation of ADD cannot be justified on these grounds.
- li. The domestic industry claims to be only concerned with the likelihood of recurrence of dumping and injury in the event of cessation of duty.
- lii. The domestic industry has improved significantly and in such manner that they are encouraged to expand their annual capacities by investing in \*\*\* lacs tons of annual capacity.

- liii. The total demand for subject goods increased during the injury period. Total demand (including captive consumption) increased by 13% during the injury period. Total demand (excluding captive consumption) increased by 12% during the injury period. This increase seems to be in line with the requirement of the user industry in India.
- liv. Imports of subject goods increased by 32% over the injury period, but imports as a percentage of demand increased merely 3%.
- lv. Domestic industry's installed capacity, production and domestic sales increased in line with the increase in demand for the subject goods in India.
- lvi. A capacity expansion could only be at the back of robust assessment that there is no likelihood of dumping and injury if anti-dumping duty on subject good lapses.
- lvii. The domestic industry's performance during the injury period and their future plans demonstrate no likelihood of recurrence of dumping causing injury.
- lviii. Overall market share of imports from subject countries increased by 3% from 2013-14 to the POI.
- lix. Profits of the domestic industry increased from 100 indexed points in 2013-14 to 300 indexed points in the POI.
- lx. Profits of the domestic industry increased by 200 indexed points during the injury period.
- lxi. The domestic industry was able to maintain overall 30% market share during the injury period, while market share of other Indian producers slightly declined from 49% in 2013-14 to 47% in the POI. There is clear improvement in the status of the domestic industry.
- lxii. There was a sharp increase in capacity during the injury period, but the capacity utilisation during the POI was almost equal to that of the base year 2013-14. Imports of subject goods did not cause any decline in the domestic industry's capacity utilisation. Domestic industry has been operating at full capacities during this year.
- lxiii. Stocks declined from 100 indexed points in 2013-14 to 74 indexed points in 2014-15. With increase in capacity and production in 2015-16, stocks increased to 136 indexed points. Capacity and production further increased in the POI, but the stocks declined to 132 indexed points.
- lxiv. The domestic industry's stocks increased in the injury period due to the decline in exports.
- lxv. Overall employment slightly decreased from 100 indexed points in 2013-14 to 96 indexed points in the POI, productivity per employee and productivity per day were at an all-time high during POI. Productivity per employee increased by 18 indexed points in 2013-14. Imports did not affect the employment and productivity of the domestic industry.
- lxvi. The wages paid out by the domestic industry increased sharply over the same period from 100 indexed points to 326. The profitability of the domestic industry was still not affected.
- lxvii. Domestic industry's capacity increased from 100 indexed points in 2013-14 to 112 indexed points in the POI. Its capital employed increased by 66 indexed points. RoCE

increased from 100 indexed points to 159 points in the POI. Imports have no impact on the return on capital earned by the domestic industry.

- lxxviii. Domestic industry's profitability improved remarkably during injury period.
- lxxix. The cost of sales of the domestic industry declined by 6 indexed points in the POI, while the selling price increased by 7 indexed points.
- lxxx. There was no price suppression or depression and they were making healthy profit.
- lxxxi. Price undercutting has had no visible impact on the performance of the domestic industry.
- lxxxii. Domestic sales of the domestic industry increased over the entire injury period with increase in demand for subject goods. If the price undercutting had any actual detrimental effect, the domestic industry would not have been able to maintain its domestic sales or increase them.
- lxxxiii. Domestic industry's claim of 30% return on capital employed is illegal as the norm is to consider the historical rate of return. The Authority should examine the level of return enjoyed by the soda ash industry globally and in India, and only then adopt an appropriate return on capital employed in this case.
- lxxxiv. The Authority is required to assess whether or not the expiry of ADD is likely to lead to continuation or recurrence of dumping or injury.
- lxxxv. The Petitioners are not suffering present injury, which can be evidenced by the Petitioner's own admission at the public hearing.
- lxxxvi. The market share of the Petitioners has increased in the POI in comparison to the base year and 2014-15. The market share of the imports from the Subject Countries has remained relatively the same. The subject imports have not impacted the market share of the Petitioners.
- lxxxvii. Economic parameters including production and sales volume have shown a positive trend in the injury period as well as the POI and the capacity utilization has been constant over the injury period.
- lxxxviii. The domestic sales volume and value figures have been steadily growing throughout the injury period as well as the POI- This shows that the domestic industry's sales performance has been profitable irrespective of the subject imports. The production has also increased over the injury period.
- lxxxix. The profitability of the Petitioners has risen by 200 points from the base year to the POI.
- lxxxx. The Petitioner's profit before interest and tax has also risen by 164 index points in the POI from the base year.
- lxxxxi. The return on capital employed has risen by 59 points from the base year to the POI.
- lxxxxii. The Petitioners increased the wages paid to their workers throughout the injury period. The wages increased by 226 index points in POI from base year.
- lxxxxiii. Likelihood analysis in a sunset review ought to be made on the basis of existing surplus capacities and capacity addition.

- lxxxiv. Price attractiveness cannot be considered as a reason for likelihood of injury in the present factual matrix for lack of evidence on the same.
- lxxxv. Annexure 4.3 of the Petition is not sufficient for determining price attractiveness for reasons as follows: (i) the data as provided is not authenticated evidence for lack of providing the source; (ii) the data only pertains to three months, i.e. January to March 2017 of the POI; (iii) it is not verifiable if it is exports from the subject countries to third countries or India.
- lxxxvi. Reasonable comparison cannot be made between subject country exports to other countries against subject country exports to India for the purpose of price attractiveness.
- lxxxvii. DCW Ltd. have reported vide its Annual Report of 2016-17 that the imports are not a threat and the company is capable of facing international competition.
- lxxxviii. The alleged injury suffered by the Petitioners is an outcome of their unplanned shut down and therefore, is not an effect of the subject imports.
- lxxxix. The DCW Ltd. in their Annual Report 2016-17 have stated that there was loss in turnover of up to 11% in comparison to the previous year due to shut down of soda ash division.

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

41. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury to the domestic industry.
42. 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.
43. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.

#### **A. Cumulative assessment**

44. 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 accounts for more than seven per cent of the import of like article; and
  - ii. Cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles.

45. In this regard, the Authority notes the following:
- i. the margins of dumping for China PR, the EU, Kenya , Pakistan and Ukraine are less than the limits prescribed above. However, the margins of dumping are more than the limits prescribe above for Iran and USA;
  - 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 compete with each other in the same market.
46. 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 the 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.
47. 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.”*
48. 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.
49. The Authority has examined the injury parameters objectively taking into account the facts and arguments of the interested parties.
50. 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.

51. In consideration of the various submissions made by the interested parties in this regard, the Authority has examined 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

52. 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
Sales of Domestic Industry (including captive)	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	110	115
Sales of Other Indian producers (including captive)	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	105	108
Imports - Subject Countries	MT	490,567	672,947	603,749	645,298
<i>Trend</i>	<i>Indexed</i>	100	137	123	132
Imports - Other Countries attracting duties	MT	62,355	49,071	25,674	35,469
<i>Trend</i>	<i>Indexed</i>	100	79	41	57
Imports - Other Countries	MT	16,044	1,202	3,839	14,355
<i>Trend</i>	<i>Indexed</i>	100	7	24	89
<b>Total Demand (With captive transfer)</b>	<b>MT</b>	<b>2,884,703</b>	<b>3,079,692</b>	<b>3,113,308</b>	<b>3,262,392</b>
<i>Trend</i>	<i>Indexed</i>	100	107	108	113
Domestic Industry	%	***	***	***	***
Other Indian Producers	%	***	***	***	***
Indian Producers as a whole	%	80.28%	76.52%	79.66%	78.69%
Subject Countries	%	17.01%	21.85%	19.39%	19.78%
Other Countries attracting duties	%	2.16%	1.59%	0.82%	1.09%
Other Countries	%	0.56%	0.04%	0.12%	0.44%
Share of imports from subject countries in Indian production (excluding Tata Chemicals Ltd.)	%	30%	40%	34%	34%

Particulars	UOM	2013-14	2014-15	2015-16	POI
Share of imports from subject countries in Indian production (including Tata Chemicals Ltd.)	%	21%	28%	24%	25%

53. The Authority notes that demand has increased during the POI as compared to the base year. The growth in demand during the POI over base year was 13%. Market share of domestic industry and imports from subject countries increased during the injury period.

## B. Volume Effects of Dumped Imports

### Import Volume and Market Share

54. 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 analyzed as under:

Particulars	UOM	2013-14	2014-15	2015-16	POI
<b>Import Volume</b>					
China PR	MT	100,052	127,005	89,907	33,769
EU	MT	189,191	242,549	242,792	295,525
Kenya	MT	162,392	130,161	101,149	89,516
Pakistan	MT	16,725	37,207	39,910	40,873
Iran	MT	-	5,427	20,204	32,991
Ukraine	MT	196	43,276	29,634	26,714
USA	MT	22,010	87,321	80,153	125,911
<b>Subject Countries</b>	<b>MT</b>	<b>490,567</b>	<b>672,947</b>	<b>603,749</b>	<b>645,298</b>
Other Countries attracting duties	MT	62,355	49,071	25,674	35,469
Other Countries	MT	16,044	1,202	3,839	14,355
Total Imports	MT	568,966	723,220	633,262	695,122
<b>Market Share</b>					
China PR	%	18%	18%	14%	5%
EU	%	33%	34%	38%	43%
Kenya	%	29%	18%	16%	13%

Particulars	UOM	2013-14	2014-15	2015-16	POI
Pakistan	%	3%	5%	6%	6%
Iran	%	0%	1%	3%	5%
Ukraine	%	0.03%	6%	5%	4%
USA	%	4%	12%	13%	18%
Subject Countries	%	86%	93%	95%	93%
Other Countries attracting duties	%	11%	7%	4%	5%
Other Countries	%	3%	0%	1%	2%
Total	%	100%	100%	100%	100%

55. Imports from China PR, the EU, Kenya, Pakistan and Ukraine were un-dumped during the POI. The Authority notes that imports from China PR and Kenya have declined during the POI whereas imports from EU, Pakistan and Ukraine have increased during the POI. The Authority further notes that market share of China PR and Kenya have declined during the POI, whereas market share of EU, Pakistan and Ukraine have increased during the POI.
56. Imports from Iran and USA were dumped during the POI. Imports from both of these countries have increased. The Authority further notes that market share of Iran and USA have increased during the POI.
57. Subject imports comprise 93% in total imports of the subject goods into India during the POI. Out of this, share of dumped imports from Iran and USA is 23%, while share of un-dumped imports from China PR, the EU, Kenya, Pakistan and Ukraine is 70%. The Authority notes that the quantum of un-dumped imports is significant in comparison to dumped imports.

### **C. Price Effect of the Dumped imports on the Domestic Industry**

58. 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 price of imports from the subject countries.

### **Price suppression and depression effects of the dumped imports**

59. 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 in relation to the injury period including the POI.

Particulars	UOM	2013-14	2014-15	2015-16	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	93	83	84
Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	107	109	107
Landed price of Subject Imports from China PR	Rs./MT	14,390	17,303	16,653	18,128
Trend	Indexed	100	120	116	126
Landed price of Subject Imports from EU	Rs./MT	16,259	17,366	18,429	16,878
Trend	Indexed	100	107	113	104
Landed price of Subject Imports from Kenya	Rs./MT	14,805	15,633	16,457	14,662
Trend	Indexed	100	106	111	99
Landed price of Subject Imports from Pakistan	Rs./MT	18,192	19,038	19,665	17,957
Trend	Indexed	100	105	108	99
Landed price of Subject Imports from Iran	Rs./MT	NA	16,598	15,813	14,722
Trend	Indexed	NA	100	95	89
Landed price of Subject Imports from Ukraine	Rs./MT	17,473	17,086	17,284	15,567
Trend	Indexed	100	98	99	89
Landed price of Subject Imports from USA	Rs./MT	12,668	15,987	15,901	14,378
Trend	Indexed	100	126	126	113

60. It is pertinent to note that imports of the subject goods only from Iran and USA were dumped during the POI, while imports from all the other subject countries were un-dumped in that period.
61. The cost of sales of the domestic industry decreased during the POI as compared to the base year. Selling price of the domestic industry however increased during the injury period. The landed value of imports from China PR, EU and USA has increased during the POI as compared to the base year. The landed value of imports from Kenya and Pakistan during the POI has more or less remained the same. The landed value of imports from Iran and Ukraine has declined during the POI as compared to the base year. The Authority notes that the selling price of the domestic industry was much higher

than its cost of sales during the entire injury period. Further, selling price of the Petitioners has consistently increased and during the injury investigation period. The imports from subject countries did not cause any price suppression or price depression for the domestic industry.

### Price Undercutting

62. 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 charges and applicable basic customs duty and education cess to the CIF prices from the subject countries, as reported in DGCI&S data. The domestic industry contended that freight should be included for determination of price undercutting. The Authority further 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
<b>China</b>					
Landed price of imports	Rs./MT	14,390	17,303	16,653	18,128
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	20-30%	10-20%	10-20%	0-10%
<b>EU</b>					
Landed price of imports	Rs./MT	16,259	17,366	18,429	16,878
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	10-20%	10-20%	0-10%	10-20%
<b>Kenya</b>					
Landed price of imports	Rs./MT	14,805	15,633	16,457	14,662
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	20-30%	20-30%	15-25%	30-40%
<b>Pakistan</b>					

Particulars	Unit	2013-14	2014-15	2015-16	POI
Landed price of imports	Rs./MT	18,192	19,038	19,665	17,957
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	(5)-5%	0-10%	(5)-5%	0-10%
<b>Iran</b>					
Landed price of imports	Rs./MT	NA	16,598	15,813	14,722
Net Sales Realisation	Rs./MT	NA	***	***	***
Price Undercutting	Rs./MT	NA	***	***	***
Price Undercutting	%	NA	***	***	***
Price Undercutting	% Range	NA	10-20%	20-30%	25-35%
<b>Ukraine</b>					
Landed price of imports	Rs./MT	17,473	17,086	17,284	15,567
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	0-10%	10-20%	10-20%	20-30%
<b>USA</b>					
Landed price of imports	Rs./MT	12,668	15,987	15,901	14,378
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	40-50%	15-25%	20-30%	30-40%

63. The Authority notes that during the POI, the price undercutting effect of imports was positive in respect of each of the above referred countries. However, it is important to note that imports from China PR, the EU, Kenya, Pakistan and Ukraine were un-dumped during the POI whereas imports from Iran and USA were dumped during the POI. Since majority of imports from the subject countries were un-dumped during the POI, 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.

#### D. Examination of other Economic Parameters of Domestic Industry

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

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

Particulars	UOM	2013-14	2014-15	2015-16	POI
Installed capacity	MT	1,111,000	1,111,000	1,236,000	1,246,400
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>111</i>	<i>112</i>
Total Indian Production	MT	1,611,777	1,693,439	1,786,756	1,886,607
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>105</i>	<i>111</i>	<i>117</i>
Production of Petitioners	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>110</i>	<i>113</i>
Capacity Utilization	%	83	85	82	84
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>99</i>	<i>101</i>
Domestic Sales (including captive)	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>99</i>	<i>110</i>	<i>115</i>
Demand	MT	2,884,703	3,079,692	3,113,308	3,262,392
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>107</i>	<i>108</i>	<i>113</i>

65. From the above information, the Authority notes that the capacity of production of the domestic industry has increased during the injury period including the POI. The domestic sales have increased during the POI. The capacity utilization has more or less remained the same despite capacity addition during 2015-16 and the POI.

#### Inventories

66. Data relating to inventories shows as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>74</i>	<i>136</i>	<i>132</i>

67. It is noted that average inventories increased prior to the POI and then witnessed decline during the POI.

#### Profits and actual and potential effects on the cash flow

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

determined profit, cash profit and ROI on the basis of its consistent practice.

Particulars	Unit	2013-14	2014-15	2015-16	POI
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	93	83	84
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	224	321	300
Profit/Loss	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	226	359	338
PBIT	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	177	280	264
Cash Profit	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	184	288	287
Return of investment	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	193	293	160

### Employment, wages and productivity

69. The data relating to employment, wages and productivity show as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
Productivity per employee	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	114	236
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	96	96
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	124	326

70. It is noted that there was marginal decline in the number of employees during the POI as compared to the base year 2013-14, however, productivity remarkably increased during the POI as compared to the base year. Wages also increased during the POI in comparison to the base year 2013-14.

71. The Authority notes that situation of the Petitioners has remarkably improved in respect of economic parameters discussed above. Particularly, capacity, production, domestic sales, cash flow, profitability, ROCE and productivity show significant improvement over the injury period. Selling price of the domestic industry has increased over the injury

period and remains higher than the cost of sales despite cost associated with addition of capacities. Analysis in later sections demonstrate that the selling price of the domestic industry was also higher than the non-injurious price determined for the domestic industry.

#### **E. Magnitude of dumping**

72. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the imports of the subject goods from China PR, the EU, Kenya, Pakistan and Ukraine was negative during the POI. Dumping margin was positive during the POI for Iran and USA. . However, the same has had no visible impact on the performance of the Petitioners.

#### **Growth**

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

#### **Ability to raise funds**

74. 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.

#### **F. Magnitude of Injury and Injury Margin**

75. 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:

76. As per the consistent practice followed by the authority, the NIP is worked out as per the methodology prescribed under Annexure-III of the AD Rules on the basis of financial records maintained by the domestic industry rather than the cost audited records. This is primarily on account of the fact that certain costs which are treated as inadmissible in the anti-dumping investigation may be considered as part of costs in the cost audit reports. Further annexure- III prescribes different methodology in respect of raw materials, utilities and other fixed costs. Cost audit report do not follow these rules and procedures. In this investigation however, the domestic industry have not been able to furnish the required information expense head wise as per the audited financial records and accordingly the authority was constrained to determine NIP on the basis of information available in the cost audit reports provided by the domestic industry.

**POI**

Country	Exporter/ Producer	NIP INR/MT	Exchange Rate	NIP US\$/MT	Landed Value US\$/MT	Injury Margin US\$/MT	Injury Margin %	Injury Margin % Range
China PR	All	***	67.95	***	267	***	***	Negative
EU	All	***	67.95	***	248	***	***	Negative
Kenya	All	***	67.95	***	216	***	***	Negative
Pakistan	All	***	67.95	***	264	***	***	Negative
Iran	All	***	67.95	***	217	***	***	Negative
Ukraine	All	***	67.95	***	229	***	***	Negative
USA	All	***	67.95	***	212	***	***	Positive
Weighted average	All	***	67.95	***	236	***	***	Negative

**G. Conclusions on material injury**

77. 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 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. The selling price of the domestic industry was also much higher than the non-injurious price during the POI.

**L. Other known factors and causal link**

**Submissions of Petitioners**

- i. The dumped imports from the subject countries have increased despite ADD in force.
- ii. Subject imports are available at prices lower than domestic prices. Thus, if the ADD ceases, the dumped imports volumes shall increase once again.
- iii. The capacities available with the producers from the subject countries and their export orientation show that in case ADD ceases to exist, the volume of dumped imports would surge.
- iv. The exporters are highly export oriented. Significant exports are made by the subject exporters to third countries at prices below which they are exported to India and are dumped at an injurious price. The imports would significantly undercut the domestic prices in the event of cessation of duties. Resultantly, the domestic industry will be faced with price depression in the market.
- v. Domestic industry would be forced to reduce the prices of the product concerned significantly given the fact that the product concerned is a commodity product.
- vi. The natural impact of the reduction of prices would be on the profitability of the domestic industry. Decline in profits would lead to decline in cash flow and return on investment.

- vii. If the domestic industry chooses to maintain its normal price levels, it is likely to lose its sales volume. That would be a bigger injury since it would lead to a use in inventories level, decline in production, capacity utilization, and productivity.
- viii. A positive finding of injury would be recorded only in case there is a relationship between cessation of ADD and recurrence or continuation of injury to the domestic industry. There exists a causal relationship between the likelihood of recurrence or injury and dumped imports in the event of premature withdrawal of ADD.

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

- i. The alleged increase in dumped imports did not impact the production, capacity utilisation and domestic sales of the Petitioners.
- ii. We dispute the domestic industry's claim that subject imports were available at prices lower than the domestic industry's prices.
- iii. Capacities available in the subject countries have no bearing in this case. The Indian industry has added close to 6 Lac tons of annual capacity as was disclosed during the public hearing. There are further plans to add 20 lac tons of annual capacity. 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 an actual detrimental impact, the domestic industry would not have been able to maintain its domestic sales or to increase them. 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.
- v. Selling price of the domestic industry continuously increased during the injury period despite the alleged dumping. The data on record does not show that the domestic industry was forced to lower its prices during the injury period.
- vi. Profitability of the domestic industry has increased almost 3 times during the POI as compared with the base year 2013-14.
- vii. Domestic industry installed additional capacities and earned very good return on the same.
- viii. There is no evidence that suggests that if ADD is revoked, consumers would switch to imports.

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

78. Having examined 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 and countries attracting anti-dumping duty were not so significant.

**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 account 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 Authority notes that the performance of the Petitioners in the export markets has not affected the assessment made by the Authority of the domestic industry's performance. 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.

79. From the above analysis, the Authority notes that neither of 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.

**M. Likelihood of continuation or recurrence of injury**

**Submissions made by the Petitioners**

- i. Absence of continued injury to the domestic industry in the investigation period is not sufficient to warrant cessation of ADD.
- ii. The injury suffered by the domestic industry in the past was due to dumping of the product. Improvement in the performance of the domestic industry or absence in the injury in the current period is a natural result of imposition of ADD.
- iii. Soda ash has a history of continued dumping in the country. The imports have increased significantly at low price, despite the imposition of ADD.
- iv. There has been an influx of unfairly priced imports from multiple countries. Against some of these countries there is a parallel anti-dumping investigation ongoing.
- v. Dumping margins determined in previous investigation and proposed in the present investigation are significant and clearly show likelihood of dumping and consequent injury in the event of cessation of ADD.
- vi. The dumping margin with respect to each of the subject countries is substantially high.

- vii. Imports from subject countries have increased in the POI after declining till 2015-16. 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.
- viii. The imports over the injury period did not have suppressing or depressing effects on price of the domestic industry for the reason that ADD was in place.
- ix. However, import price have started declining significantly and have started having suppressing effect on the prices of the domestic industry since the new Turkish capacities have commercialized.
- x. While the level of inventories of the producers in the subject countries could not be accurately determined, it can be fairly assumed that the foreign producers can scale up production in a short period of time.
- xi. Exporters from Pakistan are expanding their capacities and appears to cater to export markets. This information can be gathered from the demand and supply gap in Pakistan as provided in the IHS Chemical Week. The first phase of expansion shall add \*\*\* MT of new capacity operational from July 2017. The second phase of the expansion will also add \*\*\* MT of new capacity operational from July 2019.
- xii. M/s Olympia from Pakistan has an annual capacity of \*\*\* MT. A Chinese Engineering company is cooperating with it to add \*\*\* MT of new capacity, which shall be completed by December 2018.
- xiii. The demand in Pakistan is expected to grow in the range of 4-6% per year. The market is said to be oversupplied, as per the IHS Chemical Week.
- xiv. Despite existing significant surplus capacities of China, the proposed capacity expansions are extremely large. The fact that Chinese producers can afford such massive capacity expansions in spite of having huge surplus already show that the capacity expansions are likely to be directed towards exports.
- xv. ETI Soda from Europe, which is controlled by the Turkish conglomerate, Ciner Group is aiming to become the biggest producer of Soda Ash in Europe. It has seen two major expansion projects which have been delayed for financial and construction reasons. However, the expansion projects are now operational again.
- xvi. Producers around the world have capacities more than their domestic demand which forces them to sell their products, especially to Indian market owing to its strength.
- xvii. Producers are still looking to expand their capacities, especially Turkey, which will lead to further outflow of subject goods from Turkey to EU. EU, which is already dumping in India will intensify the act.
- xviii. US and China were traditionally the largest exporters of subject goods globally. Reports show that demand in US and China has declined. The excessive supply would also be diverted to countries with growing demand, such as India.
- xix. The volume of dumped exports was extremely high throughout the period considered.
- xx. The volume of injurious exports and price attractive exports was very high earlier. The share declined till 2015-16 and increasing thereafter.

- xxi. The volume of injurious and price attractive exports is quite high in the present POI in comparison to the consumption in India and the proportion increased thereafter in the post POI.
- xxii. Price attractiveness of Indian market is required to be decided considering the following parameters: selling price of domestic industry, current prices at which exporters are exporting to India, current prices at which exporters are exporting to a number of other countries, and surplus unutilized capacities.
- xxiii. The Indian market is highly price sensitive. The customers decide their procurement, with the price being the foremost consideration. All negotiations with major consumers happen on the basis of the price quoted by the industry and foreign producers. Availability of such low-priced imports from subject countries in the market will definitely cause an adverse impact on the domestic industry.
- xxiv. 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.
- xxv. Reliance was placed on previous authority investigations wherein authority undertook the following tests to determine whether dumping after ADD cessation is likely or not: price undercutting and injury margin in respect of exports to India and other third countries during and post-POI; the volume of exports to third countries during POI and over the past one decade which was at a price below the selling price of the domestic industry, export price to India, and whether such volume of exports is significant having regard to Indian demand. The answer to all six tests must be negative in order to ascertain that the Indian market is not attracting foreign producers.
- xxvi. The Authority has relied on the injury margin principle in the past but cannot do so anymore. It cannot determine likelihood to not exist if the injury margin is negative. The present exports to India are not sufficient to determine whether injury to domestic industry is likely to occur.

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

- i. Alleged likelihood of injury cannot be analysed by any interested party since the Petitioner has not provided all requisite post-POI data.
- ii. The mere existence of dumping in previous investigations is not the crux of a sunset review and there must be explicit evidence of an increase of dumped imports into India.
- iii. The determination of likelihood of dumping and injury upon expiration of ADD is dependent on the analysis of the prospective rate of increase of dumped imports, freely disposable or increase in existing capacity in Subject Countries, price suppression/depression, and inventories along with other relevant criteria. There is insufficient data to establish this.
- iv. The claim made regarding Turkish capacities is irrelevant and not verifiable with any evidence.
- v. Depressed or suppressed selling price of the Petitioners cannot be attributed to the price of the subject imports. The alleged effect of the price of subject imports must be significant, which in the present case is non-existent.

- vi. The extract of the IHS report is not verifiable as a true extract. Further, it does not evidence if Pakistan is export-oriented or that there is demand-supply gap in Pakistan.
- vii. The year of the IHS Report is not verifiable.
- viii. On analysis of the IHS Report, it is evident that the capacity is utilized to a great extent in the domestic market, evidencing that there is no demand-supply gap in Pakistan and all the capacity is utilized in the domestic market of Pakistan.
- ix. The table provided for capacity expansion in China is not authenticated and is not verifiable.
- x. The public domain information pertaining to ETI Soda in Europe are from 2015. Moreover, they talk about plans of expansions.
- xi. None of the evidences provided by the Petitioners show export orientation of the subject countries.
- xii. Claims about decline in demand in US and China are unsubstantiated.
- xiii. Claims about Turkish exports flowing into Europe, and in turn Europe dumping in India are unsubstantiated and are mere conjecture.
- xiv. Claims of significant exports from China, EU, Ukraine and USA dumping in third countries have not been substantiated with a verifiable source.
- xv. Price attractiveness cannot be considered as a reason for likelihood of injury in the present factual matrix for lack of evidence for the same.
- xvi. A reasonable comparison cannot be made between exports made by subject countries to other countries against exports made by subject countries to India.
- xvii. Claims regarding vulnerability of domestic industry in terms of price sensitivity of the product and the Indian market are unsubstantiated.
- xviii. The determination of likelihood is a holistic determination. The Petitioners' proposal to let ADD continue even if one of the situations mentioned in Para 122-124 of their written submission is true is against the principles of natural justice and is in violation of AD Rules.
- xix. Causation is central to the language "likelihood of continuation or recurrence of dumping and injury to the domestic industry."
- xx. DCW Ltd. has reported in its Annual Report 2016-17 that the imports are not a threat and the company is capable of facing international competition.
- xxi. The alleged injury suffered by the petitioners is an outcome of their unplanned shut down and is not an effect of subject imports.
- xxii. Landed price of imports calculated here is without loading the current ADD and thus withdrawal of ADD will not change the situation, and therefore this is no likelihood of injury.
- xxiii. Post-POI data may be used to examine the likelihood, not the historical data.
- xxiv. The data pertaining to the claims of likelihood mentioned in the said paragraphs is different from the data presented in the petition.

- xxv. The domestic industry's performance has been extraordinarily good on all parameters and likelihood of injury is based on illusory claims.
- xxvi. The imports are merely filling the gap between demand and supply at a non-injurious price. The increase in volume produced by the domestic industry would automatically lead to a drop in demand for imports.
- xxvii. The current shares of imports only constitute 20% of the market share, as compared to the domestic industry's 80% of market share.
- xxviii. The imports have not created any injurious effect on the domestic industry even at price undercutting levels.
- xxix. The domestic industry is operating at a very high level of ROCE and providing protection to such high ROCE is not the purpose of ADD.
- xxx. The alleged increase in dumped imports did not impact the production, capacity utilization and domestic sales of the domestic industry.
- xxxi. Any alleged price undercutting had no impact on the financial performance of the domestic industry.
- xxxii. Surplus capacities available in the subject countries have no bearing in this case. The Indian industry has added close to \*\*\* lac tons of annual capacity as was disclosed during the public hearing and in the domestic industry's written submissions. There are further plans to add \*\*\* lac tons of annual capacity as per the domestic industry's written submissions. The strong presence of the Indian industry would impede the flow of any surplus capacities in the subject countries to India.
- xxxiii. If price undercutting had any actual detrimental impact, the domestic industry would not have been able to expand its sales.
- xxxiv. Profitability of the domestic industry increased almost three times during the POI despite increased exports.
- xxxv. Despite increase in imports of the subject goods, the domestic industry installed additional capacities and earned very good return on the same.
- xxxvi. There is no evidence to suggest that if ADD is revoked, consumers would switch to imports.
- xxxvii. The subject goods have users in detergent as well as glass industry, which use the subject goods on a large scale.
- xxxviii. With Indian Rupee depreciating against the US Dollar, it has been becoming more and more expensive to import the subject goods. The user industry will continue to rely on local supplies of the subject goods and import the subject goods only when there is a shortfall of supply.
- xxxix. The transportation cost cannot be included in the determination of NIP since it is not supported by law. Transportation cost was not included in determining NIP in the original investigation as well. While India has advocated for this in the WTO, this proposal has not been accepted by the WTO membership yet.
- xl. The price undercutting and injury margin should be determined only on weighted average basis. The domestic industry's claim that price undercutting and injury margin

should be determined on transaction level only for those transactions where undercutting and injury margin are positive is erroneous and illegal. This would amount to applying zeroing practice, which has been held illegal by the WTO.

- xli. No other Indian producer, despite large investments made by them, has come ahead and asked for continuation of ADD.
- xlii. No credible source has been provided to prove that China PR will be adding more capacities for the subject goods.
- xliii. No post-POI data has been provided with respect to price suppression/depression, nor has any substantiated submissions been made with respect to the same.
- xliv. The alleged effect of the price of subject imports must be significant which in the present case is non-existent as evidenced by the data produced.
- xlv. No post-POI data has been provided with respect to inventory level in the Subject Countries.
- xlvi. The mere existence of dumping in previous investigations is not the crux of a Sunset review and there must be explicit evidence of an increase of dumped imports into India.
- xlvii. The determination of likelihood of dumping and injury upon expiration of ADD is dependent on the analysis of the prospective rate of increase of dumped imports, freely disposable or increase in existing capacity in the Subject Countries, price suppression/depression, and inventories along with other relevant criteria.

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

80. The Authority 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 as:

##### **1. Present and continued imports**

81. The Authority has undertaken analysis of the volume of exports of the subject goods to India from the subject countries during the injury period including the POI and post-POI period as well. Imports from China PR, the EU, Kenya, Pakistan and Ukraine were un-dumped during the POI. The Authority notes that imports from China PR and Kenya have declined during the POI whereas imports from EU, Pakistan and Ukraine have increased during the POI. Imports from Iran and USA were dumped during the POI. Imports from both of these countries have increased. The Authority notes that the volume of the exports from all the subject countries taken together to India increased from \*\*\* MT in 2013-14 to \*\*\* MT during the POI. However, in the post POI period 2017-18, imports of the subject goods from all the subject countries taken together declined to \*\*\* MT, a decline of 2.5%. As established in earlier sections, majority of imports from the subject countries were un-dumped, performance of the domestic industry improved on all economic parameters, selling price of the domestic industry increased over the injury period and remained higher than the cost of sales and non-injurious price. There is no present dumping and injury, and the analysis shows that the likelihood of continuation or recurrence of dumping and injury is not established.

## 2. Surplus Capacities

82. 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.
83. While none of the interested parties have provided any verifiable evidence and information with regard to existing surplus capacities, and consequent likelihood /possibility of increased dumped exports to the Indian market, the domestic industry has furnished information in the petition taken from IHS Chemical journal, which provides information regarding Soda Ash manufacturing in the subject countries viz. existing capacity, existing production, unutilized capacity and capacity expansion etc. As would be obvious from the table below that against Indian demand of approx. \*\*\* million MT, the unutilized capacity in the subject countries is approx. \*\*\* million MT (\*\*% of demand in India) and capacity expansion (undertaken already as well as upcoming) is to the extent of \*\*\* million MT (\*\*% of demand in India). However, it is not established that any such alleged surplus capacities in subject countries shall be diverted to India if anti-dumping duty were to be revoked.

Particulars	UOM	Subject Countries					Total
		China	USA	EU	Pakistan	Iran	
Existing Capacity	MT	***	***	***	***	***	***
Existing Production	MT	***	***	***	***	***	***
Unutilized Capacity	MT	***	***	***	***	***	***
Capacity Expansion	MT	***	***	***	***	***	***

## 3. Level of inventories

84. The level of inventories available with the producers in subject countries could not be ascertained in view of non-submission of questionnaire response by foreign producer(s)/exporter(s).

## 4. Price suppression and Price depression

85. The cost of sales of the domestic industry decreased during the POI as compared to the base year. Selling price of the domestic industry also increased during the injury period. The landed value of imports from China PR, EU and USA has increased during the POI as compared to the base year. The landed value of imports from Kenya and Pakistan during the POI has more or less remained the same. The landed value of imports from Iran and Ukraine has declined during the POI as compared to the base year. As established in earlier sections, there is no price suppression and price depression due to imports from subject countries.

## **5. Level of current dumping margin**

86. The Authority notes that dumping margin in the original investigation was positive. However, in the present sunset review, dumping margin is negative/de minimis during the POI for imports from China PR, the EU, Kenya, Pakistan and Ukraine.
87. Based on the above analyses, the Authority holds that there is no likelihood of continuation or recurrence of dumping and injury in case of revocation of anti-dumping duty.

## **N. Post-disclosure comments**

### **Submissions made by the Petitioners**

- i. The petitioners have requested disclosure of a non-confidential version copy of the communications sent by the Authority, copy of the replies filed by the Interested Parties, submissions by Interested Parties, copy of the rejoinder submissions, and the Normal Value in order to enable them to come to a meaningful conclusion.
- ii. In order to apply definitive measures at the conclusion of anti-dumping investigations, an investigating Authority must find dumping, injury and causal link.
- iii. The “essential facts” underlying the findings and conclusions pertaining to the determination of dumping, injury and causal link and likelihood of dumping and injury form the basis of the decision to apply definitive measures and should be disclosed to all interested parties as per Article 6, in order for them to comment.
- iv. The Authority has merely provided the trend prevalent from year to year on various economic parameters such as production, sales and capacity utilisation, etc.
- v. The Authority’s conclusion on these injury parameters constitute “essential fact”.
- vi. The conclusions on fact that must be resolved in order to apply definitive measures in a sunset review investigation are (a) dumping (b) injury (c) causal link (d) likelihood of continuation or recurrence of dumping (e) continuation or recurrence of injury.
- vii. The Designated Authority has not stated facts with regard to likelihood of recurrence or continuation of dumping and injury. The disclosure statement does not constitute sufficient disclosure of essential facts as per Rule 16.
- viii. With regard to likelihood of recurrence of injury, the disclosure statement merely contains parameters or information or verified data that are relevant to establishment of facts.
- ix. The information given by the exporters for determination of normal value, export price or dumping margin constitutes “data/information”, while the normal value, export price & dumping margin constitutes “facts”.
- x. Any such disclosure statement would not enable any Interested Party in knowing what the essential facts under consideration by the Designated Authority are.
- xi. The Designated Authority disclosed whether or not dumping margin is more than de-minimis and that there is improvement in all the parameters of the Domestic Industry

but has not disclosed whether there is likelihood of continuation or recurrence of dumping.

- xii. The Authority only shared the determination of NIP and the written submissions of all the parties, despite various communications by the Domestic Industry to the Authority between November 27, 2018- November 30, 2018 requesting disclosure.
- xiii. The product under consideration is Disodium Carbonate, also known as Soda Ash. The product scope in the present investigation is the same as what was already defined in the original investigation of the product concerned.
- xiv. The Authority has refrained from making an observation on whether or not the product produced by the Domestic Industry is a like article to the product under consideration.
- xv. Tata Chemicals has related producers in Kenya, US and Europe. The Kenyan and American companies are subsidiaries of Tata Chemicals and have exported goods to India. The volumes of imports from Kenya were quite significant and therefore Tata Chemicals is an ineligible Domestic Industry.
- xvi. M/s DCW Ltd. has neither imported subject goods from the subject countries nor is related to either importers or exporters of subject goods from the subject countries.
- xvii. M/s Nirma Ltd. has not imported the subject goods from the subject countries. Their related company in USA however exported the subject goods to India during 2014-15 and 2015-16. The related company in USA did not export the subject goods during the POI.
- xviii. None of other Indian producers has opposed the standing of the petitioners.
- xix. The Authority has rightly held that the petitioners satisfy the requirement of standing in terms of Rule 2 (b) and Rule 5 (3) of the Indian AD rules.
- xx. The Authority accepted the confidentiality claims and has accepted non-confidential versions, wherever possible, of such information and placed the same in the public file.
- xxi. Several issues, as listed below, should be considered as issues concerning likelihood of dumping & injury and not part of miscellaneous submissions:
  - a. The cessation of present ADD is likely to lead to continuation or aggravation of the continued dumping and likelihood of recurrence of injury to the Domestic Industry.
  - b. Imports of Soda Ash are at present subject to ADD despite which they are being exported to India from the subject country at dumping prices.
  - c. The subject exporters are exporting the product to a number of other countries at a price below fair price for the Domestic Industry.
  - d. The import in the months of August 2018 and September 2018 have seen an increase of 23% from July 2018.
  - e. China has increased the exports of the subject goods by 1718% in August, as compared to 54% in July.
  - f. USA has increased the volume of imports by 796%.

- g. Dumping Margins determined in previous investigation and proposed in the present investigation are significant and clearly show likelihood of dumping and consequent injury in the event of cessation of ADD.
  - h. In the event of cessation of ADD, these exporters will get a greater opportunity to dump the product under consideration into India, taking away the Domestic Industry's market share.
  - i. The import volumes have increased in the POI and at dumped prices. The imports are likely to enter in significant volumes at dumped price in the event of cessation of ADD.
  - j. Suppression/depression effects of the imports were not seen in the Indian market because of the existence of the ADD. Import price 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 which is threatening the global demand supply scenario.
  - k. The Domestic Industry could not ascertain the levels of inventories with the subject producers. In view of the immense capacities available with the subject countries, it can be fairly stated that production can be ramped up as and when market is available.
  - l. USA and China have remained the first and second biggest exporters of the subject good respectively.
  - m. The Turkish exporters have capacities to the tune of \*\*\* million metric tonnes of which their demand is around \*\*\* million metric tonnes, which leaves \*\*\* metric tonnes fit for exports. These goods are sent to Europe, and then are pushed to India.
  - n. There is an existence of dumping even in third countries by China, EU, Ukraine and the USA. Transaction wise analysis has been undertaken for last one-decade imports.
  - o. The volume of price attractive exports is quite high in the present POI in comparison to the consumption in India and the proportion increased thereafter in the post POI.
- xxii. The inappropriate placement of the submissions of the Domestic Industry may result in inappropriate examination of these submissions.
  - xxiii. The Authority has only referred to various High Court and Supreme Court orders without stating the observations of the Designated Authority on the present investigations.
  - xxiv. The Domestic Industry's concern is with regard to the fact that due consideration must be given to various submissions raised by the Domestic Industry.
  - xxv. The disclosure statement contains various submissions by other Interested Parties which were not made known till the stage of hearing or post hearing written submissions.
  - xxvi. The Interested Parties claimed that for a non-importing industrial user, there are no questionnaire formats applicable. It is only applicable to initiations that took place

after February 2018. The requirements under the law cannot be different for an investigation initiated before or after issuance of this trade notice.

- xxvii. It is precisely for this reason that the issue was raised before the Designated Authority earlier as soon the trade notice was issued. Enough time was given to the Authority to direct the Interested Parties to provide relevant information in the ongoing cases as per the trade notice.
- xxviii. It appears that neither the Interested Parties have been asked to provide information in on-going cases, nor have the Interested Parties taken cognizance of the trade notice.
- xxix. The information on record of the Designated Authority is not consistent with the trade notices in a large number of investigations.
- xxx. The Interested Parties have argued that the complex history of the present case has added ambiguity to any timelines in the investigation.
- xxxi. The Petitioners had challenged the Final Findings dated 22.7.2017 and Annulment Order dated 22.7.2017 by way of Petition and allied matters. The High Court vide Order dated 31.7.2017 restrained the Central Govt. from acting upon the Final Findings dated 22.7.2017 and Annulment Order dated 22.7.2017.
- xxxii. By virtue of the Order dated 31.7.2017, the withdrawal order of the present case was “no longer in operation” and the investigation was de-facto restored.
- xxxiii. The Designated Authority was required to undertake the investigation for completing the Sunset Review.
- xxxiv. The High Court vide Judgment and Order dated 11.6.2018 allowed the subject writ petition filed by the petitioners for quashing and setting aside the Final Findings dated 22.7.2017 in Mid Term Review and Order dated 22.7.2017 annulling Sunset Review and directed the Authority to do the needful for bringing the Sunset Review to its logical end strictly in accordance with law.
- xxxv. There can be no ambiguity that the investigation had to be conducted and concluded after following the due process of law.
- xxxvi. The Interested Parties claimed that there are no duties in existence, as the Authority did not apply to the Central Government to extend the period of duties. There is no occasion for the Authority to give its recommendation to the Central Government.
- xxxvii. They further claimed that the Department of Revenue cannot extend the duties in terms of the judgement of Forech India Ltd. v. The Designated Authority & Ors since there are no existing duties. No Authority can extend the duties if there is a break in the period under Rule 18(1). The said judgement has not been stayed, and is therefore binding on the Authority
- xxxviii. The present investigation is being undertaken as per the High Court’s direction vide Judgment and Order dated 15.06.2018 which extended the period for concluding the Sunset Review Investigation by 6 months in terms of the first proviso to Rule 17(1)(a) of the Rules. The argument of the Interested Parties implies that the High Court order is illegal.

- xxxix. The decision of the Delhi High Court is under challenge. Stay application has also been filed against the said order. The Supreme Court issued notice vide interim order 9th July 2018 while orally observing that since the Government is not withdrawing the notification, stay is not necessary. The Central Govt. has not withdrawn the ADD till date.
- xl. The High Court order dated 11.06.2018 had made it very clear that the investigation had to be concluded as per law, which in unambiguous terms meant that all the Interested Parties involved ought to have participated and submitted information relevant for the investigation. Interested Parties cannot make a claim that they were not aware of their obligation under an investigation.
- xli. There is stark difference between the dumping margin determined by the Domestic Industry and that determined by the Authority.
- xlii. The Authority has held that China cannot be given market economy treatment since a part of the POI falls prior to December 2016. In the absence of any market questionnaire/responses being filed by any of the responding producer, China cannot be granted market economy treatment. In the absence of any responding exporters/producers from any of the subject countries, the Authority has held the same as non-cooperative.
- xliii. For the purpose of determination of Normal value in USA, EU and Iran, the Domestic Industry submitted evidences relating to IHS chemical reports, which has been used/adopted/accepted by the Designed Authority in several cases, since they provide a true picture of the prices prevailing in the respective regions.
- xliv. The rules have placed a clear hierarchy between domestic price and cost of production. Section 9A(1)(c) of the Act clearly provides for a hierarchy. This was also established in the case of Ministry of Commerce vs M/s.Haldor Topsoe.
- xlv. The Supreme Court has made it clear and mandatory that if information with regard to price in subject country is available, the Authority cannot choose cost of production as a basis of determination of normal value.
- xlvi. IHS Chemical Weekly provides historical and forecasted pricing on a worldwide basis. Each month, it publishes a market summary and market statistics supplement. The market summary includes an analysis of the current market situation as well as price and margin history and forecasts.
- xlvii. IHS Chemical's Report is mostly accessed by highly experienced researchers. It is authentic, has recognition, reliability and usefulness of the data and information published in it.
- xlviii. Information was provided upon initiation of investigations and was made available to other Interested Parties. The information has not been disputed by any Interested Party, it is not appropriate to discard these trade journal prices and adopt cost of production.
- xlix. For the purpose of determination of normal value in Kenya and Pakistan, evidences relating to the annual reports of Tata Chemicals plant in Magadi, Kenya and the Annual report of ICL, Pakistan was considered by the petitioners, as they would

provide the most accurate picture with regard to normal value in those subject countries.

- I. The normal value has been determined, disregarding that information and using less appropriate information, that too without full disclosure of the same. There is no reason recorded in the disclosure statement for rejecting the information and evidence provided by the petitioners.
- li. In a situation where exporters have preferred non-cooperation and there is no objection from any Interested Party, the Designated Authority is required to proceed with the claims made by the Domestic Industry as the best information available as per Rule 6(8).
- lii. The Authority has only laid reference on 'best available information' however, it has not been disclosed to the parties as to what forms the basis of 'best available information' in the present case.
- liii. The consideration of VAT adjustments in case of calculation of export price for China PR must be made.
- liv. Prices actually prevailing in the subject countries shows positive dumping margin. The dumping margin determined in the MTR Final Finding under challenge (which had responses filed by cooperating producers) also showed positive margin much above the de minimis level. Normal value has been wrongly determined.
- lv. The POI in the said investigation was 2014-15. The Authority had also determined dumping margin for post POI which was April 2015-Sep 2015, which was also positive.
- lvi. US producers have the advantage of immense natural resources and so their cost of production will be less as compared to the synthetic materials used in India. US exporters are resorting to dumping practices as they are exporting to India at prices much below their normal value which is leading to surge in imports.
- lvii. An advantage of low cost cannot imply resorting to dumping, and low cost does not mean "absence of dumping".
- lviii. Submissions filed earlier show that petitioners have admitted that the performance of the Domestic Industry has not deteriorated in the current period but has improved largely due to ADD in force.
- lix. Transportation cost forms a very substantial portion of the cost of production in case of subject goods as the Indian Producers of soda ash are located in the State of Gujarat (due to availability of raw material), and the sales have to be made throughout India.
- lx. The subject goods are a comparatively lower price product. 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.
- lxi. The selling price of the Domestic Industry should be compared with the landed price of imports only after adding the transportation costs.

- lxii. The rules do not provide for one set methodology of determination of the effect of the dumped imports on the prices of the Domestic Industry. It cannot be said that a practice has become the law or that it will stand appropriate in every situation.
- lxiii. Consumers of soda ash do not compare ex-factory price of the Domestic Industry and ex-port price of imports while negotiating the prices with the Domestic Industry. They determine and compare landed price of the product from different sources at their factory.
- lxiv. The position of the Government of India at the WTO on fair comparisons favour this methodology.
- lxv. 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 an expense incurred for transportation of goods to an extended factory gate. If the goods are transferred from the factory to the depot then the goods are to be considered as a part of the inventory.
- lxvi. Even as per the accounting standards, the freight from the factory to depot is considered as a part of the cost of production and if that is the case then the depot is only an extended factory warehouse and that alone should be considered as the basis of the ex-factory NIP and selling price.
- lxvii. GST and other charges incurred are calculated only when the goods are moved from depot as those are considered as the ex-factory costs. The depot prices must be considered as ex-factory prices for the purpose of calculation of the NIP and selling price.
- lxviii. Past practice alone cannot be a justification for non-consideration of the arguments and submissions made by the Domestic Industry, particularly when such submissions have been made since the time of original investigation in this particular case.
- lxix. Undercutting and injurious imports/injury margins should be determined considering only those transactions that were undercutting or injuring the prices of the Domestic Industry.
- lxx. The weighted average export prices to India are grossly insufficient to determine whether injury to the Domestic Industry is likely to recur.
- lxxi. The producers in major subject countries are holding huge unutilized capacities, are exporting significant volumes of the product under consideration to third countries at prices (a) below selling price of the Domestic Industry in India, and (b) below export price from these countries to India.
- lxxii. In the event of cessation of duties, these producers are likely to find good market opportunities in India and are likely to export significant volumes at a price below the selling price of the Domestic Industry.
- lxxiii. Behaviour of individual exporters, as shown through different export transactions is relevant, appropriate and necessary to be examined as this in itself signifies the tendency of dumping of such producers/exporters causing injury.
- lxxiv. It is however seen that the disclosure statement merely contains these submissions and not emerging essential facts which have been considered by the Authority.

- lxxv. Submissions by Interested Parties do not constitute essential facts under consideration.
- lxxvi. The facts established by the Designated Authority on the basis of information and evidence on record constitute essential facts under consideration of the Designated Authority.
- lxxvii. In the context of present SSR case and considering the injury parameters laid down under the law, the Designated Authority is required to consider the above legal provisions in the manner prescribed by Rule 11.
- lxxviii. The demand for the product concerned has increased in India over the injury period.
- lxxix. Despite the existence of duties, the imports occupy a significant share in the Indian demand and import volumes have increased over the injury period. This clearly shows that the imports are going to at least increase (and not decline) in case of cessation of ADD.
- lxxx. As the duties are not being collected from July 2018 as per current notification, and even when the present investigation is not concluded and not decided whether ADD is required to be extended further, imports have already started showing significant increase.
- lxxxi. The Authority has noted that the landed prices of the subject imports from the subject countries are undercutting the net selling prices of the Domestic Industry by a significant margin resulting in significantly positive undercutting levels.
- lxxxii. Price undercutting has been determined without considering freight on the domestic product, whereas freight on the imported product has been considered up to the port levels (which constitutes majority of the freight on the imported product). The comparison is therefore not at the same level.
- lxxxiii. The Authority has noted that the cost of sales of the Domestic Industry have declined during the injury period while the selling prices of the Domestic Industry have increased during the same period.
- lxxxiv. The landed prices of the imports from China PR, EU and USA have increased over the injury period. The landed value of imports from Kenya and Pakistan during the POI has remained about the same. The landed prices of imports from Iran and Ukraine have declined during the POI as compared to the base year.
- lxxxv. It seems to have been ignored that (a) the present situation is when the ADD is in place and therefore is not at all relevant to show the likelihood of injury in case the present ADD is not extended, (b) landed price of imports from all the subject countries, except China PR has declined in the POI as compared to 2015-16 without corresponding decline in cost of sales.
- lxxxvi. This shows (a) the behaviour of the exporters to reduce prices irrespective of any relation to costs of the product and (b) likelihood of reduction in prices in the event the present ADD are not extended further.
- lxxxvii. The imports were not causing any price suppression or depression effect because of the ADD in force.

- lxxxviii. The Authority has noted the enhancement of capacity of the Domestic Industry over the injury period. The production and the domestic sales of the Domestic Industry have also increased over the same period. The capacity utilization of the Domestic Industry, despite addition of capacities, has remained about the same over the injury period.
- lxxxix. Various Interested Parties have claimed that the capacity utilisation by the Domestic Industry is over 80%, which is a good utilisation level.
- xc. The Designated Authority has considered that the plant was underutilised, and the Domestic Industry could have produced more than what it produced during the period.
- xc. Nirma was running the plant at 95%, which itself shows that 80% is not the optimum capacity utilisation. Thus, the Domestic Industry can at least produce up to 96% of its capacity.
- xcii. It would not be appropriate to conclude that the Domestic Industry was producing optimally. Or, in the alternate, the NIP should be determined at 80% for all the three companies.
- xciii. The anti-dumping duties were levied in 2012. The industry was incurring losses in 2011-12 and was making low level of profits and ROI until 2013-14.
- xciv. After imposition of ADD in 2012 the situation of the Domestic Industry gradually improved and consequently constituents of Domestic Industry and other producers felt that that the market is viable to invest in capacity expansions and have planned expansion.
- xcv. Significant capacities have been added by the Domestic Industry and other new producers. Post imposition of ADD, a fresh capacity to the tune of 10 Lac MT are either already commissioned (by Nirma and GHCL) or are at the verge of getting commissioned (by Garhi).
- xcvi. 20 lacs MT capacity enhancements are being planned at this stage. These are however only because the Indian market for the product has remained viable.
- xcvii. While an investment of Rs. 3,225 crores have already been made, further investments of Rs. 10,000 crores are being planned. Significant capacity addition has been made by other producers as well. M/s Gharhi has commissioned a new green field plant of a production capacity of 5 lac MT at an investment of Rs. 2200 crores. This has however been ignored in the disclosure statement. The impact of possible non-extension of ADD on these investments has also not been considered while undertaking injury analysis.
- xcviii. Dumped and increased imports will have an adverse impact on such huge investments made by the Domestic Industry. Fresh investments require a minimum reasonable return of Rs. 7,000/MT in order to be reasonably viable. The average return earned by the Domestic Industry over the injury period was much lower.
- xcix. The profit element in price is an important life line for continuance of entrepreneurial activity required for industrial production. Profits being earned by the Domestic Industry are being reinvested in capacity creation and are not being withdrawn by the industry.

- c. Should the Domestic Industry continue to earn these profits, the fresh investments will be recovered over a period that exceeds even the life of the assets.
- ci. The non-extension of the duties would likely decimate not only the Indian industry's investments for fresh capacity additions but will also impact the earlier existing capacities.
- cii. Improvement in profits of the Domestic Industry should not be regarded as sufficient to conclude absence of likelihood of injury to the Domestic Industry, since profit is understood merely as the excess of money over the capital.
- ciii. It would also be relevant to note that it is not a case where the petitioner's Domestic Industry is earning profits at the cost of consumer industry. Not only that the consumer industry is earning higher profits, but also, that they have improved significantly over the present injury period.
- civ. In sunset review investigations, the Authority is required to consider whether dumping of the product post cessation of ADD is likely to adversely affect the new capacity expansions that have already taken place in the country and for the capacity expansions that will take place in the country.
- cv. Reference is made to the Canadian practice wherein adequate consideration is given to the fact that significant investment has been made by the Domestic Industry in future production.
- cvi. The Domestic Industry has already provided information, by way of the submissions filed earlier, with regard to the cost of production and NIP of the newly installed capacities.
- cvii. It shows that the profitability of Domestic Industry in the new plant is already quite low and the Domestic Industry would suffer severe decline in profits in respect of such new capacities, if the present ADD is not extended further and Domestic Industry is forced to sell at such prices.
- cviii. The Authority has not examined market share in demand in the Disclosure Statement. The market share of the imports has increased over the injury period and market share of the Domestic Industry has remained more or less the same. Market share of the domestic producers as a whole has declined.
- cix. The data on record shows that the increase in inventories is about 36 basis points between the base year of the investigation and 2015-16, and the decline between 2015-16 and the POI is only by 4 basis points, i.e., from 136 to 132.
- cx. The Authority has noted that profits, cash profits and ROI of the Domestic Industry has improved over the injury period. It has been ignored that (a) the profits, cash profits and ROI in the POI shows some decline as compared to the preceding year, (b) profits, cash profits and ROI of the new investment is quite low, (c) the improvement in profits, cash profits and ROI are a result of imposition of ADD and does not imply absence of likelihood of recurrence of injury, (d) injury period parameters are relevant only for examination of continued injury and not likelihood of injury.

- cxix. The 4-basis point decline in inventory level in the POI as compared to the previous year has been specifically observed in the disclosure statement, a 21-basis point decline in profitability in the POI has been completely ignored.
- cxii. An objective examination of the performance of the Domestic Industry implies that all parameters should be considered with the same yardstick on a non-discriminatory basis.
- cxiii. While the current POI is relevant for establishing continuation of dumping, the historical data is relevant for establishing likelihood of dumping as it establishes the subject country(ies) as habitually indulging in dumping practices.
- cxiv. Calculations have shown that dumping has prevailed throughout the 10 years period. The data for the POI on weighted average basis itself shows that the dumping has continued, the same may be sufficient.
- cxv. If the Designated Authority comes to a conclusion that the weighted average dumping margin is de-minimis, then there is a need to examine dumping margin separately for each import transaction.
- cxvi. There is continued dumping of subject goods. Normal value should be determined as per the prices prevailing in the subject countries and should not be constructed.
- cxvii. Imports made into the domestic market at dumped prices despite imposition of antidumping duty. Imports after declining till 2015-16 increased significantly in the POI which further again intensified in Post POI.
- cxviii. Performance of the Domestic Industry has improved in view of antidumping duty in place with some decline in the POI as compared to the previous year. However non-extension of anti-dumping duty is likely to lead to recurrence of material injury. Further, as regards high profitability of Domestic Industry, it is submitted that soda ash is a highly capital intensive, low raw material cost and high finished product freight industry. The freight costs constitute very high percentage of cost of production. Therefore, this case should be seen in the light of peculiarities of the product under consideration.
- cxix. As regards ROCE, the plants are being operated by industry are depreciated. Since net fixed assets are unfair to domestic producers and don't represent true value the domestic producers' assets value, the Domestic Industry requests the Designated Authority to consider present value of investment for calculating ROCE.
- cxx. Mere improvement in performance of the Domestic Industry is insufficient to conclude that extension of duties is not justified. Rule 23 mandates the Authority to examine the effect of the revocation of duty on Domestic Industry, instead of merely focusing on the present situation of Domestic Industry. If the Authority comes to a conclusion that the Domestic Industry has not suffered continued injury, the Authority needs to examine whether the Domestic Industry is likely to suffer injury in the event of cessation of antidumping duty. If not so, the Authority must examine whether continued dumping of the product under consideration is likely to lead to recurrence of injury.

- cxxi. Producers from subject countries have significant capacity, much more than the domestic demand, which establishes that in the event of cessation of duties, exports to India will intensify.
- cxxii. The price undercutting without prevailing antidumping duties is positive.
- cxxiii. Historically (as per data for the 10-year period) the share of dumped and injurious imports has been significant.
- cxxiv. Significant volume of third country exports by subject countries are at prices below the prices at which exports have been made to India.
- cxxv. Significant volume of third country exports by subject countries are at prices below the selling prices of the Domestic Industry.
- cxxvi. Non-extension of antidumping duty would lead to a situation where import prices would materially be below selling price of the Domestic Industry. The consumers would therefore switch to imported goods which will lead to significant increase in imports of the product.
- cxxvii. The investigation is legal and is being undertaken pursuant to the High Court Order. The duties can be levied prospectively once the Authority gives recommendation to that extent.
- cxxviii. The quantum of duty is not required to be modified and the existing duties should only be extended.
- cxxix. Anti-dumping duty may be imposed only as fixed quantum of anti-dumping duty (fixed form of duty), expressed as duty in US\$/MT. Rupee has depreciated significantly and therefore the definitive duties must be expressed in US\$. The depreciation INR has impacted the costs of the raw materials, utilities and other costs.
- cxix. The product is already attracting fixed quantum of anti-dumping duty at present.
- cxixi. The Anti-dumping legislation has been created in consonance and in conformity with the WTO Agreement on Anti-Dumping, which explicitly permit authorities to impose anti-dumping duties in the form and manner requested.
- cxixii. Experience generated out of fairly large number of investigations (more than 300 investigations have been conducted so far spread over more than 15 years) that attempts are made to evade anti-dumping duty imposed. A large number of complaints made by spectrum of industries over a long period with regard to circumvention of anti-dumping duties are relevant in this regard.
- cxixiii. Customs port authorities lack a mechanism to ensure correctness of import price reported by an importer. It is neither feasible nor practicable for the port authorities to verify the import price.
- cxixiv. The duty should be imposed in a manner where it does not become futile.

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

- i. In respect of background of the case, HUL brings to the notice of Hon'ble Designated Authority that the decision rendered by the Hon'ble High Court of Gujarat in W.P. 14202 and 14204 of 2017, which was the basis for the Authority herein to continue with the

current sunset review proceedings, is under consideration before the Apex Court in S.L.P. (Civil) Dairy No. 36509/2018.

- ii. In respect of procedure, the Hon'ble Designated Authority has observed at paragraph no. 7(v) and 7(vii) of the Disclosure Statement that "no importer/user or no producer/exporter from subject countries filed any response to questionnaire or made any submission". In response, HUL submits that said observation is erroneous. Some interested parties have filed their submissions and the same are part of the public file records. Therefore, the same ought to be considered by the Designated Authority.
- iii. Further, the Hon'ble Designated Authority has also observed at paragraph no. 7(xi) that "exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties". HUL submits that said observation is erroneous.
- iv. HUL is one of the largest industrial users of the subject goods and have not imported the product in question. Therefore, as per the prescribed rules and procedures in existence at the time of initiation, the importer questionnaire is not required to be filed by such industrial user. HUL further submits that, during the course of the present investigation, it has provided certain pieces of data and information which it thinks is relevant for the Designated Authority to come to a conclusion for issuance of final findings. Since the Designated Authority is a quasi-judicial authority, it has to address all the legal submissions along with the data/information placed on record by interested parties prior to recommending the final findings.
- v. The Hon'ble Designated Authority has made observations with respect to the product scope and like article. HUL submits that it does not have any comments on the same. In the event that new or additional information is made available, HUL reserves its right to comment on the same.
- vi. HUL submits that the Hon'ble Designated Authority Statement has made observations with respect to the eligibility of the Petitioners as domestic industry. However, it has erred in not recording any observation on the eligibility of other domestic producers, specifically GHCL of the PUC in India.
- vii. Further, though the Designated Authority in the past anti-dumping proceedings of the subject goods has specifically considered GHCL as domestic industry, it is not clear as to why the Designated Authority herein has not considered the request of the Petitioners and HUL herein to consider/examine the eligibility of GHCL as domestic industry. GHCL's Annual Report for the year 2017-18 shows that their Soda Ash division is performing exceptionally. Their sales value has risen exceptionally along with their capacity utilization being above 95%.
- viii. In view of the above, it must be considered whether the Petitioners are requesting for a reconsideration of GHCL's eligibility to be domestic industry merely because of GHCL's positive performance in recent years. Since this issue remains unaddressed in the Disclosure Statement, the Hon'ble Designated Authority may specifically determine if the Petitioners have impliedly excluded GHCL, at first instance, from the domestic industry so as to avoid the determination of injury or likelihood of injury being unfavorable to them due to GHCL's exceptional performance and not because of GHCL's unsubstantiated existence of imports.

- ix. The Hon'ble Designated Authority has made a general observation with respect to the fact that it has accepted the confidentiality claims wherever warranted and not disclosed confidential information to interested parties. HUL submits that it does not have any comments on the same. However, HUL reserves its right to comment in the event new or additional information is made available.
- x. HUL agrees with the averment made above by other interested parties. Once there has been a lapse of duties or break in levy of duties pursuant to original investigation, the already expired duties cannot thereafter be levied by way of a sunset review investigation. The Hon'ble Designated Authority ought to take cognizance of the most recent decision of the High Court of Delhi in *Forech India Ltd vs Designated Authority*.
- xi. The Hon'ble Designated Authority has noted that the interested parties had sufficient time to respond to the questionnaire and participate in investigation. Before making such an observation, HUL submits that the Hon'ble Designated Authority must specifically take into consideration the complex history of the present case (particularly with the writ petition and orders thereafter) which has added ambiguity to any timelines in the present investigation, and therefore interfered with most of the interested parties' adherence to the timelines for filing questionnaire responses. However, the Authority is requested to take into consideration all the legal submissions and other information/evidence provided by the opposing interested parties prior to issuance of its final findings.
- xii. On normal value from China, HUL does not have any specific comments on the same. However, HUL requests the Hon'ble Designated Authority to take into consideration the relevant AD Rules for the purpose of determining the normal value for China PR.
- xiii. On computation of normal value for subject countries, Authority has not disclosed the methodology it has adopted for computation of constructed normal value. The Authority ought to have given such information to all interested parties vide Disclosure Statement. The Hon'ble Designated Authority should calculate the normal value in accordance with the relevant section/rules and also take into consideration the information provided by participating exporters/producers.
- xiv. On export price, the Designated Authority has not disclosed the methodology or source for adjustments it has made to arrive at the export price for subject countries. The Hon'ble Designated Authority should calculate the export price in accordance with the relevant section/rules and also provide evidence of the adjustments that have been made to the export price.
- xv. The Hon'ble Designated Authority has observed that the dumping margin is negative for China PR, EU, Pakistan and Ukraine and dumping margin is de-minimis for Kenya. This is a crucial determination since it clearly establishes an absence of continuation of dumping for these subject countries.
- xvi. Therefore, in order for any continuation of duties, it would be mandatory to now establish a likelihood of recurrence of dumping in the present investigation. Given that there is presently no dumping from a majority of the subject countries, and no injury to the Petitioners (or likelihood thereof), the Hon'ble Designated Authority is requested to allow the impugned duties to stay expired.

- xvii. As emphasized clearly in Annexure II, the examination of injury to the domestic industry is only required to be conducted with regard to dumped imports. As determined by the Hon'ble Designated Authority in its Disclosure Statement, there is no / de minimis dumping taking place in the period of investigation from China PR, EU, Kenya, Pakistan and Ukraine. Since there is no dumping from these countries, the analysis of injury for these countries is excessive and unwarranted under the above provisions. With regard to injury, the Hon'ble Designated Authority is only required to assess whether the Petitioners are injured on account of imports from the subject countries which have positive dumping margins i.e. Iran and USA.
- xviii. The Hon'ble Designated Authority has observed that the demand has increased in the injury period, along with an increase in the market share of the subject imports and the Petitioners. However, in the same paragraph, the Authority has rightly noted that the market share of domestic industry increased during the injury period. HUL submits that, though the Authority has observed as aforesaid, it has not provided the trend for the market share of the domestic industry in the total demand. Without prejudice, the sales of the Petitioners have increased at a greater rate than the total demand of the country, indicating an increase in market share. Thus, subject imports have not negatively impacted the market share of the Petitioners.
- xix. While there has been an alleged increase in imports from EU, Pakistan, Ukraine, Iran and USA, there has been an increase in sales of the domestic industry, evidencing that there has been no impact of the subject imports on the domestic sales of the domestic industry.
- xx. The selling price of the Petitioners has consistently been able to keep up with the cost of sales. The subject imports have not prevented the Petitioners from appropriately adjusting their price with any change in cost, thus demonstrating that the Petitioners are suffering no price suppression or depression.
- xxi. The price undercutting data available in Disclosure Statement is only in respect of the POI. Also, the Hon'ble Designated Authority has not provided the net selling price or net sales realization (even indexed) figures that it is considering for the purpose of price undercutting analysis for the POI. In the absence of disclosure of the price undercutting figures that are being considered by the Hon'ble Designated Authority for the injury period as a whole, HUL is being deprived of the opportunity to make meaningful comments on the same. The Authority is requested to kindly disclose all the information it is considering in respect of price undercutting analysis.
- xxii. It is noted that the Hon'ble Designated Authority has assessed price undercutting based on the "consistent practice of the Authority", which can be reasonably presumed to mean that freight has not been included. However, given that there is no concern on confidentiality here, the Hon'ble Designated Authority is requested to explicitly clarify whether or not freight has been considered.
- xxiii. There is an increase in production and sales of the domestic industry. Further, it can be seen that the domestic industry has been able to utilize its installed capacity.
- xxiv. The inventories have decreased in the POI in comparison to the previous year, which evidences that the domestic industry has been able to make increased sales in the POI.

- xxv. Admittedly there has been a remarkable increase (as also observed by the Authority) in the profit before tax and interest, cash profit and return on investment, profits of the domestic industry in the POI in comparison to the base year.
- xxvi. The productivity per employee and the wages have increased immensely in the POI in comparison to the base year.
- xxvii. HUL does not have any comments on magnitude of dumping and reserves its right to comment during the course of investigation in the event new or additional information is made available by the Petitioners.
- xxviii. HUL agrees with the finding of the Designated Authority with regard to growth and the Petitioners' ability to raise funds, as examined at paragraphs no. 70 and 71 of the Disclosure Statement.
- xxix. The Hon'ble Designated has clarified that the NIP has been calculated on the basis of the best information available. If a cooperating producer's individual treatment had been rejected on account of non-provision of data, the Hon'ble Designated Authority would not allow the producer to provide additional data at such a late stage. The same strict standard must also be applied to the Petitioners and no further information concerning NIP (or any other issues under consideration) must be accepted. If indeed such information is accepted, the Hon'ble Designated Authority must issue the disclosure statement again and allow the interested parties to file their comments within a reasonable period of time.
- xxx. Without prejudice, the Authority has rightly noted that the injury margin for China PR, EU, Kenya, Pakistan, Iran, Ukraine is negative. Along with an absence of dumping from most of the subject countries, there is clearly an absence of injury to the domestic industry and the margin of injury is also negative for all subject countries except USA.
- xxxi. If there is no dumping from most of the subject countries or injury to the Petitioners, there can be no question of a causal link.
- xxxii. The Petitioners have not provided concrete or sufficient evidence (including post POI data) for proving that discontinuation of duty would lead to recurrence of dumping and injury.
- xxxiii. It is pertinent to analyse the post-POI data which the Petitioner has not provided. Furthermore, though the Designated Authority has noted that it has taken into consideration the post POI data, the interested parties including HUL have not been provided with any such data. Without prejudice, there is a decline in import volumes in the post-POI period as acknowledged at paragraph no. 78 of the Disclosure Statement.
- xxxiv. It is not evident/verifiable from the Disclosure Statement as to which year the IHS report pertains to. Moreover, the Authority has kept the information confidential without any reasonable basis. The Hon'ble Designated Authority is humbly requested to make available the figures in summarized ranges so that the interested parties can also comment on the essential facts considered herein. Since HUL cannot verify or comment on the confidential information of the Disclosure Statement, it relies on the submissions it has made at paragraph no. 84 to 90 of the Rejoinder submissions while it was responding to the IHS Report relied upon by the Petitioners. The same may be reconsidered by the Authority before making any conclusive findings.

- xxxv. Based on information available on subject countries' markets, it is clear that the local capacities, particularly in China and Western Europe, are predominantly utilized for domestic sales. Indeed, export sales in these markets are a very small portion of the total production (for the past year as well as forecasts for the coming years).
- xxxvi. The onus to prove likelihood of dumping or injury lies with the Petitioners. The Authority by stating that the exporters/producers did not provide the data on inventories shifts the burden on the exporters/producers from the Petitioners. In view of the Petitioners statement at paragraph no. 104 of their written submissions, the Authority herein is requested to note that the Petitioners have not been able to prove likelihood of dumping or injury with sufficient evidence.
- xxxvii. 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. The detailed submissions on this aspect is made in the relevant section hereinabove. The Authority has rightly noted (indirectly) that there is no price suppression or depression at paragraph no. 82 of the Disclosure Statement.
- xxxviii. It is evident that the dumping margin is negative for all but two of the subject countries.
- xxxix. The Hon'ble Designated Authority has explained the methodology that have been used to arrive at the non-injurious price and HUL do not have any comments in respect of the same.
- xl. Issues raised by Saint Gobain India Pvt. Ltd. during the public hearing, written submissions and the rejoinder statement which have not been mentioned or have not been dealt with appropriately in the Disclosure Statement are to be considered as part of its comments to the disclosure statement.
- xli. After the annulment of the sunset review investigation dated 22.7.2017, there is no opportunity for the SGIPL to provide its questionnaire response.
- xlii. The present investigation is without jurisdiction and anti-dumping duties now cannot be extended in the light of the judgement of Hon'ble Supreme Court and Hon'ble Delhi High Court.
- xliii. No notification with retrospective or prospective effect can now be issued by the Central Government even if the sunset review is decided in favour of the applicant domestic producers in terms of the settled legal position in the case of Forech India Ltd. v. The Designated Authority & Ors that there cannot be a gap between expiry of original duties or extension of one year.
- xliv. The extension of duties for one year has lapsed on 2.7.2018, amounting to a gap of over 4 months.
- xlv. The Central Government also cannot issue Custom Notification to collect the anti-dumping duties after there is a break in duties.
- xlvi. Any recommendation given by the Hon'ble Authority would be without authority of law and contrary to the mandate available to them under Section 9A(5). The said investigation must be terminated.
- xlvii. DI was attempting to misguide the Hon'ble Court when they approached the Court for judicial scrutiny in connection with this matter. But we are hopeful that such attempts

to misguide the Hon'ble Court will be proved futile for the DI at the end of the process of judicial scrutiny and the duties shall be ultimately allowed to expire

- xlvi. Indian producers have very selectively provided injury data to the Authority to show only a premeditated picture of injury and accordingly large profit-making producers like GHCL did not share injury data for the purpose of this investigation.
- xlix. If GHCL has decided not to participate in the present matter on account of their import, then it has to be construed that GHCL has shifted its focus from manufacturing to trading which shows the DI has time and again approached the Authority with particular agenda.
- I. The dumping margin and injury margin from subject countries other than USA is either negative or below de-minimis levels. However, it is relevant to be noted that as proposed by the DI, the Authority has conducted cumulative assessment in the present matter and what is relevant under cumulating is the overall impact of imports from subject countries on domestic industry and not imports from a particular country. The situation of the DI is extremely strong that they are not vulnerable to any dumping and injury in the event of expiry of present duties on subject countries.
- li. The imports from subject countries did not create any volume effect on the DI which is evident in the increases in key volume parameters such as production, sales etc. The NSR of the DI increased over the years whereas the COP declined. This shows the DI is enjoying strong pricing power and in fact the pricing behavior is highly monopolistic. The imports are, thus, not creating any adverse effect on the price as well of the DI. The positive price undercutting is only on paper and such positive price undercutting is the result of very high price charged by the DI.
- lii. It can be seen that profitability of the DI moved from 100 basis points in the base year to 300 points in the POI and ROCE moved from 100 basis points in the base year to 160 points in the POI. Such increases should be seen as a 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.
- liii. The ROCE earned by the DI though declined over the 2 previous years on the trend line, the actual ROCE percentage still remain exorbitantly high rendering the fall in trend deceptive and meaningless. The Authority permits 22% ROCE for the purpose of NIP and our understanding is that the DI is earning an average ROCE in the range of 25% to 35%. This is evident in the order of the Authority dated 5.4.2018 concerning Soda Ash from Russia and Turkey matter wherein the Authority found ROCE of 29% realized by the DI during April 16 to Sep 2017. The profit margin was 41% and company like Nirma earned 58% of profit margin. These levels of ROCE and profit margin are not a normal situation and clearly show extreme level of profits earned by the DI.
- liv. The DI is in fact seeking protection for such extra ordinarily high ROCE earned by misusing the ADD in force to overcharge the users and continued protection to maintain such profit level is not the intended purpose of ADD. The distortion which that was found earlier is totally absent now and the DI is well placed to compete with imports.

- iv. The imports from subject countries declined in the post POI which should be read along with our previous submission that imports in POI were necessitated due to demand supply gap as well. This shows absence of likely increase in import volume.
- lvi. M/s Nirma Ltd.'s related company in USA is involved in manufacturing and export of the subject goods to India. Nirma's related US company had exported the subject goods during 2014-15 and 2015-16.
- lvii. Nirma's related company had exported significant quantities of the subject goods to India during 2014-15 and 2015-16.
- lviii. Applying literal interpretation of Rule 2(b), Nirma should be excluded for standing examination under Rule 2(b) read with Rule 5(3) of the AD Rules.
- lix. The reason for excluding M/s Tata Chemicals Ltd. from the standing analysis seems to be that Tata has a related company in Kenya which had exported the subject goods to India during the injury period. The same standard should also be applied to Nirma, as it has a related company in USA that had exported the subject goods during the injury period.
- lx. When Nirma is excluded from standing analysis, the remaining Petitioner M/s DCW Ltd. will no longer have standing as its share in total Indian production will fall way below 25%.
- lxi. Dumping margin due to imports from China PR, the EU, Pakistan, Iran and Ukraine was negative during the POI. Also, dumping margin due to imports from Kenya during the POI was de-minimis. Injury margins were also negative for all subject countries except USA.
- lxii. Even though dumping margins seems to be positive for imports from Iran and USA, the weighted average dumping margin for the subject countries is negative in this case because dumping margin for five out of seven subject countries is either negative or de-minimis.
- lxiii. Similar logic is extended to injury margins. Even though injury margin was positive for USA, the weighted average injury margin for all the subject countries was negative during the POI.
- lxiv. The selling price of the domestic industry is much higher than their non-injurious price.
- lxv. It is evident that imports of the subject goods were not dumped and consequently did not cause any injury to the domestic industry during the POI.
- lxvi. This is a strong indicator that there is no likelihood of continuation of dumping and injury or likelihood of recurrence of dumping and injury if anti-dumping duty were to be revoked.
- lxvii. Therefore, even though market share of imports from the EU, Pakistan, Ukraine, Iran and USA increased during the injury period, there was no overall impact on the performance of the domestic industry.
- lxviii. Imports from China PR, the EU, Kenya, Pakistan and Ukraine were un-dumped during the POI. Such un-dumped imports could not cause any injury to the domestic industry. This is established from the fact that injury margins were negative for China PR, the EU, Kenya, Pakistan, Iran and Ukraine.

- lxix. Domestic industry's installed capacity, production, domestic sales and capacity utilisation have all improved over the injury period.
- lxx. Average inventories increased during the injury period in line with the increase in installed capacity and production of the domestic industry and decreased during the POI.
- lxxi. The profitability of domestic industry in terms of profit before tax and interest, cash profit and return on investment have remarkably increased in the POI as compared to the base year.
- lxxii. There was decline in the number of employees during the POI as compared to the base year 2013-14 and productivity remarkably increased during the POI as compared to the base year. Wages also increased during the POI in comparison to the base year 2013-14.
- lxxiii. Growth of the domestic industry was positive in terms of improvement in production, sales, profit before tax and interest, cash profit and return on investment during the POI.
- lxxiv. Domestic industry has enhanced its capacity of production of the subject goods in the year 2015-16 and the POI.
- lxxv. 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.
- lxxvi. Cost of sales of the domestic industry decreased during the POI as compared to the base year. The selling price of the domestic industry also increased during the injury period and has been independent of the landed prices of imports.
- lxxvii. The landed values of imports from China PR, the EU and USA have increased during the POI as compared to the base year. The landed values of imports from Kenya and Pakistan during the POI have remained the same. The landed values of imports from Iran and Ukraine have declined during the POI as compared to the base year.
- lxxviii. Imports of the subject goods increased because of sharp gap in demand and supply of the subject goods in India. This increase did not impact the selling price of the domestic industry.
- lxxix. Profitability of the domestic industry increased almost three-times during the POI when compared with the base year 2013-14, and the selling price is higher than their non-injurious price.
- lxxx. No evidence of correlation between increase in imports and shift in consumer preference to imported goods.
- lxxxi. The subject goods have users in detergent as well as glass industry, which use the subject goods on a large scale.
- lxxxii. With Indian Rupee continuously depreciating against the US Dollar during the POI and post POI period 2017-18, it had become more and more expensive to import the subject goods.
- lxxxiii. 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.

- lxxxiv. In the post POI period 2017-18, the volume of imports of the subject goods declined by 2.5% in comparison to the POI.
- lxxxv. Trade journals cannot be relied upon in anti-dumping investigations, as per Secretary (Revenue), GOI v. Dyestuffs Manufacturers Association of India, 2015 (322) ELT 3 (SC). IHS Chemical journal data submitted by the Petitioners must be disregarded.
- lxxxvi. The domestic sales of the domestic industry increased to 115 indexed points over the injury period.
- lxxxvii. 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.
- lxxxviii. The mere fact that the Petitioners managed to expand their sales in India despite the alleged price undercutting demonstrates the absence of injury.
- lxxxix. Such reasoning is supported by the the Truck and Bus Tires Case, where the imposition of anti-dumping duty was annulled by Hon'ble CESTAT on the basis that the injury findings of the Designated Authority were flawed, and that maintenance of sales volume would have been hard if there was price undercutting and underselling.
- xc. Imports of Soda Ash are no longer subject to anti-dumping duty, as the anti-dumping duty lapsed on 2 July 2018.
- xc. Since the anti-dumping duty on the subject goods has already lapsed on 2 July 2018 and the sunset review is not yet over, any prospective levy of anti-dumping duty would run afoul of the judgment in Forech India Limited v. The Designated Authority & Others, W.P.(C) No. 4810 of 2014 and thus, would be illegal.

### **Examination by the Authority**

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

- i. As regards the submission that the Authority should disclose essential facts that form the basis of its findings and conclusion, it is observed that the Authority had disclosed all essential facts under consideration in terms of Rule 16 of the AD Rules to all the parties concerned.
- ii. As regards the submission that the Authority should disclose the non-injurious price and its basis, it is observed that the Authority had disclosed the same to the domestic industry in terms of Rule 16 of the AD Rules.
- iii. 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.
- iv. 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 at appropriate places in the present findings.
- v. As regards the submission that there are stark differences in the dumping margins determined in the petition and disclosure statement, it is observed that the Authority has conducted dumping margin analyses as per the AD Rules and the same have been disclosed to all interested parties. No party has established how the Authority's

dumping margin determination is inconsistent with the AD Rules. As regards the submission that VAT adjustment should be made in the ex-factory export price for China PR, it is observed that the Authority has made the applicable VAT adjustment in determining ex-factory export price for China PR.

- vi. As regards the submission that transportation cost should form part of the NIP, it is observed that as explained at appropriate places in the present findings, the Authority has determined NIP as per Annexure-III to the AD Rules. The Authority has compared NIP and landed value at the same level of trade.
- vii. As regards the submission that imports of the subject goods shall increase in the event of cessation of anti-dumping duty, it is observed from the analysis of import volume for post-POI period 2017-18 that imports of the subject goods declined by 2.5% in comparison to 2016-17. Analysis of other economic parameters do not show that dumping and injury are likely to continue or recur if the anti-dumping duty on the subject goods were to be revoked.
- viii. 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 during the injury period including the POI in terms of profit, ROCE, capacity expansion, production and sales. The selling price of the Petitioners was found to be much higher than the NIP of the Petitioners. There is no price suppression and price depression. Dumping margin was found to be de-minimis or negative for China PR, the EU, Kenya, Pakistan and Ukraine. Injury margin was found to be negative for China PR, the EU, Kenya, Pakistan, Iran and Ukraine. Weighted average injury margin was negative for all the subject countries. Imports of the subject goods declined by 2.5% during the post-POI period. The Petitioners have not been able to establish that dumping causing injury is likely to continue or recur in the event anti-dumping duty were to be revoked on the subject goods. Buoyed by the significant improvement in the performance of the Petitioners, fresh capacities to the tune of 10 Lac MT are either already commissioned (by Nirma and GHCL) or are at the verge of getting commissioned by other Indian producers, as has been conceded by the Petitioners. Petitioners have further conceded that 20 lacs MT 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 incurring significant cost in capacity expansion.
- ix. 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.
- x. 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.
- xi. 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 Authority, 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. In any case, the post POI import data was placed in the public file and all the interested parties could have accessed it after following the due procedure.

- xii. As regards the submission that the Authority cannot legally recommend continuation of anti-dumping on the subject goods and no notification can be issued with retrospective or prospective effect, it is observed that under the Customs Tariff Act, 1975 and AD Rules, the final decision to impose or not to impose anti-dumping duty lies with the Central Government.

## **O. Conclusions and Recommendations**

89. 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 during the injury period including the POI in terms of profit, ROCE, capacity expansion, production and sales.
- iii. The selling price of the Petitioners was found to be much higher than the NIP of the Petitioners.
- iv. There was no price suppression and price depression.
- v. Dumping margin was found to be de-minimis or negative for China PR, the EU, Kenya, Pakistan and Ukraine.
- vi. Injury margin was found to be negative for China PR, the EU, Kenya, Pakistan, Iran and Ukraine. Weighted average injury margin was negative for all the subject countries.
- vii. The Petitioners have not been able to establish that dumping causing injury is likely to continue or recur in the event anti-dumping duty were to be revoked on the subject goods.
- viii. Capacity, production, domestic sales and overall profitability of the industry do not indicate existence of injury or a deteriorated economic condition.
- ix. The factors submitted by the Petitioners on likelihood of recurrence of injury on withdrawal of ADD are not supported by the price realisations and price trends of the subject goods during the POI.
- x. Due to significant improvement in the performance of the Petitioners, fresh capacities to the tune of 10 Lac MT are either already commissioned (by Nirma and GHCL) or are at the verge of getting commissioned by other Indian producers, as has been conceded by the Petitioners.
- xi. Capacity enhancements of 20 lacs MT are being planned at this stage because the Indian market for the product has remained viable.
- xii. ROCE of the Petitioners has remained very high despite incurring significant cost in capacity expansion.

90. The Authority on account of the aforesaid reasons concludes that continuation of anti-dumping duty is not warranted and accordingly does not recommend extension of anti-dumping duty on the imports of subject goods from the subject countries.

**P. FURTHER PROCEDURE**

91. 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