

**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**  
**(DIRECTORATE GENERAL OF ANTI-DUMPING &**  
**ALLIED DUTIES)**

**NOTIFICATION**

NEW DELHI, the 21st September, 2002

**PRELIMINARY FINDINGS**

**Sub:** Anti-Dumping Investigation concerning imports of Caustic Soda from People's Republic of China and Korea RP.

**No.14/10/2002-DGAD** - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

**A. PROCEDURE**

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

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Alkali Manufacturers Association of India (AMAI) (hereinafter referred to as petitioner) on behalf of the domestic industry, alleging dumping of Sodium Hydroxide commonly known as Caustic Soda (hereinafter also referred to as subject goods) originating in or exported from People's Republic of China and Korea RP (hereinafter referred to as subject countries). The petition was also supported by M/s DCW Limited, Mumbai, M/s Gujarat Alkalies & Chemicals Limited, Vadodara, Gujarat, M/s Gujarat Alkalies, Dahej, M/s Search Chem Industries Limited, Mumbai, M/s Indian Rayon and Industries Ltd., Veraval, Gujarat, M/s Grasim Industries, Nagda, M.P., M/s SIEL Chemical Complex, Patiala, Punjab, M/s Bihar Caustic & Chemicals, Ltd., Jharkhand, M/s Jayshree Chemicals Limited, Orissa, M/s Andhra Sugars Limited, Tanaku, Bilt Chemicals, DCM Sriram, New Delhi and Punjab Alkalies & Chemicals, Chandigarh.
- ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.

- iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from People's Republic of China and Korea RP. The authority notified the Embassies of People's Republic of China and Korea RP in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with the sub-Rule 5(5) of the Rules.
- iv. The Authority issued a public notice dated 14.5.2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom Code 281511 and 281512 of Schedule I of the Customs Tariff Act, 1975 (28151101, 28151102 and 28151200 of ITC) originating in or exported from People's Republic of China and Korea RP.
- v. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by petitioner) and gave them an opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):
- vi. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- viii. The Authority provided a copy of the petition to the known exporters and the Embassy of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential petition was also provided to other interested parties, wherever requested.
- ix. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
  - 1. M/s Hanwha Chemical Corporation, Korea RP
  - 2. M/s Shanghai Chlor Alkali Chemical Co. Ltd., PR China
  - 3. M/s Tricon Energy Limited, USA
- x. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation in accordance with **Rule 6(2)** with a request to advise all concerned exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the known exporters was also sent to the Embassy of the subject countries in accordance with Rule 6(3).

xi. A questionnaire was sent to the following known importers/user associations of the subject goods in accordance with Rule 6(4):

1. M/s Abhey Chemicals Ltd., Baroda
2. M/s Albright Wilson Chemical Ltd., Mumbai
3. M/s Arvind Mills Ltd., Ahmedabad
4. M/s Birla Cellulose Ltd., Bharuch
5. M/s Central Pulp Mills Ltd., Delhi
6. M/s Deepak Nitrite Ltd., Nandesari
7. M/s Godrej Soaps Ltd., Mumbai
8. M/s Gujarat Electricity Board, Vadodara
9. M/s Gujara Narmada Fertilizers Co. Ltd., Bharuch
10. M/s Gujarat State Fertilizers & Chemicals Ltd., Vadodara
11. M/s Hindustan Lever Ltd., Mumbai
12. M/s ICI India Ltd., Valsad
13. M/s Indian Farmer Fertilizers Coop. Ltd., Gandhinagar
14. M/s Indian Oil Corporation Ltd., Vadodara
15. M/s Indian Petrochemicals Corporation Ltd., Vadodara
16. M/s Jaysynth Dyechem Ltd., Mumbai
17. M/s Link Pharma Ltd., Baroda
18. M/s Meghmani Organics Ltd., Ahmedabad
19. M/s Narmada Chematur Petrochemicals Ltd., Bharuch
20. M/s Nirma Ltd., Ahmedabad
21. M/s PAB Chemicals (P) Ltd., Baroda
22. M/s Rama News Prints & Papers Ltd., Surat
23. M/s Rubamin Ltd., Baroda
24. M/s SABERO Organics Ltd., Mumbai
25. M/s Torrent Gujarat Bio-tech Ltd., Baroda
26. M/s Transpek Industries Ltd., Vadodara
27. M/s National Alumunium Ltd., Bhubaneswar, Orissa
28. M/s C.J. Shah and Company, Mumbai
29. M/s Cyanides & Chemicals Company, Mumbai
30. M/s Demosha Chemicals Limited, Mumbai
31. M/s Transpek Silox Industires Limited, Gujarat
32. M/s Deepak Nitrite Limited, Pune
33. M/s Hitsu Industries Ltd., Gujarat

Response/information to the questionnaire/notification was filed by the following exporters/producers:-

1. M/s Hanwha Chemical Corporation, Korea RP
2. M/s Shanghai Chlor Alkali Chemical Co. Ltd., PR China

3. M/s Tricon Energy Limited, USA

Response/information to the questionnaire/notification was filed by the following Importers/user Associations.

1. M/s Deepak Nitrite Limited, Pune
2. M/s Transpek Silox Industries Limited, Gujarat
3. M/s National Aluminium Ltd., Bhubaneswar, Orissa
4. M/s Birla Cellulose Ltd., Bharuch

xii. Information regarding injury was sought from the petitioner(s), which was also furnished by the petitioner. The injury parameters of the following domestic producers were furnished:-

1. M/s DCW Limited, Mumbai
2. M/s Gujarat Alkalies and Chemicals Ltd., Vadodara
3. M/s Gujarat Alkalies and Chemicals Ltd., Dahej
4. M/s Search Chem Industries Ltd., Dahej
5. M/s Grasim Industries
6. SIEL Chemicals Complex, Patiala, Punjab
7. M/s Bihar Caustic & Chemicals Ltd., Bihar
8. M/s Jayshree Chemicals Ltd., Orissa
9. M/s Shriram Alkali & Chem.
10. M/s Andhra Sugars Ltd., Kovvur Unit
11. M/s Andhra Sugars-Saggonda Unit

xiii. Additional information from M/s Hanwha Chemical Corporation, Korea RP was also sought, which was provided.

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

Cost investigation was also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner. The cost of production data of the following companies were considered and examined appropriately:--

1. M/s DCW Limited, Mumbai
2. M/s Gujarat Alkalies and Chemicals Ltd., Vadodara
3. M/s Gujarat Alkalies and Chemicals Ltd., Dahej

4. M/s Search Chem Industries Ltd., Dahej
  5. M/s Grasim Industries
  6. SIEL Chemicals Complex, Patiala, Punjab
  7. M/s Bihar Caustic & Chemicals Ltd., Bihar
  8. M/s Jayshree Chemicals Ltd, Orissa
  9. M/s Shriram Alkali & Chem.
  10. M/s Andhra Sugars Ltd., Kovvur Unit
  11. M/s Andhra Sugars-Saggonda Unit
- xv. \*\*\*\*in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xvi. The last date of submission was 24th June, 2002. On request of interested parties, extension of time was granted upto 10th July, 2002. Response of M/s Shanghai Chlor Alkali Chemical Co. Ltd., exporter from PR China was received on 22nd July, 2002 which has also been considered by the Designated Authority.
- xvii. Investigation was carried out for the period starting from 1st April, 2001 to 31st March, 2002 i.e. the period of investigation (POI).

## **B . VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

### **1. PETITIONER'S VIEWS**

#### **a. PRODUCT UNDER CONSIDERATION**

- i. The name of the product being dumped into the Indian market is Sodium Hydroxide generally known as Caustic Soda. Caustic Soda is chemically known as NaOH. It is an Inorganic Chemical classified under Chapter 28 of the Custom Tariff Act. Caustic Soda is a soapy, strongly alkaline odourless liquid widely used in diverse industrial sectors, either as a raw material or as an auxiliary chemical. It is mainly used in the manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminum, cotton, textiles, toilet and laundry soaps, detergents, dyestuffs, drugs and pharmaceuticals, vanaspati, petroleum refining etc. Caustic soda is produced in two forms- lye and solids. Solids can be in the form of flakes, prills, granules or any other form. All forms of caustic soda are the subject matter of the present petition.

Caustic Soda causes burn on contact with body tissues. Contact with eyes causes severe damages, swallowing results in severe injury. Caustic soda mist

causes momentary stinging sensation in nose and throat. It reacts with strong acid very violently under boiling phenomena.

- ii. Caustic Soda is a basic product very widely used in diverse industrial sectors, either as a raw material or as an auxiliary chemical. It is mainly used in the manufacture of pulp and paper, newsprint, viscose yarn, staple fiber, aluminum, cotton, textiles, toilet and laundry soaps, detergents, dyestuffs, drugs and pharmaceuticals, vanaspati, petroleum refining.
- iii. Three technologies are available world over for production of Caustic Soda. The Indian industry is producing Caustic Soda using all the three processes. The three processes are:
  - Mercury Cell Process
  - Diaphragm Process
  - Membrane process
- iv. Even though all three technologies are being used in India for manufacturing Caustic Soda, Mercury Cells technology and Membrane Cells technology are being widely used in India.
- v. Indian Caustic Soda industry has been largely able to meet entire requirement of Caustic Soda in India. The Indian industry was self-sufficient in its requirement ever since 1975. As mentioned in previous para, Caustic Soda has been in the list of imports permitted under OGL particularly for actual users since 1980-81. The imports were, however, limited because of the pricing policy of the Indian industry. The capacities installed by the producers in China and Korea are far higher than the requirement in their own country. Further, with the imposition of anti-dumping duties on a number of other countries, the producers in the subject countries are finding it lucrative to export to India. The excess capacities in these Countries have put tremendous pressure on the producers to look for markets outside their country. Resultantly, the exporters from China and Korea have quoted very low prices for exports to India. It would also be relevant to point out that the producers in these countries have at times not directly offered for supplies to India. Substantial volumes have been offered by traders in third countries for supply of Caustic Soda originating in these Countries. The offers being by traders, naturally, these traders have taken care of their margins also. The prices quoted by the producers in these Countries are, therefore, still lower. The petitioners believe that the prices offered are far below the associated cost of production. Thus, the exporter from China and Korea has resorted to dumping of Caustic Soda in the Indian market.

#### b) DOMESTIC INDUSTRY

- i. DCW Limited a multi product company involved in production of various products such as Soda Ash, Caustic Soda (Lye, Solid and flakes), Calcium Chloride, Soda Bicarbonate, Aluminum Bicarbonate, Salt etc.
- ii. Gujarat Alkalies & Chemicals Limited is also a multi- product company involved in production of wide range of products which include Caustic Soda, Chlorine Gas, Hydrochloric Acid, Hydrogen gas, Sodium Cyanide, Sodium Hydrochloride, Sodium Ferrocyanide, Methyl Chloride, Chloroform, Carbon Tetrachloride, Potassium Hydroxide, Potassium carbonate, Phosphoric Acid, Hydrogen Peroxide etc.
- iii. Search Chem. is a subsidiary of United Phosphorus Limited. SCIL is a multi product company involved in production of various chemicals such as Yellow Phosphorus, Iso Propyl Bromide, Thio di Phenol, Methylene Glutaronirite, Acetyl Bromide, Para Nitro Benzyl Alcohol and Triphenyl Phosphorus Thionate etc. The company is also involved in production for Power i.e. Electricity.
- iv. Grasim Industries Limited is a flagship company of Aditya Vikram Birla Group. Grasim Industries Limited is a multi product, multi location and well diversified company involved in production of various products such as Viscose Staple fibre, White Cement, Sulphuric Acid, Carbon Domestic industry Sulphate, Rayon grade pulp, Paper, Stable Bleaching Powder, Man Made Fibre Fabrics, Man Made Fibre Yarn, Gray Cement, Articles of Cement Concrete, Industrial Machinery, Poly Aluminum Chloride, Chloro Sulphonic Acid, and Sponge iron, etc.
- v. Andhra Sugars Limited is a multi product, multi location company involved in production of Sugar, Acetic Acid, Industrial Alcohol's, Sulphuric Acid, Superphosphate, Chlorosulphonic Acid, Oleum, Aspirin, Carbon Dioxide, Alum, Diffusers, Chemical Equipment, Sugar Factory Boiling House Equipment's, Unsymmetrical Dimethyl Hydrazine, Cotton Seeds etc, Richburn and oil cakes processing, Refinery, Hydrogenation of oils, cattle and poultry feed, wind power, electricity, etc.
- vi. Bihar Caustic, Jayshree Chemicals, and SIEL (Chemical Complex) are involved in production of Caustic Soda and it's by-products only.

c) LIKE ARTICLE

- i. There is no difference in the Caustic Soda produced by the Indian industry and imported from China and Korea. Caustic Soda produced by the Indian industry in general and the participating companies in particular is comparable in terms of characteristics such as physical & chemical characteristics, raw material composition, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and

commercially substitutable. The consumers have used the two interchangeably. Caustic Soda produced by the domestic industry should be treated as like article to Caustic Soda imported from subject countries within the meaning of the anti-dumping Rules.

- ii. As discussed earlier in this petition, world-over, Caustic Soda is being produced by three processes. Indian industry is also producing Caustic Soda using all the three processes. However, difference in process does not mean difference in the product in terms of its physical & chemical properties, product specifications, marketing, pricing, consumer perceptions, tariff classification, etc.

d. DUMPING

- i. Producers in from China and Korea are involved in dumping the goods in India. The dumping has been largely resorted through traders in third Countries. However, the supplies were planned directly from these Countries.
- ii. Caustic Soda is a basic inorganic chemical and is used by a number of industries as raw material. It is primarily traded in bulk quantity and, therefore, the shipments are normally directly from the countries of origin. However, in the instant case and particularly in the tender floated by NALCO for purchase of very significant volumes, traders in third Countries have participated wherein the supplies have to be made directly from the subject countries.
- iii. NALCO had recently floated a tender for 100000 MT of Caustic Soda. A number of exporters participated in the tender floated by NALCO. The quantity of the tender floated is very significant.
- iv. Exporters from subject countries as well as other country against which investigation is under progress or which are now attracting duties participated in the tender. Details of the tender floated, exporter's name, agent's name, quantity offered, price offered, revised price offered, negotiated price at which order has placed by NALCO, landed value of imported material etc. are given in the "tender detail"..
- v. It may be seen that NALCO has placed its orders for 87000 MT, which is more than combined imports of Caustic Soda in a year in India.
- vi. In addition to China and Korea RP, exporters and producers from Indonesia are also dumping Caustic Soda in the Indian market. It is the market information of the domestic industry that around 3500 MT material is shortly landing the custom port in India. It would be worthy to mention here that earlier the domestic industry had filed a petition for imposition of Anti Dumping Duty *inter-alia* on Indonesia. However, the investigations were not initiated against Indonesia. Getting benefit of the situation i.e. imposition of Anti Dumping Duty against some other countries and no duty on imports from



- Indonesia, the producers and exporters from Indonesia have now found this a good opportunity to dump the material at times of serious decline in the export price from several countries and faced with surplus unutilized capacity.
- vii. Efforts were made to get information on prices at which Caustic Soda is being sold by the exporters from Korea RP in their domestic market. We have also made efforts to get price lists of the exporters or price evidence for their exports to other countries or any other information from the published sources. We have been able to get information about the prices in domestic market of Korea RP from a leading international Journal. Reliance is being placed on the information published in the Chlor Alkali in this regard.
  - viii. Chlor alkali regularly reports the prices of Caustic Soda in the domestic market in Korea . Thus, considering the prices given in the Chlor Alkali, calculation of normal value in Korea RP have been done.. The normal value on this basis comes to US \$ 227 pmt in case of Korea RP.
  - ix. Massive dumping of Caustic Soda in the Indian market is causing material injury to the domestic industry. Further, the order placed by NALCO would cause further material injury to the domestic industry, as may be seen from the para on "Evidence of Injury".

e) INJURY

- i. It is understood that the capacity of producers in subject countries is far in excess of the domestic demand in their respective markets. The huge volume of material offered to NALCO is a clear evidence in this direction. The producers are under tremendous pressure to sell the material. Vast Indian market is naturally quite lucrative to the exporters at the cost of Indian Producers. It is understood that capacity of Chinese Industry alone is more than 8 million MT, which is much more than the demand of Caustic Soda in China.
- ii. The exporters are understood to have booked orders for significant quantity through their Indian agent/s. In fact, orders for 87000 MT have already been placed by NALCO, which alone is more than average annual imports of Caustic Soda in India as also capacity of a number of individual producers in India.
- iii. Our market intelligence suggests that a lot of dumped material is under transit and shipment is expected very shortly. Should the present trend of order booking continue, the domestic industry would loose significant sales.
- iv. The landed price of the imported material is significantly below the selling prices of the domestic industry. The volume of material for which order has booked is very significant in terms of demand of the subject product in India. Moreover, what should be appreciated is that should the producer in subject

countries continue to sell the material at present prices in the Indian market, the domestic industry would not be able to hold even the present prices.

- v. The landed price of imports is significantly below the full cost of production and fair selling price of the domestic industry. The domestic industry would be forced to face cash losses in case it has to sell at matching prices. The order placed by NALCO has had severe depressing effect on the prices in the market, more so in the post proposed investigation period.
- vi. The dumping margins are very significant. The price at which material is being exported does not permit recovery of even cost of production leave alone profits on huge investments.
- vii. In the instant case:-
  - 1. There is a history of dumping. Earlier the domestic industry has been injured from dumping of Caustic Soda in India by the exporters/ producers from Saudi Arabia, USA, Japan, Iran and France. The domestic industry requested the Designated Authority to impose Anti Dumping Duty. The Designated Authority, after a detailed investigation, recommended imposition of Anti Dumping Duty, which have since been imposed by the Central Government. After imposition of Anti Dumping Duty against these countries, producer/exporter from Qatar started dumping Caustic Soda in India. The domestic industry requested the Designated Authority to impose Anti Dumping Duty against Qatar also. The Designated Authority after preliminary investigations, recommended imposition of provisional duty. After initiation of the investigation against Qatar, producers and exporters from subject countries started dumping the material. Thus, there is a clear history of dumping of Caustic Soda in India by now.
  - 2. The importers are well aware that the price at which the material is being exported from subject countries is a dumped price as the price is significantly below the reference price fixed by the Designated Authority in the earlier investigation. Evidently, the importers and consumers are well aware that the material is being imported at dumped prices;
  - 3. The injury is being caused by the producers/exporters from subject countries in a short period. Immediately after imposition of duty against Saudi Arabia, USA, Japan, Iran, France and Qatar the producer in subject countries started dumping. Our market intelligence suggests that the exporter have booked huge orders, which are under process of exportation.
  - 4. Sales to the tune of about 87,000 MT have been lost by the domestic industry in a single order;
- viii. The Sales volumes of the participating companies as provided to the Authority indicate that sales of the participating companies, which has been increasing till

2000-01 declined in the April-December 2001. Further, the sales volumes are likely to remain low, considering the significant volume of sales lost by the domestic industry.

- ix. The imports of Caustic Soda from the subject countries have increased dramatically. From a situation of off-and-on imports, the imports made by NALCO alone would be more than the combined volume of imports from all the countries and capacities of many a producers in the Country. The volume of imports is contained in Proforma IV-A. Further, dramatic increase in imports has resulted in significant increase in share of imports in (a) imports of Caustic Soda in India; and (b) demand of Caustic Soda in India.
- x. Production of the participating companies are given in Proforma IV A. It may be seen that the production of the participating companies, which has been increasing till 2000-01 declined in the April-December 2001. Moreover, the petitioners submit that the change in the production level alone may not indicate injury to the domestic industry. More important parameter is the price at which offers for sale have been made by the exporters from the subject countries and the prices at which the domestic industry has been forced to sell or may be forced to sell in view of the dumped imports from the subject countries.
- xi. Caustic Soda industry has provided very large-scale employment in the Country. Any sickness in the industry would have crippling effect on the employment.
- xii. The petitioners have lost significant sales due to the dumped imports. The NALCO order lost is a significant loss of sales for the domestic industry.
- xiii. Profitability of the participating companies is given in Proforma A. It may be seen that the domestic industry is making huge losses.
- xiv. Imports of Caustic Soda from Other Countries (excluding countries already attracting anti-dumping duties or countries against which investigation is under progress), are de-minimus or are at a price not causing any injury to Indian industry.
- xv. Demand of the Caustic Soda is increasing continuously. In fact, the demand has registered significant growth over the past five years. The domestic industry has sufficient capacity to meet the requirement of the Country. The changes in the demand have, therefore, not contributed to any injury to the domestic industry.
- xvi. Material injury has been caused to domestic industry from dumped imports from the subject countries. As stated elsewhere in the petition also, the domestic industry is producing Caustic Soda for the several years. The technology adopted by the domestic industry is comparable to the technology adopted by the exporters. There is no significant difference in the manufacturing process. . It is submitted that the lowering of prices by the

exporter from the subject countries alongwith the dumped imports from Other Countries (which are already attracting duties are against which the investigations are in progress) is the reason for the present injury to the domestic industry.

## **2. IMPORTER'S VIEWS**

### **1. M/S NALCO**

#### **a) PRODUCT UNDER CONSIDERTION**

- i. **MANUFACTURE OF VALUABLE BY PRODUCTS ALONGWITH CAUSTIC SODA** - The Petition deliberately does not disclose the fact that the process of manufacturing Caustic Soda also leads to the manufacture of Chlorine and Hydrochloric Acid. The Petition itself admits that the Petitioner is engaged in protecting the interests of the domestic producers of not only Caustic Soda but also Chlorine, which goes on to show that there is a substantial monetary benefit obtained from the production of Chlorine. This is neither reflected in the particulars furnished by the Petition with respect to the cost of production being apportioned between the two products nor is the realisation resulting from the Chlorine mentioned therein. It is submitted that the cost realisation of the Chlorine is substantial and any Petition with respect to Caustic Soda would be incomplete without the examining the Chlorine production as regards both determination of dumping and injury. This fact is also important as the description of the domestic industry expressly specifies that all the companies are multi product companies or are engaged in the production of Caustic Soda by products. The implications on the cost of production are dealt with in greater detail subsequently in the present response.
- ii. NALCO verily believes that the Petitioner has also filed a petition for imposing Anti Dumping Duty on Chlorine. It is further verily believed that the domestic industry has sought to make out a case of dumping and injury therein by attributing the entire production cost towards production of Chlorine. In light of the aforesaid, it is respectfully submitted that the Hon'ble Authority in accordance with its powers under R. 8 of the Anti Dumping Rules, 1995 should seek a declaration on affidavit with respect to Chlorine petition or through such other appropriate means from the Petitioner, in order to verify the accuracy of the information furnished the in present Petition. The Hon'ble Authority has in the past sought such an assurance in the investigations initiated with respect to the import of Iso Propyl Alcohol, Case No. 12/1/ 2000 DGAD.

#### **b. DOMESTIC INDUSTRY**

- i. The inclusion and support of the domestic producers mentioned in the Petition does not disclose the true factual picture with respect to the act solely responsible for the present Petition i.e. the NALCO tender. An examination of the NALCO tender in question (**the Tender**) and the other tenders of NALCO in the past would clearly disclose the absence of any cause of action in favour of the domestic producers specifically supporting in the Petition. The industries expressly supporting the present Petition have not in past participated in the tenders of NALCO due the cost logistics arising from their geographical location. The members of the domestic industry who have participated in the tender process have either insufficient quantities to satisfy the tender quantity or have expressed their inability to transport the quantity. A detailed description of the logistical problems is set out hereinbelow.
- ii. NALCO's annual requirement of Caustic Soda for manufacture of Alumina is approx. 100,000 DMT on 100% NaOH basis. The Caustic Soda is purchased in lye form with approx. 50% NaOH content. As such, total quantity of Liquid Caustic Soda required by NALCO works out to 200,000 MT
- iii. The problem associated with supply of caustic soda to NALCO is that its alumina plant is located at Damanjodi, which is at a higher altitude. Therefore the railway does not allow 4 wheel wagons for dispatch to Damanjodi and thus supply can only be made through 8 wheel wagons with air break system. Such wagons being not available with railway, therefore none of the Caustic Soda domestic manufacturers can supply NALCO by rail.
- iv. Given the peculiar nature of Caustic Soda and as also admitted in Petition i.e. a quantity of Caustic Soda supplied would be twice the amount needed under a tender, at 50% NaOH basis, even supply by road tankers is not an economically viable option. A road tanker can carry only limited quantity of approximately 5 – 6 DMT (10 – 12 Liquid MT Caustic Soda). Therefore, only industries, which are geographically proximate from Damanjodi like M/s. Andhra Sugar, M/s. Rayalaseema (in Andhra Pradesh) and M/s. Jayshree Chemicals in Orissa, are able to use the road route option. Even with respect to the aforesaid industries the quantity supplied are small for reasons mentioned above.
- v. Accepting larger quantity by road is problematic for unloading at plant given the quantity supplied in a tanker. For supply of 2,000 DMT in a month number of tankers to be handled works out to 400 nos. i.e. 16 – 20 tanker a day. As such, accepting more tankers will be physically improbable because for supply by tankers, samples are required to be collected from each tanker and analysed for specification confirmation and weighment. The process of verification is time consuming and involves additional cost for testing.
- vi. The major supply to NALCO comes through the Vizag port from sea, where it has its own Caustic Soda storage tanks to store approx. 30,000 Liquid MT. NALCO uses its own railway tank wagon for transporting Caustic Soda from

Vizag to Damanjodi. As regards supply by sea only 2 domestic suppliers namely M/s. DCW and M/s. SPIC had offered to use the sea route. **It is stated that none of the domestic manufacturers on western coast of India including but not limited to those supporting the Petition have offered to supply Caustic Soda using the sea route to NALCO due to high freight element.** M/s. IPCL had once offered to sell Caustic Soda to NALCO subject to the condition that NALCO should arrange for lifting the same from the IPCL plant, which was not acceptable to NALCO given the logistic problems in transportation mentioned above. It is further stated manufacturers on the western coast either do not have arrangements for shipment by sea or sea freight to Vizag and are unable to supply Caustic Soda to NALCO.

- vii. In light of the aforesaid the Petitioner's true motivation of seeking the support of the domestic producers mentioned is adequately borne out, namely to ride on the shoulders of the industries not actually supplying NALCO and to ensure that the Petition does not suffer from the lack of numbers required to fall within the definition of domestic industry under R. 2(b) of the *Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injur) Rules, 1995 (the Anti Dumping Rules)*. The aforesaid rule sets out the definition of "domestic industry" and requires that the domestic producers filing the Petition should constitute **a major proportion of the total domestic production**. Though the domestic producers constitute a major proportion of the domestic production the definition of domestic industry in the facts and circumstances of the present case would have to be determined in accordance with the proviso to the aforesaid rule under sub clause (ii), which reads as follows:

"Provided that in exceptional circumstances referred to in sub rule (3), of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market would constitute a separate industry if-

- (i) the demand in the market is not in any substantial degree supplied by the producers of the said article located elsewhere in the industry"
- viii. Therefore the investigation of the Hon'ble Authority should be confined to the domestic producers actually participating in the NALCO tenders in the past i.e. from 1994-95 to 2001-2002. The capacity utilisation, cost of production and injury determination should be sought specifically from the aforesaid producers. A table listing out the various domestic producers who have supplied/offered to supply NALCO alongwith the quantity offered is provided on confidential basis.

c) LIKE ARTICLE

- i. It is submitted that the Custom Tariff classification deals with that Caustic Soda under Tariff 2815.11 relating to solid Caustic Soda and 2815.12 relates to liquid Caustic Soda. Though in the present petition under Part-1, Para-3, the petitioner has mentioned that Caustic Soda produced in India are predominantly produced by using Mercury cell technology and Membrane cell technology, but the details of these technologies have not been intentionally furnished in the Petition. Whereas the same domestic producers while filing Anti Dumping petition for imposition of Anti Dumping duty on Caustic Soda imports from Qatar had set out the manufacturing process under both the technologies.
- ii. A perusal of the process description in the earlier petition, discloses that the process of manufacture of Caustic Soda results in the production of three distinct products i.e. Caustic Soda Liquid, Chlorine and Liquid Hydrochloric Acid. It may be mentioned here that for every 1 MT of Caustic Soda manufactured, approximately 0.8 MT of Chlorine is also produced. The Caustic Soda comes out of the process is in liquid form having NaOH concentration of around 47% - 50% and balance is water. Thereafter, liquid Caustic Soda has to be further processed in order to manufacture solid Caustic Soda in the form of Flexes/Pearls. As stated herein above the Petitioner has deliberately not disclosed the fact that the process of manufacture of Caustic Soda, results in the production of two commercially valuable co-products i.e. Chlorine and Hydrochloric Acid. It is further stated that the Petition does not disclose the additional process involved for converting Liquid Caustic Soda to Solid Caustic Soda with the intention to conceal the actual cost of production of Solid and Liquid Caustic Soda and the Petitioner is put to strict proof thereof.

d) INJURY

- i. A perusal of the installed capacity & production status given in the Petition at **Annexure-VIII** it may be seen that the 5 parties who are the only participants in NALCO's tenders, are producing almost around 90% of installed capacities. Further it can be seen that these parties have only offered quantities which can satisfy at an average 50% - 60% of NALCO's requirement and they represent hardly 15% of domestic production. Therefore when the parties who can be affected by NALCO's import, are producing above 90% of their installed capacities and not able to offer quantities required by NALCO, it is hard to believe that import by NALCO can sustain any material injuries to these industries. Further other parties in the petitions having no interest in NALCO's tender and unable to supply due to logistic problem can by no means be affected by NALCO's import. NALCO reserves its rights to file further submissions when such information is furnished by the industries as indicated.

- ii. The imports figure indicated in the Petition with respect to Caustic Soda imports in **Annexure-II** and claimed as being ostensibly based on reports of DGCI&S, are denied as being misleading and are quoted out of context. The imports have been considered taking Solid, Flexes and Liquids together whereas it is submitted that these three products are completely different from each other in all aspects. It is further submitted that the manufacturing process, production cost and selling price for these products are different. Furthermore, even the end uses of these products are different. Therefore, considering all these products under a single head for purpose of determining Anti Dumping Duty is not only misleading but also constitutes a misrepresentation. It is stated that NALCO has been only importing Liquid Caustic Soda. In light of the aforesaid it is submitted that each of these products should be considered separately. Therefore their respective importation effect, prices and dumping margin should also be determined separately. It is further submitted that the solid and liquid Caustic Soda have different uses, pricing, consumer perceptions and tariff classifications and cannot be treated as "like articles" under R. 2(d) of the Anti Dumping Rules, 1995.
- iii. The international price as can be seen from the Chlor-Alkali Report, on which Petition has also placed reliance, shows wide variation in the prices of these products i.e. Solid and Liquid Caustic Soda. For example for the month of April, 2001 in USA the Caustic Soda Liquid price is shown in the range of US\$ 300 – 325 on FOB US Port basis, the Chlorine price under spot market was in the range of US\$ 0 – 40. However, if the pricing position is seen for the month of March, 2002 i.e. the end of investigation period, it shows that the Liquid Caustic Soda price in USA sport market was US\$ 50 – 75 per DMT on FOB US Port basis, whereas the Chlorine spot price was US\$ 80 - 100. Similarly in Europe market, the Caustic Soda price in April, 2001 was in the range of US\$ 325 – 355 per DMT FOB at that time the Caustic Soda Flexes / Pearls price was US\$ 350 – 370 per MT FOB. Whereas in March, 2002, the Caustic Soda Liquid price was in the Europe market was US\$ 90 – 110, whereas Flexes / Pearls price was US\$ 260 – 290 per MT.
- iv. The above figures show that there can be no comparison between the price of solid Caustic Soda with that of liquid Caustic Soda. Even in liquid Caustic Soda there will be variation in price between Mercury process and Diaphragm process and considering all the prices together to arrive at any decision is totally misleading. The above international price trends shows that when the realization from Caustic Soda is high, producers are willing to supply Chlorine at a lower price to meet the Caustic Soda demand. Likewise the situation reverses when there is demand for Chlorine. Chlorine price can go up even upto US\$ 300 per MT and at such time Caustic Soda can be supplied at a lower rate. This happens regularly in the international market since the producer is



interested in total realization i.e. from Caustic Soda, Chlorine and Hydrochloric Acid and from any single product. In light of the aforesaid link between these commercially valuable products Anti Dumping Duty determination can only be done if the prices of all these products are considered to determine whether there is dumping and the resultant injury therefrom in a market. Without this examination, the whole process would lead to an incomplete understanding of the Caustic Soda market, which would result in misleading and incorrect conclusions.

- v. It is submitted that an indigenous producer who participated in the Tender, M/s. DCW and who is also a part of the Petition, had offered an ex-work price of Rs. \*\*\* per DMT. The exchange rate (i.e. Bill Selling Rate ) prevailing on November 9, 2001 was US\$ 1 = Rs.48.38. Therefore, the indigenous ex-work price offered was US\$ \*\*\*. Against this imported landed price considering Custom Duty rate of 35% works out to around US\$ \*\*\* per DMT. Therefore, the imported landed price was much higher than the offered ex-work price of Caustic Soda prevailing in domestic market. The domestic offer because of logistic problems and the higher element of freight for supply mentioned above was not competitive.
- vi. It is submitted that during the period of investigation that the domestic industry was selling Chlorine at ex-work price of approx. Rs. \*\*\* per MT in September, 2001. Therefore, the total realization to Indian manufacturers with Caustic Soda and Chlorine together works out to Rs. \*\*\* per MT, which is much higher than the cost of production of Caustic Soda, Chlorine together. From the above, it is adequately shown that domestic industries has filed the present Petition solely motivated by the desire of higher profit margins due to which they are losing business to overseas parties. Therefore, it is not correct to state that international parties are supplying at much below the normal value as being alleged.
- vii. The Alkali Association represents the Association of Indian Manufacturers of Caustic Soda and Chlorine. Most of these manufacturers have multi-product plant and part of the Chlorine and in some cases 100% Chlorine is utilized by them for manufacture of value added products and they get larger margins by selling Chlorine. For them, Caustic Soda is only a by-product. The very purpose of Anti Dumping Petition by the Alkali Manufacturers is to increase the indigenous price of Caustic Soda in the country. Through Alkali Manufacturers Association these manufacturers have conspired to keep Caustic Soda price at a level, which will be just lower than the imported price of Caustic Soda with Anti Dumping Duty. It may be mentioned here that out of the countries, who are capable of exporting Caustic Soda to India due to Petition by these Alkali Manufacturers Association and due to non-participation of the countries on whom Dumping was alleged, Anti Dumping

Duty have been levied in respect of 5 countries i.e. USA, France, Saudi Arabia, Iran and Japan. Provisionally Anti Dumping Duty has also been imposed from imports from Qatar. With imposition of Anti Dumping Duty from Korea and China almost 90% of exporting countries of the world that can export Caustic Soda will get covered. It may be seen that in March, 2002 when the whole world can buy Caustic Soda at the prevailing market price of US\$ \*\*\* FOB and considering average freight of US\$ \*\*\* from most of the countries of the world to India the landed price would have been US\$ \*\*\* C&F. Against this with Custom Duty of 35% then applicable, the landed price works out to US\$ \*\*\*. Against this the Hon'ble Authority should consider the landed price as US\$ \*\*\* which is arrived at by taking into account the Anti Dumping Duty applicable now. The additional implication per MT over normal international price works out to approx. US\$ \*\*\* per MT with an exchange rate of Rs.48.38 this works out to Rs. \*\*\* per MT. For NALCO's requirement of 100,000 DMT the additional implication will be Rs. \*\*\*. **When any Aluminum Manufacturers in the world can buy at a price of US\$ \*\*\* per DMT with the imposition of Anti Dumping Duty in India, NALCO will be forced to buy at US\$ \*\*\*. This will only make Indian Aluminum Industry non-competitive and will give rise to increase in indigenous price of Aluminum, which will result in import of Aluminum. The Indian Alkali Industries who are already producing almost to the full capacities and their productions are increasing their profit margin are increasing, but inspite of above, they want further profit by imposition of Anti Dumping Duty which is against the object and spirit of India's commitments to the WTO.** There is no injury to indigenous industries and on the contrary this Anti Dumping Duty is solely motivated by the desire of the indigenous manufacturers to join hands and increase the price of Caustic Soda much above their cost of production and gain supra competitive profits. The Designated Authority should look into this game plan of Alkali Association and should reject their Petition in view of misrepresentation, suppression and submission of distorted facts.

#### d) DUMPING

- i. It is incorrect to state that all countries in the world are dumping Caustic Soda into Indian market. The Chlor-Alkali report based on which the Petitioner has endeavored to establish the normal value of the product in countries like China and Korea gives details of price summary on monthly basis as prevailing in international market. The copies of price summary report for the period of investigation i.e. from April, 2001 - March, 2002 is submitted herewith and marked as **ANNEXURE "C"**. A perusal of the report, shows that the prices of liquid Caustic Soda per DMT was in the range of US\$ \*\*\* in USA US\$ \*\*\* in

western Europe, US\$ \*\*\* in eastern Europe in April, 2001 on FOB basis. At that time the export price in Far East was in the range of US\$ \*\*\* per DMT. During the year gradually the Caustic Soda price had started falling and by March, 2002 the Caustic Soda price in USA had come down to US\$ \*\*\* in Western Europe, US\$ \*\*\* in Eastern Europe, US\$ \*\*\* in Far East to US\$ \*\*\* per DMT on FOB basis. This being the nature of variation of price for this product in the whole world, if the domestic price in April, 2001 is considered in a particular country it will give a high value of Caustic Soda whereas the same domestic price in March, 2002 would be drastically different. Since the variation is in the range of 500% – 600% for this product in a period of one year, it will be erroneous to rely upon the figures given by the Petitioner at a particular period are only considered in determining the normal value. It may be appreciated that the normal value in USA is US\$ \*\*\* in April, 2001, the same normal value has become US\$ \*\*\* in March, 2002. **Therefore, in order to find out whether there is any dumping or not, one has to go to the point when the contract for import was finalised and what was the price prevailing at that period in those countries. This is required as the prices changes not only on a month to month basis but also very drastically. Therefore any conclusion drawn on the basis of isolated figures given by Petitioner would be erroneous and not reflect the true Caustic Soda market.**

- ii. The allegations that NALCO's import order of 88,000 DMT placed at a price of US\$ \*\*\* for Membrane / Mercury grade and US\$ \*\*\* for Diaphragm grade is being imported at less than normal value and is therefore being dumped into Indian market is denied as being false and misleading. NALCO invited Global Press Tenders for its annual requirement and the parties submitted the tender on September 28, 2001. The commercial points were clarified and thereafter prices were opened. The price bid opening was held on November 9, 2001. From the pricing summaries given in the Petition, it may be seen that the C&F, Visakhapatnam price offered by parties from Korea, China, Romania, Qatar, Iran in the tender was in the range from US\$ \*\*\*. It may be appreciated that since this tender was submitted in September, 2001, **the international price of Caustic Soda as prevailing in September is relevant as parties participating in the tender consider the prevailing international price and assume the price trend and quotes in the Tender.** Due to logistic reasons, the offers from Far East were more competitive given the freight element. From the Chlro-Alkali report of September, 2001, it may be seen that the prices in Far East was in the range of US\$ \*\*\* per DMT on FOB basis. The freight charges from China and Korea are in the range of US\$ \*\*\* per DMT showing that for the exports from Far East the available international market price on C&F India ports will works out to US\$ \*\*\* per DMT. Further the trend of price was

downward for Caustic Soda liquid during that period whereas the Chlorine prices had started picking up. Considering this, the price finalized in NALCO's tender is purely as per the prevailing international price and therefore cannot be considered as a price below the normal market price.

## **2. M/S Grasim**

- i. M/s Grasim has submitted that they have never imported Caustic Soda from any country till now rather have purchased Caustic Soda from Indian manufacturers.

## **3. M/s Transpek Industry Limited**

### **a) INJURY & OTHER ISSUES**

- i. We would like to inform you that we do not use Caustic Soda in our manufacturing activities. However, we would like to present the indirect effect of dumping of Caustic Soda in Indian market.
- ii. We use Chlorine in large quantities. Chlorine is manufactured by plants like GACL and is a co-product with Caustic Soda.
- iii. As a result of dumping of Caustic Soda by manufacturers in China and Korea, the manufacturers of Caustic Soda and Chlorine have to reduce their prices of Caustic Soda to face the competition. The loss incurred by them in disposal of Caustic Soda will have to be compensated by them by a corresponding increase in price of Chlorine.
- iv. As pointed out above, we shall be forced to pay higher prices of Chlorine which is consumed by us in large quantities. In fact, the prices of Chlorine have been revised upwards from Rs.4750/- per tonne in January to Rs.9350/- per tonne in June, 2002.
- v. It will be observed that correspondingly prices of Caustic Soda have decreased from Rs.12810/- per tonne in January, 2002 to Rs.8960/- per tonne in June, 2002. Some of the products like Thionyl Chloride, in which Chlorine is used, are being exported by us. These exports are likely to suffer as the prices of our product in international market would not be competitive.
- vi. We therefore strongly plead your taking suitable action by imposing anti dumping duty on Caustic, which will go a long way in stabilising the costs of Caustic and Chlorine to a natural level, and thus help Chlorine based industries situated in and Gujarat.

## **4. M/s Deepak Nitrite Limited, Nandesari**

### **a) INJURY & OTHER ISSUES**

- i. We consume Caustic Soda Lye in manufacture of our product, Sodium Nitrite. We are principal producer of this material in India and also export around 10-15% of our production.
- ii. Caustic Soda Lye is one of the very basic ingredients which is used by almost all chemical industries, and hence any action which might increase the price, will have a cascading effect on the price and competitiveness of range of chemicals. It will reduce the competitiveness of Indian end-user industry vis-à-vis given material from abroad.
- iii. Manufacturing of Caustic Soda Lye concurrently produces chlorine, hydrochloric acid and hydrogen. Overall competitiveness of chloro-alkali industry depends on availability of balanced demand for this basket of products as well as limitations in storage of chlorine and hydrogen. Depending on overall industrial growth, different regions have different demand pattern, and hence price realisation of Caustic Soda Lye alone should not be considered as deciding factor. One should rather check overall price for baskets of products, i.e. main product and co-products, in an exporting country to determine whether exporter has dumped material to India.
- iv. The petitioner has claimed Normal Value of subject goods in Korea RP on the basis of selling price i.e. export price. However, this appears to be hypothetical because to the best of our knowledge there is negligible import of Caustic Soda Lye into India from Korea.

While announcing the Normal Value of China, the Authority has considered the price of Caustic Soda Lye only and the prices of other products such as chlorine, hydrochloric acid and hydrogen does not appear to have considered.

- v. The petitioners have indicated CIF price as per the DGCI&S data wherein they have referred to the tender floated by NALCO. NALCO is the largest consumer of Caustic Soda Lye in the country and the tender price received by them cannot be considered as the reference price for this purpose.
- vi. Principal cost of components in the manufacture of Caustic Soda Lye and its co-products is cost of electricity. Majority of countries names in the investigation have significantly lower cost of Electricity, i.e. almost 1/3rd to 1/5th of Indian cost, enabling them to sell the product at lower price as compared to domestic manufacturers.
- vii. Capacity set up in India are far in excess of Indian demand, which leads to poor utilisation. It should be noted that percentage of imports as such is insignificant and, in fact, is reducing in last three years. The price of imported product is not falling, but has more or less stabilised. It should be noted that Caustic Soda Lye is being imported from various countries, i.e. from continents of Europe, America and Asia. The price levels of Caustic Soda Lye exported to India are thus a reflection of overall competitiveness of Caustic Soda Lye industry

abroad based on economy of scale afforded by large size plants, cheap power and other raw material as well as matching demand pattern for the basket of products.

- viii. Under these circumstances, we request the Designated Authority to kindly examine the issues in overall perspective while ascertaining the nature of dumping, if any.

### **3. EXPORTER'S VIEWS**

#### **1. M/S TRICON ENERGY LIMITED, USA**

##### **a) STANDING OF THE PETITIONER**

- i. The petitioners claim that the petition is being filed by M/s Alkaline Manufacturers Association of India. Further in the petition, "participating companies" data is produced for the injury analysis.
- ii. It is respectfully submitted that this is contrary to the Anti Dumping laws and practice in India. All the supporting petitioners must provide full and complete data for this proceeding. Clearly data of "participating companies cannot be the basis for injury to the industry as a whole. In fact it may well be the case that the data of the "non "participating companies" might indicate that there is no injury at all.

##### **b) PRODUCT UNDER CONSIDERATION**

The product under consideration as defined by the petitioners is "Sodium Hydroxide" generally known as Caustic Soda. Caustic Soda is chemically known as NaOH. It is an organic chemical classified under Chapter 28 of the Customs Tariff act. Caustic Soda is produced in two forms –lye and solids. Solids can be used in the form of flakes, prills, granules or any other form. All forms of Caustic Soda are the subject matter of the present petition.

- i. It is submitted that the petitioners have erroneously gone ahead and evolved only one Normal Value for both lye and solids, which is clearly not permissible under the Anti Dumping laws in India as the two ciA/Ta. Globally the chlor-alkali industry is being driven by the demand-supply of chlorine, unlike in India and therefore globally, Caustic Soda is considered as a by-product. Demand for Chlorine is higher than that of Caustic and many a times a part of Caustic produced in the process is wasted.
- ii. This is reflected in the fact that only 4 out of 42 domestic producers of caustic soda have participated in the NALCO tender. Furthermore it is noteworthy that

none of these four were awarded any quantity in the global tender, the reasons for which are not prima facie apparent.

- iii. Caustic Soda solutions are produced as a co-product with Chlorine electrolytically by three technologies, mercury cells, membrane cells and diaphragm cells. Each of these processes utilize NaCl salt as the primary raw material. The salt is electrolytically split using direct current (DC) electricity, resulting in Chlorine and an available sodium ion ( $\text{Na}^+$ ) that is reacted with water in the cell to make Caustic Soda and by-product Hydrogen. The Hydrogen by-product produced is used as a fuel source, sold to Hydrogen customers, or to produce high purity (burner grade) Hydrochloric Acid. A fourth technology that produces commercially available quantities of Caustic Soda solutions is a chemical conversion of trona ore. This process produces low quality Caustic Soda
- iv. The mercury cell operation utilizes mercury as the cathode for the electrolytic reaction, as well as for the sodium amalgam that is reacted to deionized water to produce the Caustic Soda solution. There is essentially no wet consumption of mercury in process, as all cells are 'closed loop' with regards to mercury flow across the bottom of the cell and through the cell decomposer, where the amalgam is reacted to Caustic Soda solution. The solution produced by this process is 50-52% by weight NaOH, produced directly from the cell without any additional evaporation. This process produces the highest purity Caustic Soda commercially available.

The high purity characteristic is descriptive of the very low concentrations of contaminants in the product. Salt, or NaCl, is typically less than 10 ppm, with a maximum of 30 ppm. Sodium Chlorates, or  $\text{NaClO}_3$  are typically 0.5 ppm, with a maximum limit of 1 ppm. Sodium Carbonates, or  $\text{Na}_2\text{CO}_3$ , are typically 0.02 weight %, with a maximum limit of 0.06 weight %, Sodium Sulfates, or  $\text{Na}_2\text{SO}_4$ , are typically 10 ppm, with a maximum of 20 ppm.

The mercury cell produced Caustic Soda is typically referred as Mercury Cell Grade, or more commonly, Rayon Grade. Most product of rayon fiber is dependent on the availability of the high purity Rayon Grade Caustic Soda solution. Another very common use of this high purity caustic solution is for Domestic Industry water exchangers. The Domestic Industry unit resin literature often specified Rayon Grade Caustic Soda only for regeneration. One must remember that this literature was published prior to the availability of membrane cell produced solution.

- v. The Diaphragm Cell process utilizes asbestos, or alternate substitutes to asbestos, to separate the co-products Caustic Soda and Chlorine. The production of 50% Caustic Soda occurs primarily outside of the electrolytic

cell. The diaphragm cell produces a very weak 'cell liquor' which contains 12-14% by weight, NaOH and roughly the same concentration NaCl salt. The 'cell liquor' is subsequently evaporated in a three or four 'effect' evaporation process to a final nominal concentration of 50% NaOH by weight (49-52% range). The excess salt is precipitated and filtered through the evaporation process for subsequent reuse/recycle. The process produces the lower quality electrochemical Caustic Soda solution.

The quality considerations with respect to the diaphragm cell produced Caustic solutions include relatively high salt, chlorates, carbonates, and sulfates. Salt as NaCl, concentrations are typically 1.0% with maximums ranging from 1.1 to 1.3 weight %, depending on producer. Sodium Chlorates are typically 0.15 weight %, with a maximum of 0.3 weight %. Sodium Carbonates are typically 0.1 weight %, with a maximum of 0.2 weight %. Sodium Sulfates are typically 0.01 weight %, with a maximum of 0.02 weight %.

The diaphragm cell produced Caustic Soda is often referred to as Diaphragm Cell Grade. It is also called Commercial Grade, Technical Grade, and occasionally Technical Diaphragm or other similar combinations.

An additional 'Grade' of Caustic Soda produced by the diaphragm cell process is the purified Grade. The production of Purified Grade involves the further evaporation of the 50% Diaphragm Grade Caustic Soda solution to reduce the salt concentration. The higher Caustic Soda concentration forces precipitation of the salts, which are soluble in Caustic Soda solution in an inverse relationship. The higher concentration solution is then re-diluted to the 50% concentration that is commercially available as Purified Grade Caustic Soda.

Common uses include process and wastewater neutralization, textiles production, soaps and detergents and aluminum production. These uses and applications generally will refer to the Caustic Soda as any of the various grades previously addressed, dependent on supplier's terminology.

- vi. The membrane cell process utilizes a selective membrane that separates the Chlorine and Sodium ions. The membrane allows the Sodium ion to 'migrate' across the membrane while keeping the Chlorine gas and salt (brine) solution in a compartment on the other side of the membrane. The sodium ion is reacted with purified water as in the mercury cell to produce the Caustic Soda. The solution produced by the membrane cell process is nominally 33-35 weight %. Evaporation is utilized, as in the diaphragm process, to raise the concentration up to the nominal 50 weight % solution suitable for shipments. The salt concentrations are not concentrated as significantly in this evaporation process



due to the selective osmotic nature of the membranes as well as the reduced amount of evaporation required in this process opposed to the diaphragm evaporation. Minute quantities of salt do migrate across the membrane, concentrating upto to the maximum 75 ppm. Note that other producers employing the membrane cell technology may have a higher maximum limit of 100 ppm on the allowable salt concentration in the Caustic Soda solution.

The high purity characteristic is descriptive of the low concentrations of contaminants in the product. Salt, or NaCl, is typically less than 30 ppm, with a maximum of 75 ppm. Sodium Chlorates, or NaClO<sub>3</sub> are typically 3 ppm, with a maximum limit of 5 ppm. Sodium Carbonates, or Na<sub>2</sub>CO<sub>3</sub> are typically 0.03 weight %, with a maximum limit of 0.05 ppm. Sodium Carbonates, or Na<sub>2</sub>SO<sub>4</sub>, are typically 15 ppm, with a maximum of 20 ppm. Note that these limits are Olin specific, with some slight deviation to be expected amongst the various membrane cell operation.

The Caustic soda produced by the membrane cell process is most commonly referred to as Membrane Grade.

- vii. It is a well known fact within the Caustic Soda production, consumption and trading industry that the cost of caustic soda is linked to the cost of chlorine, as both are produced during the same process. In effect when chlorine prices are high, caustic soda prices are low and vice versa. It is a well known fact that during the POI, chlorine prices globally were at an all time high and consequently caustic soda prices were at historic lows.
- viii. It is respectfully submitted that M/s Tricon Energy Limited sold caustic lye in India pursuant to a global tender dated 31.8.2001 for 1,00,000,00 DMT, plus/minus 5%(on 1000 Naoh basis).
- ix. Two alternatives were offered and M/s Tricon Energy were awarded the tender to supply 30,000 DMT plus/minus 5% of caustic soda lye on 10% NaOH basis. This caustic soda was to be produced by the diaphragm method which is typically USD 5 cheaper than caustic soda lye produced through a membrane method. This fact was recognized in the tender document itself wherein it was noted that "for comparison of prices of mercury/ membrane grade with that of diaphragm grade caustic soda lye, a financial loading of USD 5 per DMT shall be loaded in the price of the diaphragm grade"
- x. It may be pertinent to note that DMT means dry metric tonne. Caustic Soda Lye being in a liquid form will contain caustic soda plus water. To obtain caustic soda on DMT basis the water will have to be evaporated. Typically, for example obtain 500 DMT of caustic soda on 100% NaOH basis, 1000 MT of caustic soda lye will be shipped in a soluble form. When evaporated, it will result in 500 DMT of caustic soda on 100% NaOH basis.

- xi. M/s Tricon Energy Limited, represented M/s Hanwa Chemical Corporation in the aforesaid tender. M/s Tricon Energy Limited inter alia put up the earnest money deposit and the performance guarantee bond. In addition to this there were several other requirements of the tender which were fulfilled by M/s Tricon Energy Limited.
- xii. The main response has been filed by M/s Hanwa Chemical Corporation, which accurately reflects the role played by M/s Tricon Energy Limited on a purely documented and commercial manner. To explain this position briefly, M/s Tricon Energy Ltd., contracted with M/s Hanwha Corporation for supply of 30000 DT +/- 5% at USD 189.36/DMT CFR vizag as per Sale and Purchase contract dt. December, 10, 2001. Proforma Invoice for L/C opening was however issued by Hanwha Corporation at USD 184.79/DMT CFR Visakhapatnam for adjustment of USD 4.57/DMT from previous transaction between M/s Hanwha Chemical Corporation and M/s Tricon Energy.

c) INJURY AND CAUSAL LINK

- i. It is denied and disputed that the Domestic Industry has suffered the injury
- ii. First as stated above, Chlorine prices were at record high and the domestic producers must have reaped benefits of that.
- iii. Second, notwithstanding the representations on capacity, it is submitted that the domestic units, have a much lower capacity of caustic soda that has been represented. The size of the unit compared with the outdated technology and the high cost of power, clearly indicate that the injury if any, is not caused by any dumping. Furthermore, one of the domestic producers who also manufactured epichlorohydrin M/s Tamil nadu Petro Products Limited admitted that the high cost of energy was the reason for their 'serious injury' in a safeguard proceeding. As part of their restructuring plan, they had committed to introduce a captive power plant, which would reduce their cost of production. Thus it is admitted that Indian industry was being injured due to factors other than dumping.
- iv. As stated above, M/s NALCO floated global tender with a view towards obtaining the most competitive price for its requirement. It may be noted that the supplies were made to M/s NALCO at non dumped prices based on then prevailing market rate. On the other hand, the local suppliers were at an inherent disadvantage in as much as the local transportation costs were prohibitively high based on the requirement of M/s NALCO that the shipment may be in liquid form. Furthermore, the four Indian bidders offered almost identical prices, irrespective of their method of production or capacity. It is respectfully submitted that prima facie such pricing is not possible.

Without any prejudice to the aforesaid, it is respectfully submitted that the Domestic Industry could not have been injured by the minimal supplies made by M/s Hanwha Chemical Corporation and M/s Tricon Energy Limited pursuant to the NALCO tender.

## **2. M/S HANWHA CHEMICAL CORPORATION, KOREA RP**

### **a) PRODUCT UNDER CONSIDERATION**

- i. Hanwha group is one of the top ten conglomerates from the Rep. Of Korea. Further Hanwha Chemical Corp. is the manufacturers of the Caustic Soda, which is being sold in the overseas market through the group's trading window (Hanwha Corp., Seoul, Korea) and some other traders (if any, for example in present case the cargo sold to NALCO through M/s Tricon-Energy, USA).
- ii. Our plants are fully integrated plant as against this the local makers in India(the petitioners) are running the smaller capacity plants where they are not able to effectively manage the output of Chlorine and thereby making hue and cry about their higher cost of production of Caustic Soda.
- iii. In a Chlor Alkali unit, from the common salt primarily we get two things, Caustic Soda and Chlorine, now, if Chlorine (which is a commodity which cannot be trade in the international market due to its extremely hazardous nature) cannot be used in some other effective way(like production of product like Epichlorohydrin and EDC -> VCM > PVC) the burden of Chlorine prices would be reflected on Caustic Soda.
- iv. Caustic Soda is a commodity; the general price reference is drawn from the Electric Chemical Unit, also known as ECU(this includes the Caustic Soda + Chlorine). Further in case of global size plants, the prices are influenced by various factors. The main factors are as follow:  
  
+ the price movements of EDC > VCM > PVC
- v. For all the above two factors one of the basic raw materials is Chlorine – now, if the international market demands more PVC, it means that the demand of Chlorine is high, now to produce more Chlorine, more of Caustic Soda will be generated. So, while looking into the pricing factors, the other related factors may kindly be looked into before coming to any conclusion and determination of prices.
- vi. Further the global practice is to produce primarily Chlorine and thus Caustic Soda as by-product, whereas in India it seems to be otherwise.

### **b) INJURY**

- i. In the written petition of the Alkali Maker's Association, we find that the Caustic Soda industry is a very old industry and that there are several makers claiming that their joint capacity to be more than the demand in India. On the other side, we find that India has also enough capacity for PVC and Epichlorohydrin – however if we make further observations, we find that the PVC plants in India are importing EDC and/or VCM as their basic feedstock (and not able to produce EDC and/or VCM locally by using the local Chlorine). The Designated Authority may ask this to the petitioners and we are sure the findings would be that the local Caustic units were planned considering only the local rather neighbourhood demand for Caustic Soda Lye only - it is not out of place to mention that we have come across situations whereby the local Caustic producers were said to be disposing chlorine at virtually nil cost – this in a way clearly shows their inefficient handling of production costs.
- ii. Irrespective of any protection they seek, this situation would never going to change – rather, the user industry would keep on suffering while the Caustic units making merry just because of the protections.
- iii. We are not engaged in dumping of Caustic Soda Lye in India market by merely offering international price. No intention to dumping Caustic Soda Lye in India and causing injury to the Domestic Industry in India.
- iv. First of all, we have not sold any cargo to India market directly. Basically, we received one inquiry from Tricon Energy, USA and we have given them offers considering the prevailing international market for supplies to NALCO in India. And, Tricon have further participated in the NALCO tender.
- v. The export volume during the investigation period from Korea RP was very little i.e only 12569.32 DMT and the percentage of total inputs as compared to total consumption in India which is 1600000 DMT is a meager 0.78% only. This cannot cause any injury to the Domestic Industry.
- vi. The Caustic Soda Lye has become a commodity and for this the price reference is drawn from the international price indexes – the prices are quoted like metals in London Metal Exchange (LEM for various metals) and PLATT/ICIS for Polymers, etc. Rather if the Designated Authority compare the prices prevailing in the international market at the time of the shipments that we have made to NALCO, the same is fairly higher.
- vii. There is a global size Alumina producer in India-NALCO - they consume big quantity of Caustic Soda Lye and to get a better pricing they invite global tenders where the local makers and as well as the global producers participate. The Designated Authority has seen the cost comparison presented by the petitioner related to the offers made by the overseas suppliers – however, if we examine the participation by the local makers in that tend, we find that out of the 42 producers only 4 companies participated, the total qty. offered by them

(83,000 DMT +/-5%) the Designated Authority may look into this situation prior to coming to any conclusion.

- viii. We from Hanwha have offered only Diaphragm Process to NALCO(though we have Membrane Process also). We further reiterate that based of the petition of the petitioner, there seems to be only one marker of Diaphragm Process in India and their installed capacity is approx.7250 MT. Which is only 1/4th of the NALCO's total requirement of particular process. Considering this fact it is not at all a dumping rather we have offered a grade, which is not offered by the local maker.
- ix. Petitioner has mentioned that Caustic Soda produced by the three process are same – the Designated Authority may note that there are some critical difference in the specifications. The Chloride content in the Diaphragm Grade Caustic Soda is higher than that of Mercury and Membrane Grade.
- x. Though in the petition the petitioners have mentioned that there are three production processes to produce Caustic Soda Lye, prima facie it appears that the local companies in India use either Mercury cell or membrane cell based Caustic Soda Lye.
- xi. On further analysis of the capacities of the participating local makers in the NALCO's said tender, we find that only Tamilnadu Petroproducts Ltd. (TPL- Capacity 49500 MT) and Andhra Sugars (Capacity 30000 MT) have membrane cell technology and their operation ratio during year 2000-2001 has been almost touching 100%.
- xii. The Designated Authority may please look into the fact that the local companies, operating at near about 100% of their capacity or above, without selling their products to NALCO – offer to NALCO in tender anywhere 30% to 60% of their total capacity – the obvious intentions seems to be to exploit the regional market which they are catering to.
- xiii. Though the petitioner claims that in India, Caustic Soda is produced by using all the three processes (Mercury, Diaphragm and Membrane), however, we find in their submissions that only one maker (Sirpur Paper) has a production process based on Diaphragm Cell, that too a very small capacity of 7250 MT/year.
- xiv. One of the plea that the local makers take about their higher cost of production is that the cost of power is very high in India and as since power plays a very important and significant role in Caustic production so they should be given protection.
- xv. Here we draw the reference of one submissions made by one of the Caustic producers in India – Tamilnadu Petroproducts Ltd. (TPL) – during one hearing hearings in the Safe-Guard duty on Epichlorohydrin imports into India. – TPL has referred that they are producing Caustic Soda and as well as Epichlorohydrin and further that by way of installation of a captive power plant

they propose to reduce the cost of the Chlorine to one third the existing cost – at this juncture we would like to draw the attention of the Designated Authority – as tPL(one of the Caustic Soda producers has clearly established the link in the production of Caustic Chlorine and ECH) and further, they say that the captive power plants can drastically reduce the cost of productions. Therefore, our submission is that while determining the costing of Caustic Soda, these factors may kindly be looked into more closely.

- xvi. In their petition- the petitioners have described the characteristics of Caustic Soda Lye and the solid/flakes –the Designated Authority can very well understand from a first glance that for supplies of Caustic Soda Lye some special provisions have to be made (because crystallization begins at 12-15 Deg Celsius) and further the boiling point is 142-148 Deg. Celsius.
- xvii. Nowhere we find that among the petitioner companies location from the user (NALCO) are far off- which means that they have to make special arrangements for transportation of Lye. This also means that many of inland producers have primarily no right to seek Anti Dumping duty on a product which they cannot deliver practically to their buyers owing to geographical locations. Further for the other producers, one has to really look into the facilities for loading into a specialised vessels and subsequent deliveries to the buyer (NALCO). We feel that this is one of the main reasons for only 4 local companies participating in the NALCO tender.
- xviii. If we examine the India's exports of Caustic Soda – this becomes more evident that India is not able to export Caustic Soda Lye whereas the exports of Solid and Flake types are their.
- xix. Now the Designated Authority may look into the submissions made by the petitioner-represent the imports of Caustic Soda, it is seems that the petitioner is trying to mislead the investigations by mixing the two (Caustic Soda Lye and Caustic Soda flakes/solid)
- xx. The petitioner in their non-confidential submissions has taken total imports during the POI 163,012 mt, after annualizing the data of imports from April-December, 2001. However the supporting annexure of their submissions covers the data for April, 2001 –November, 2001 only. In fact it seems that the petitioner is trying to mislead the Authority by adding total quantity awarded in the NALCO tender as imports during the POI. The fact is that the quantity awarded is to be supplied as staggered shipments till December, 2002. The actual imports during the POI is much less as compared to the previous year. Further if we annualize the data on the basis of the imports (April 01 –January 02) the total imports also shows considerable decline in Caustic Soda Lye imports.
- xxi. Now think of the problems that could be faced by the buyers like NALCO-who need Caustic Soda Lye-if they are supplied with Caustic Soda Flakes/Solid and

if they have to arrange to convert that to Lye again-it leaves a big question mark?

- xxii. One of the basic reasons for imposition of anti dumping duty on the imports of Caustic Soda from Korea (Hanwha Chemical Corporation) together with others – the petitioner states in their petition that the capacity in these countries are far higher than their basic domestic requirement. It is observed from the Korea's import statistics for the Caustic Soda - it is evident from our submissions, that Korea imports large volume of Caustic Soda as well as exports. The basic reason for this trading is to effectively manage the Caustic situation in Korea.
- xxiii. Here it not out of place to mention that we participated in the NALCO tender during the 2nd half of year 2001- by that time prices had started to come down in the international market. Further, if the Designated Authority may look at the prices in the international market prevailing during April,2002 it touched USD 30 per DMT FOB US GULF – however from may, 02, the prices have again started to move upwards sharply.
- xxiv. Our capacity of production, cost of production, local sales volume and the costing etc. are being submitted in the specified formats as prescribed by the Designated Authority and in view of the sensitivity of the information, we are submitted those details as absolutely confidential. The ex-factory export price to India is much higher than the ex-factory domestic selling price in Korea. The Designated Authority or the nominated officials can verify these data for this purpose in our head office in Korea at any mutually suitable date and time.

### **3. CHLOR SHANGHAI CHEMICAL CO. LTD. , PR CHINA**

- i. The exporter has filed exporter questionnaire and have mentioned that this is company limited by shares duly established in accordance with the Company Law in China which independently operates business and production activities and selects suppliers and customers and develops sales market acceptance to the signals of the market.
- ii. The respondents have claimed a market economy/individual treatment.
- iii. The exporter has indicated that the respondent quotes the export price according to the terms and conditions of its trading company in Hong Kong who then passes the sales documents to its customers in Japan which are reinvoiced to the Indian customers.
- iv. Hong Kong company is acting on a commission basis.
- v. It has also been requested that comparison should be made at appropriate percentage on caustic soda basis and that 99% subject goods be excluded..
- vi. The exporter has provided transactions of the domestic sales during POI of the subject goods and the associated export prices to India along with the relevant cost of production details.

## **C. EXAMINATION BY AUTHORITY**

The foregoing submissions made by the exporter, petitioner and other interested parties, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

### **1. PRODUCT UNDER CONSIDERATION**

The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature NaOH), commonly known as Caustic Soda originating in or exported from Korea RP and PR China. Caustic soda is an inorganic, soapy, strongly alkaline and odourless chemical and finds application in various fields like manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminium, cotton, textiles, toilet and laundry soaps, detergent, dyestuffs, drugs and pharmaceuticals, petroleum refining etc.

Caustic soda is classified under chapter 28 of the customs Tariff Act, 1975 under Customs Head 2815.11 and 2815.12. As per ITC Eight Digit classification, the product is classified under the Custom Heading 2815.1101, 2815.1102 and 2815.1200. The classification, is however, indicative only and is in no way binding on the scope of the present investigation.

Caustic soda is produced in two forms, i.e. lye and solids by three technology processes, i.e mercury cell process, diaphragm process and membrane process.

Caustic Soda can be imported under OGL and attracts a basic customs duty of 35%. The present investigation covers all forms of caustic soda.

The Authority notes that it has been mentioned by various interested parties that the three different types of production process of caustic soda produces different quality of caustic soda. It has also been indicated that the Membrane type process is used by a very few producers in India. Further it has been mentioned that 99% caustic soda be excluded from the purview of the scope of the investigation.

The Authority however notes that both M/s Tricon Energy Ltd., USA and M/s Hanwha Chemical Corporation, Korea RP have indicated an adjustment of 5 \$/MT on the basis of the membrane technology as indicated in the NALCO's tender. The Authority therefore notes that M/s NALCO has loaded an adjustment of 5\$/MT for such a technology depending on its own requirements and the Authority has appropriately considered this adjustment while evaluating the dumping margin for M/s Hanwha Chemical Corporation. Therefore the Authority notes that the difference



in terms of quality can best be addressed by way of appropriate adjustment as and when evidenced and claimed. The adjustment granted to M/s Hanwha Chemical Corporation has been for the purpose of preliminary determination pending final determination. The Authority also notes that the investigation covers all forms of caustic soda both Lye and flakes and all that are different forms of the same subject goods and are used substitutably depending on the requirement of the user. The two forms in various concentrations are therefore the subject matter of the investigation. The Authority further for the purposes of dumping margin has made appropriate comparisons on DMT basis only.

## **2. LIKE ARTICLE**

The Authority notes that the petitioner has claimed that the goods produced by them are like article to the goods produced, and exported from the subject country. Also both are technically and commercially substitutable and the consumers are using the domestically produced and imported goods interchangeably. It has been indicated that the Caustic soda is processed by three processes viz. Mercury cells process, diaphragm process and membrane process world over. The difference in these processes does not mean difference in product in terms of various characteristics. Also there is no significant difference in the cost of production for the three processes. The petitioner has claimed that the goods produced by them and those exported from the subject countries are like article within the meaning of the Rules. The Authority in view of submissions made by other interested parties and keeping in view the substitutability and interchangeability of the goods exported from subject countries and those produced by the Domestic Industry, considers the subject goods exported and the domestically produced subject goods as like article as per Rule 2(d) for the purpose of preliminary determination pending final determination.

## **3. DOMESTIC INDUSTRY**

The petition has been filed by M/s Alkali Manufacturers Association of India on behalf of the domestic industry. The petition has been supported by M/s DCW Limited, Mumbai, M/s Gujarat Alkalis & Chemicals Limited, Vadodara Gujarat, M/s Gujarat Alkalies, Dahej, M/s Search Chem Industries Limited, Mumbai, M/s Indian Rayon and Industries Ltd., Veraval, Gujarat, M/s Grasim Industries, Nagda, M.P, M/s SIEL Chemical Complex, Patiala, Punjab, M/s Bihar Caustic & Chemicals, Ltd., Jharkhand, M/s Jayshree Chemicals Limited, Orissa, M/s Andhra Sugars Limited, Tanaku , Bilt Chemicals, DCM Sriram, New Delhi and Punjab Alkalies & Chemicals, Chandigarh. None of the domestic producers has opposed the petition.

The Authority notes that various interested parties have mentioned that only a limited number of domestic producers participated in the NALCO's tender and that shipping

the goods to NALCO by domestic producers is a costly affair because of the high inland freight. It has been indicated that the Domestic Industry definition be limited to these producers who have actually participated in NALCO's tender. The Authority does not consider this argument appropriate since NALCO happens to be only one of the consumers of caustic soda. Also the Authority notes that inability to supply in a cost effective manner to NALCO is a matter to be appropriately considered under injury examination and not to be addressed for the scope of the Domestic Industry. Also the Authority notes that in any event of any displacement of the domestic producers situated in proximity to NALCO, the injury occurring to them would eventually be transmitted to the other domestic producers. However the dumping of goods and their imports by NALCO is to be appropriately addressed as per Anti Dumping Rules. Therefore the argument of the interested parties that suppliers and non-suppliers to NALCO form two different competitive market does not hold merit..

The Authority also notes that the domestic producers who have supported the petition constitute more than 50% of the total domestic production and therefore have the standing to file the petition on behalf of the domestic industry as per Rule 5 (3) (a) and (b) of the Anti-Dumping Rules and also represent Domestic Industry in terms of Rule 2(b)

#### **4. NORMAL VALUE & EXPORT PRICE**

Under Section 9A(1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:-
  - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
  - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section(6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of

export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

The normal value and ex-factory export price determination is illustrated below.

#### A. NORMAL VALUE

##### 1. **M/S SHANGHAI CHLOR CHEMICAL ALKALI CO. LTD. PR CHINA**

The Authority notes that the exporter has provided details on sales in their home market of ion exchange Membrane Grade Caustic Soda (48%) during the Period of Investigation (POI). The ex-factory export price has been indicated as \*\*\*\*\$/Dry Metric Tonne (DMT). The exporter has provided the cost of production of the subject goods during the POI as \*\*\*\*\$/DMT. The weighted average domestic sales price has been shown to be making profits and thereby in the ordinary course of trade. In claim of market economy/individual treatment, the exporter has indicated that they are established in accordance with the Company Law of China and is a public listed company at the Shanghai Stock Exchange. The exporter independently operates business and production activities, freely selects suppliers and customers and develops sales markets in response to the signals of the market. The Authority in this regard notes the specific provisions in the notifications pertaining to Anti Dumping Rules No.28/2001 dated 31st May, 2001 and Notification No. 1/2001 dated 4th January, 2002 in which the conditions for 'non-market economy' country has been defined. In the Notification dated 4th January, 2002, a country would be presumed as non-market economy in case the country has been determined to be or has been treated as non-market economy for the purpose of an anti dumping investigation by the Designated Authority or by the competent Authority of any WTO member country during the three year period preceding the investigation.

The Authority also notes that information pertaining to various specified criteria has been sought for from the cooperative exporter in order to consider the rebuttal on the treatment as non-market economy. On perusal of the response provided by the exporter, it is noticed that only a broad statement of fact has been provided regarding the operation on the market signals but no specific information on various criterion as listed in the Custom Notification dated 4th January, 2002 has been provided with adequate evidence to justify treating the exporter to be operating on the market principles. The Authority therefore for the purpose of preliminary determination pending final determination does not propose to consider the broad statement provided by the exporter as a justification for their being operating on the market economy principles. The Authority also recalls that the China has been treated as non-market economy in Steel Concrete Reinforcing Bar by PR China to USA dated

22.6.2001, Bicycles by China to EU dated 30.6.2001 and Non-Frozen Apple Juice Concrete by China to EU dated 13.4.2000 during the last three years. This has also been indicated in the preliminary finding pertaining to dumping of STPP from China and Chinese Taipei which have also been implemented by the Department of Revenue vide their Notification dated 17.6.2002. The cost data of the subject goods as available from the petitioners which has been duly normated by adopting the best practices on constructed cost of production with appropriate adjustments to arrive at the constructed Normal Value as per Annexure 1 to the Anti Dumping Rules and Section 9A(1)(c)(ii) (b) of the Customs Tariff Act, 1975 as amended in 1995. The constructed Normal Value of the subject goods has therefore been referenced as \*\*\*\*\$/DMT for the POI. The Authority in this regard also notes that the data furnished by the exporter on the ex-factory domestic selling price and the ex-factory export price also indicates the incidence of dumping to an extent of \*\*\*\*\$/DMT.

## **B. EXPORT PRICE**

The Authority notes that the exporter has provided the ex-factory export price of the subject goods during the POI as \*\*\*\*\$/DMT and have also claimed adjustments of \*\*\*\*\$/DMT as discounts/commission and have provided the ex-factory export price as \*\*\*\*\$/DMT. The Authority on the basis of the information provided by the exporter has correlated the exports made by the exporter with the response provided by M/s NALCO, the importer of the subject goods during the POI.

The Authority for the purpose of preliminary determination pending final determination has considered the ex-factory export price as provided by the exporter and allowed the adjustments on discounts/commission.

The ex-factory export price comes to \*\*\*\*\$/DMT. The Authority in this regard also notes the submissions made by the exporter that the appropriate comparison for the purpose of dumping margin be made i.e. 48% subject goods should be compared with 48% of the subject goods and 100% concentration of the subject goods should be compared with 100% of the subject goods. In the instant case, the Authority notes that the export price has been provided on the DMT basis and that the Normal Value as indicated above has also been computed on the DMT basis for the purpose of comparison.

## **C. ASSESSMENT OF NON-COOPERATING PRODUCERS/EXPORTERS FROM PR CHINA**

### **A. NORMAL VALUE**

The Authority notes that none of the exporters other than M/s Shanghai Chlor Alkali Chemical Co. Ltd, PR China has responded to the questionnaire sent by the Authority for the purpose of investigation. In view of this non-cooperation, the Authority upholds the claim of the petitioners for treating such producers/exporters on the non-market principle. Keeping in view the treatment as considered in various EU/ES cases cited above, the Authority has therefore constructed the normal value by adopting normated cost of production by benchmarking best practices.

The Authority has referenced the Normal Value for such producers/exporters as \*\*\*\*\$/DMT.

## **B. EXPORT PRICE**

The Authority notes that the export price has been provided by the petitioners on the basis of the data collected by them from DGCI&S and other secondary prices. The petitioners have also claimed adjustments on ocean freight, ocean insurance, commission, inland freight, port expenses and credit cost to an extent of \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT and \*\*\*\*\$/DMT respectively. The Authority notes that as per the DGCI&S data imports of subject goods to an extent of 8210 MT have been shown from PR China. As per the response of one of the cooperating importer viz. M/s NALCO, the imports from PR China are shown to an extent of 26505 MT. The DGCI&S data is therefore not exhaustive and complete and therefore cannot be referenced. Since NALCO is one of the importer, there would be other imports of the subject goods made by other importers which may not have been reflected in the DGCI&S data. Also no response has been received from the Customs regarding the details of the imports made during the POI. Since the best available information under such circumstances for the non-cooperating exporter could only be the information as available from the cooperating exporter, viz. M/s Shanghai Chlor Alkali Co. Ltd. whose export price also happens to be the lowest on the basis of the information as available with the Authority, the Authority considers it appropriate to reference this export price for the non-cooperating exporters from PR China. The adjustments allowed on the CIF on account of ocean freight, ocean insurance, commission, inland freight and port expenses to an extent of \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT and \*\*\*\*\$/DMT respectively

The ex-factory export price is referenced as \*\*\*\*\$/DMT.

## **KOREA RP**

M/S HANWHA CHEMICAL CORPORATION, KOREA RP.

## **A. NORMAL VALUE**

The Authority notes the response filed by the exporter regarding their domestic selling prices of subject goods during the POI. The Authority notes that the transaction wise details on the domestic selling price for the POI has been provided by the exporter during the POI. The exporter has claimed adjustments on the domestic sales on account of discounts, inland freight, inland insurance and others to an extent of \*\*\*\*\$/DMT, \*\*\*\*\$/DMT, \*\*\*\*\$/DMT and \*\*\*\*\$/DMT respectively. The exporter has also submitted that the domestic sales made during the period as near to the period of exports to India should be referenced for the purpose of appropriate comparison. The Authority notes that the sample evidence pertaining to the domestic selling price has been provided by the exporter. The exporter has claimed an adjustment on account of inland freight to an extent of \*\*\*\*\$/DMT which has been substantiated by the exporter by way of expenses incurred on the freight component.

The Authority for the purpose of preliminary findings pending final determination has considered the adjustments as claimed on the inland freight. The Authority for the purpose of preliminary determination pending final determination also allows the other adjustments on inland insurance and commission. The Authority has referenced the domestic selling price for the period December, 2001-March, 2002 which is comparable to the period of exports made to India for the purpose of determination of the Normal Value. The Authority also notes that the cost of production of subject goods as claimed during the POI indicates that the domestic selling prices are in the ordinary course of trade. However the Authority has considered this cost of production for the purpose of preliminary findings pending final determination.

Therefore for the purpose of preliminary determination pending final determination, the Authority has referenced the Normal Value as \*\*\*\*\$/DMT.

## B. EXPORT PRICE

The Authority notes that the exporter has provided the ex-factory export price as \*\*\*\*\$/DMT. The exporter has provided export price to M/s Tricon Energy Limited, USA who in turn have exported the subject goods to India during the POI. Further the exports have been made through M/s Hanwha Corporation, the trading arm of M/s Hanwha Chemical Corporation. The exporter has claimed adjustments on account of discounts/commission to M/s Hanwha Corporation to an extent of \*\*\*\*\$/DMT. The Authority has also correlated the exports made by M/s Tricon Energy Limited, USA to M/s NALCO, the importer of subject goods in India who have provided the CIF price of the subject goods during the POI to India. The Authority for the purpose of final determination pending final determination has considered the adjustments as claimed by the exporter on discounts, adjustment on terms of sales as per NALCO's tender and adjustment on previous transaction sales to M/s Tricon to an extent of \*\*\*\*\$/DMT.

The ex-factory export price comes to \*\*\*\*\$/DMT.

## **C. ASSESSMENT OF NON-COOPERATING PRODUCERS/EXPORTERS FROM KOREA RP**

### **A. NORMAL VALUE**

The Authority notes that none of the exporters other than M/s Hanwha Chemical Corporation, Korea RP has responded to the questionnaire sent by the Authority for the purpose of investigation. In view of this non-cooperation, the Authority has constructed the normal value on the basis of the data provided by the petitioners by referencing the best normated cost of production.

The Authority has referenced the Normal Value for such producers/exporters as \*\*\*\*\$/DMT.

### **B. EXPORT PRICE**

The Authority notes that the DGCIS data indicates the imports from Korea RP to an extent of 56 MT. The Authority notes that one of the importers viz. M/s NALCO has provided response indicating imports from Korea RP to an extent of 6270.43 MT whereas the exporter has during this period exported quantity to an extent of 12569 MT. Thus the information as provided by DGCIS does not capture the import data fully and is being lowest and best available information. Therefore the CIF price of M/s Hanwha Chemical Corporation has been referenced for the non-cooperating exporters as well. The adjustments on the export price are considered on ocean freight, ocean insurance, commission, port and inland freight to an extent of \*\*\*\*\$/MT, \*\*\*\*\$/MT, \*\*\*\*\$/MT, \*\*\*\*\$/MT and \*\*\*\* \$/DMT respectively on the basis of the information made available by the petitioners and the cooperative exporter.

The ex-factory export price comes to \*\*\*\*\$/DMT.

## **5. DUMPING-Comparison of Normal Value & Export Price**

The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in

conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporter/producers of the subject country.

The dumping margin for exporter/producers comes as under:

Sl.No.	Exporter/Producer	Ex-factory Export Price (\$/MT)	Dumping Margin as % of EP
1.	<b>KOREA RP</b>  1. Hanwha Chemical Corporation. 2. Other producers/exporters	**** ****	Deminimis 53.22
2.	<b>PR CHINA</b>  1.M/s Chlor Shanghai Chemical Co. Ltd. 2. Other producers/exporters	**** ****	74.02 80.03

## 6. INJURY AND CAUSAL LINK

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

For the examination of the impact of the dumped imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

As regards the threat of injury, the Authority notes that the Anti-Dumping Rules states as follows:

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which



would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the DA shall consider, inter-alia, such factors and;

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. inventories of the article being investigated.

The Authority notes that various interested parties have mentioned that it is in totality that the price of chlorine and hydrochloric acid along with caustic should be considered. It has also been mentioned that the domestic producers of caustic soda in India are using obsolete technology and have high cost of production on account of electricity cost. The issue of high inland freight for supply to NALCO has also been indicated.

It has also been further mentioned that there is an excess capacity in India which is leading to injury to the domestic producers. Submissions have also been made that world over chlorine is the main product and whereas in India it is the caustic soda which is the main product. The Authority after noting the above submissions holds that the non-injurious price has been evaluated for the various domestic producers by appropriately considering the sales realisation from the related products. Also in order to eliminate inefficiencies, the Authority has normated and benchmarked the best practices on utilisation of raw materials, utilities etc..

As regards the injury which could happen on account of higher cost of production in India, the Authority notes that under the Indian Anti Dumping Rules it is the lesser duty rule which is applied. Further in any event the anti dumping duties cannot exceed the dumping margin. Therefore in any event if injury to Domestic Industry which could exceed the dumping margin it is certainly not addressed under the Rules of the Anti Dumping.

However despite the above, the Authority appropriately considers the cost of production of the domestic producers and normates the same for determination of Non-Injurious Price (NIP). As regards the injury on account of inland freight is concerned, the Authority holds that the comparison of landed value of dumped goods

with NIP is made at the ex-factory level which does not include the inland freight. Therefore the importer viz. Ms NALCO could import the material at non-dumped price and thereby may not place order on to the domestic producers in India in case the freight was consideration for them.

As regards the submissions on usage of obsolete technology is concerned, the Authority notes that the various domestic producers in India are using all the three technology and that the inefficiencies in the cost of production are appropriately considered while determination of the Non-Injurious Price. As regards filing of separate petitions on chlorine by the Domestic Industry is concerned, the Authority notes that the related product if at all comes for anti dumping duty investigation, its cost of production and non-injurious price would be appropriately considered as per the general accounting and costing principles

The Authority notes and observes the following economic parameters in the case of the domestic producers who have supported the petition:-

	1999-00	2000-01	2001-02
Capacity (MT)	830000	830000	842500
Production (MT)	712146	730625	711556
Capacity utilisation (%)	85.8	88.03	84.46
Sales (MT)	588455	583221	544046
Net Sales Realisation (Rs/MT)	****	****	****
Cost of production (Rs/MT)	****	****	****
Imports all countries (MT)	86743	73622	93291
Imports from China (MT)	19	17	26505
Imports from Korea (MT)	21	33	12569
Market share of imports from subject countries (%)	.05	.07	41.88
Demand (MT)	1477061	1488052	1510619

It could be seen from the above that :

- Sales of the Domestic Industry have decreased from 588455 MT in 1999-2000 to 544046 MT to 2000-2001 .
- It is also seen that there is slight fall in the capacity utilisation from 85.8% in 1999-2000 to 84.46% in 2001-2002.
- The production of the Domestic Industry has also decreased from 712146MT in 1999-2000 to 711556MT in 2000-2001 .
- Though The Net Sales Realisation have increased from \*\*\*\*MT in 1999-2000 to \*\*\*\*MT in 2001-2002, the cost of production have shown an increase during the period. The Net Sales Realisation is however below the Non-Injurious Price determined for the period of investigation on account of the price undercutting caused by the dumped imports and thereby leading to lower Net Sales

Realisation as compared to Non-Injurious Price, and consequently erosion of profitability..

## **7. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

The Authority notes that it has been indicated by M/s NALCO that the anti dumping duties would affect their export competitiveness. The Authority in this regard holds that there are various schemes under the EXIM policy which permit imports of goods for export production without levy of anti dumping duty. Therefore there are appropriate schemes which an exporter could avail of for the purpose of export production. The Authority also holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers. Imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

## **8. LANDED VALUE**

The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

## **D. CONCLUSIONS:**

It is seen, after considering the foregoing, that:

- a. The subject goods in all forms originating in or exported from the subject country have been exported to India below its normal value except M/s Hanwha Chemical Corporation, Korea RP .

- b. The domestic industry has also suffered material injury by way of financial losses due to depressed Net Sales Realisation (NSR) on account of price depression caused by low landed prices of the dumped subject goods.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject countries.
- d. The Authority recommends anti-dumping duty on imports of subject goods falling under Chapter 28 originating in or exported from the subject countries.
- e. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping so as to remove the injury to the domestic industry accrued on account of dumping. Accordingly, it is proposed that provisional anti dumping duties equal to the difference between the amount of Column 3 of the Table below and landed value of subject goods in \$/MT be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from subject countries under Chapter 28 Customs sub-heading 2815.11 and 2815.12 of the Customs Tariff, pending final determination except on exports by M/s Hanwha Chemical Corporation .

Sl.No.	Exporter/Producer	Amount (US\$/MT)
1.	<b>KOREA RP</b> All producers/exporters except M/s Hanwha Chemical Corporation	353.4
2.	<b>PR CHINA</b>  1.M/s Chlor Shanghai Chemical Co. Ltd. 2. Other producers/exporters	  362.34 362.34

## E. FURTHER PROCEDURE

The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, Importers, Petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the despatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would conduct verifications to the extent deemed necessary;
- d. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- e. The Authority would disclose essential facts before announcing final findings.

**(L V SAPTHARISHI),**  
Designated Authority