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No. 15/15/2008-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
NOTIFICATION

Udyog Bhavan, New Delhi the 6th November 2009

Final Findings

Subject: Mid-term review of Anti-Dumping duties imposed on imports of Saccharin originating in or exported from China PR

No.15/15/2008- DGAD : Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

A BACKGROUND OF THE CASE

1. The Designated Authority, having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as the AD Rules); recommended imposition of provisional Anti Dumping duty on imports of Saccharin (hereinafter referred to as subject goods) originating in or exported from China PR (also referred to as subject country) falling under Sub-heading 2925.11. The preliminary findings were published vide Notification No 14/27/2004-DGAD dated 1st April 2006 and provisional duty was imposed on the subject goods vide Customs notification No. **54/2006**-Customs dated 6th June, 2006. The Designated Authority notified the final findings on 3rd January 2007 and definitive anti dumping duty was imposed by Customs as per notification No. 41/2007-Customs, dated 19.03.2007.

2. The Designated Authority, in terms of section 9A(5) of the Act and Rule 23 of the AD Rules, received a duly substantiated application from M/s. M/S Vishnu Chemical Ltd, Hyderabad, requesting for review and enhancement of the anti-dumping duty in force on subject goods. The

applicant claimed that the conditions of dumping have changed substantially requiring a review of the anti-dumping measure in force. The applicant claimed that the price of OTS a major raw material has significantly increased as well as exchange rate also has significant variation since the imposition of existing duty. Further, the existing duty is not sufficient to address the injury to the domestic industry. The Applicant claimed with prima facie evidence in this regard and has requested for review and enhancement of the anti dumping duty in force.

3. The Designated Authority initiated the Mid-term Review investigation of anti-dumping duty imposed on imports of Saccharin originating in or exported from China PR vide notification No. No. 15/15/2008-DGAD dated 7th May, 2008 in accordance with Section 9A (5) of the Act, read with Rule 23 of Antidumping Rules, to review the need for continued imposition of duties in force. The time period of completion of midterm review investigations was extended by 6 months in accordance with rule 17 of the anti dumping rules. The review covers all aspects of notification no 14/27/2004 dated 3rd January 2007.

B. PROCEDURE

4. In these proceedings the procedure described below has been followed:

(i) The Embassy of the subject country in New Delhi was informed about the initiation of the investigation in accordance with Rule 6(2).

(ii) The Designated Authority sent copies of initiation notification dated 7th May 2008 to the Embassy of the subject country in India, known exporters from the subject country, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within the prescribed time limit. Copies of the letter, application and questionnaire sent to the exporter were also sent to the Embassy of the subject country along with a list of known exporters/ producers with a request to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time.

(iii) Copy of the non-confidential version of the application filed by the domestic industry was made available to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra.

(iv) Questionnaires were sent to the following known exporters from subject country in accordance with the rule 6(4) to elicit relevant information:

1. Suzhou Fine Chemicals Group Company Ltd.

Sukun Highway, Outside Loumen, Suzhou China215001

2. Kaifeng No.3 Chemical Plant

No.5 Min xiang street,
Kaifeng city,
Henan Province, 475003
China

3. Suzhou Industry Zone Yotech Chemical Industrial Co. Ltd.

2nd Floor, Yunlong Building
225 Ganjiange Rd
Suzhou City
Jiangsu 215021
China

4. Shanghai Fortune Chemical Co. Ltd.

2433 Huhang Road,
Zehlin Town,
Fengxian District
Shanghai, China PR.
Tel: 0086-21-62171900
Fax: 0086-21-62671272

Except for Shanghai Fortune Chemicals Co. Ltd. none of the other exporters responded to the questionnaire in response to the above notification.

(v) Questionnaire was sent to the following known importers and users of subject goods in India calling for necessary information in accordance with Rule 6(4):

1. EAGLE TRADING COMPANY

Market char Rasta
Rajmahal Road,
Barorda,
Gujrat

Phone :0265-2430237

2. COLGATE PALMOLIVE INDIA LTD
6, SEWRI FORT ROAD,
SEWRI,
EAST BOMBAY 400015
TEL-4146457/59

3. GENERAL IMPORT CO INDIA
SHREE DATTA COMPOUND,
REHNAL VILLAGE,
BHIWANDI,
DIST THANE
Mumbai,

4. JAGMOHANDAS & SONS
SARVOTHAM CARE LTD
1-20-248 UMAJAY COMPLEX
2ND FL RASOOLPURA
SECUNDERABAD 3

5. SPECIALITY CHEMICALS
407, YOGESHWAR BUILDING
135/139, KAZI SAYED STREETMASJID,
BOMBAY 400003
TEL-3414469/1026 FAX:3439319

6. C J SHAH & CO
105, BAJAJ BHAVAN,
10 TH FLOOR NARIMAN POINT
BOMBAY 400021

7. GRAUER & WEIL INDIA LTD
AKURLI ROAD KANDIVILI
EAST BOMBAY 400101
TEL-56993000 FAX:56993010
EMAIL:hq@growel.com

8. NANDLAL BANKATLAL PVT LTD
303, SHARAF MANSION 32,
PRINCESS STREET
BOMBAY 400002

9. NECTAR DRUGS P LTD
KAKAD MKT,KALBADEVI ROAD
KALBADEVI
BOMBAY 400 002

10. PROCTER & GAMBLE HYGIENE AND HEALTH
C GRECIOS ROAD
SAHAR
BOMBAY 400 099
TEL:28266000

11. SUN SHINE COSMETICS LTD
B-15, SHALIMAR INDL.ESTATE
NEAR TATA POWER HOUSE
MATUNGA
BOMBAY 400019

12. NEERU MARKETING P LTD
315, IIND FLOOR,
TILAK BAZAR, KHARI BAOLI,
DELHI 110 006

13. M/S ARTEK SURFIN CHEMICALS LTD.
SURFIN CENTER, 121, MAROL CO-OP. IND. ESTATE,
M. V. ROAD, ANDHERI (E), MUMBAI - 400 059

14. M/S GRAUER AND WEIL INDIA LTD, MUMBAI
'GROWEL HOUSE', AKURLI ROAD,
KANDIVLI [EAST], MUMBAI - 400 101.
TEL: 022-6699 3000. FAX : 022-6699 3010.
E-MAIL: HQ@GROWEL.COM / SECRETARIAL@GROWEL.COM

Except M/s Grauer & Weil (India) ltd and Artek Surfin Chemicals Ltd, none of the other importers / interested parties have filed the questionnaire or any information in this regard.

(vi) Imports data for the injury period that is period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).

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

(viii) M/s. Vishnu Chemicals Ltd, Hyderabad being domestic industry, has submitted the information/data. The Authority examined the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) in order to assess the injury suffered, to work out the cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to domestic industry.

(ix) In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 23rd September 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally.

(x) The arguments made in the written submissions/ rejoinders received from interested parties have been considered, wherever found relevant, in this disclosure;

(xi) The period of investigation for the purpose of the present review is 1st October, 2006 to 30th September, 2007 (12 months). However, injury analysis shall cover the years 2004-2005, 2005-2006 and 2006- 2007.

(xii) In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the known interested parties and comments received on the same have been considered in the final findings.

(xiii) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

(xiv) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.

(xv) *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND 'LIKE ARTICLE'

5. The product involved in the original investigation and this current review is Saccharin. Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar. Saccharin is primarily produced in two types i.e. soluble and insoluble saccharin. In market parlance soluble saccharin is called sodium saccharin whereas insoluble sodium saccharin is called insoluble saccharin. Apart from sodium saccharin, saccharin can have other variants such as calcium and zinc Saccharin. Saccharin is produced in two physical forms, viz. Granular and powder. Sodium saccharin in granular form is used in situation where saccharin will be dissolved, the powder form which have been grounded and spray dried is used in dry mixes and pharmaceuticals. Insoluble form of saccharin is used in many pharmaceutical and medical applications. It is slightly soluble in water. Saccharin is more than 500 times sweeter than sugar. All forms of saccharin are within the scope of the present investigations.

It is used in variety of industries such as food and beverage, personal care products, table-top sweeteners, electroplating brighteners, pharmaceuticals, etc. It is classified under Chapter 29 of the Customs Tariff Act, 1975 under sub-headings 29251100. The applicant has stated that subject goods are being imported under above mentioned sub-headings. However, the Custom classification is indicative only and not binding on the scope of investigation.

C.1 VIEWS OF THE DOMESTIC INDUSTRY

6. Following issues have been raised by the domestic industry with regard to product under consideration and like article:
 - 6.1. Present review investigation being a mid-term review investigation, product under consideration remains the same as has been defined in the previous investigations.
 - 6.2. The product involved in the previous investigation and the present review investigation is Saccharin. Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar. Saccharin is primarily produced in two types i.e. soluble and insoluble saccharin. In market parlance soluble saccharin is called sodium saccharin whereas insoluble sodium saccharin is called insoluble saccharin. Apart from sodium saccharin, saccharin can

have other variants such as calcium and zinc Saccharin. Saccharin is produced in two physical forms, viz. Granular and powder. Sodium saccharin in granular form is used in situation where saccharin will be dissolved, the powder form which have been grounded and spray dried is used in dry mixes and pharmaceuticals. Insoluble form of saccharin is used in many pharmaceutical and medical applications. It is slightly soluble in water. Saccharin is more than 500 times sweeter than sugar. All forms of saccharin are within the scope of the present investigations.

6.3. Saccharin is classified under Chapter 29 of the Customs Tariff Act, 1975 under sub-headings 29251100. The applicant has stated that subject goods are being imported under above mentioned sub-headings. However, the Custom classification is indicative only and not binding on the scope of investigation.

6.4. The goods produced by the domestic industry are like article to the imported product. The Designated Authority in the previous investigations examined the Issue of product under consideration and like article in detail.

C.2 Views of the importers, consumers, exporters and other interested parties

7. Responding exporter M/s Shanghai Fortune Chemical Co. Ltd; has contended that unlike domestic industry they do not use OTS route for the manufacturing of Saccharin. Importers M/s Artek Surfin Chemicals Ltd. and M/s Grauer and Weil India Ltd. have also argued that the Chinese producers from whom they import the subject good doe not follow the OTS route.

C.3 Examination by the Authority.

8. The product under consideration in the present investigation is Saccharin (also referred to as subject goods hereinafter), classified under Chapter 29 of the Customs Tariff Act, 1975 under sub-headings 29251100.

9. There is no significant difference in Saccharin produced by the Indian industry and Saccharin exported from China PR, which can have an impact on price. Saccharin produced by the Indian industry and originating in or exported from the China PR is comparable in terms of characteristics such as physical and chemical characteristics. The Authority has

examined all the submissions made by various interested parties and considers that rule 2 (d) specifies that like article means an article that is 'identical' or 'alike' in all respects to the articles under investigation or in the absence of such an article, another article having characteristics closely resembling those of the article under investigation. In order to establish that subject goods produced by the domestic industry is a Like Article to that exported from subject country, characteristics such as technical specifications, manufacturing process, functions and uses and tariff classification have been examined. It has been found that subject goods produced by domestic industry have characteristics, which are similar to those imported from subject country. Thus, it is noted that subject goods produced and sold by the domestic industry in the domestic market are like product to the subject goods sold to India from subject country.

D. Standing and scope of the Domestic Industry

D.1. Views of Domestic Industry

10. In the previous investigations, The application was filed by M/s A S Enterprises, Mumbai, M/s Swati Petrochemicals Pvt. Ltd., Thane and M/s Shree Vardhyani Chemical Industry Co. Ltd., Gujarat and their supporters representing All India Saccharin Manufacturers Association, Mumbai, which are the producers of the subject goods in India. The applicants and their supporters account for 81.73% production of subject goods in India and the Authority considered that the applicant as domestic industry, as it accounted for a major proportion of the production of the 'Like Article' in India, in accordance with the Rules.

11. Presently, M/s Vishnu Chemicals Ltd Hyderabad, has filed the Application for review and enhancement of anti dumping. The application is supported by M/s A S Enterprises, Mumbai, M/s Swati Petrochemicals Pvt. Ltd., Thane and M/s Shree Vardhyani Chemical Industry Co. Ltd., Gujarat and their supporters representing All India Saccharin Manufacturers Association, Mumbai. The Applicant has submitted that it continues to be a major producer of the subject goods in India and accounts for significantly more than 25% of the total Indian Production.

12. Therefore, for the purposes of this review, the Applicant satisfies the standing requirement and constitutes domestic industry within the meaning of the Rules.

D.2 Views of the importers, consumers, exporters and other interested parties

13. Responding exporter M/s Shanghai Fortune Chemical Co. Ltd; and importers M/s Artek surfen Chemicals Ltd; and M/s Grauer and Weil India Ltd. has raised question as to the standing of domestic industry, on the pretext that it is not clear in the present application if the supporters in the original petition extend their support to the present petition as well. It has been stated that:

- a) The petitioner is not a representative of the domestic industry. In the original investigation the domestic industry was represented by Shri Vardayini Chemicals Pvt. Ltd, Swati Petrochemicals Pvt. Ltd, M/s A.S. Enterprises limited and M/s Jetsons Limited. Their combined production is several times higher than the total production of 185 MT of the petitioner during the POI.
- b) The supporters have extended their full support to the petition filed by the association. However, the initiation notification shows that the review investigation has been initiated at the instance of M/s Vishnu Chemicals Ltd.
- c) It is not clear whether M/s Swati Petro Products and M/s Jetsons are engaged in the production of saccharine or in bias tyres as in their supporting letter, it is mentioned that they are engaged in production and sales of bias tyres.
- d) The data of total domestic production may be provided.

14. Subsequent to the disclosure statement, the comments have been filed by the following interested parties within the deadline

- (i) The domestic industry
- (ii) M/s. Shanghai Fortune Chemical Co. Ltd. (China PR) & M/s. Majestic International Trading Co. Ltd. (Exporter, Hongkong)
- (iii) M/s Grauer & Well (India) Ltd, Mumbai.
- (iv) M/s Artek Surfen Chemcals Ltd., Mumbai.

Following the disclosure statement the domestic industry has reiterated all statements presented in the previous submissions filed before the Authority and has requested that such submissions should be incorporated therein.

M/s Grauer & Well (India) Ltd, Mumbai and M/s M/s Artek Surfen Chemcals Ltd., Mumbai in their post disclosure statement before the Authority have pointed out the delays in the various stages of this investigation and have also submitted that the data for the domestic

industry as a whole is not reflected in the injury analysis as per the ruling of the Hon'ble Supreme Court of India. They have also reiterated various issues raised by them earlier in this investigation.

D.3. Examination by the Designated Authority

15. The Application for review and enhancement of anti dumping duty has been filed by M/s Vishnu and it has provided relevant information in respect of changed circumstances with regard to dumping and consequent injury to the domestic industry. In respect of the issue that the petitioner has production below 50% (39% of total production) , the Authority notes that the legal requirement is " a major proportion" and the authority notes that the Production by M/s Vishnu Chemicals Ltd., Hyderabad commands more than 25% share in Indian production. Further, as Rule 5 is not attracted in the midterm review, the issue of support raised is not relevant however, a letter from the All India Saccharin manufacturers Association authorizing M/s Vishnu Chemicals to file the application on behalf of the association is available in the public file. The letters of other supporters indicate the same position. Concerning the mention of word Bias Tyres by M/s Swati Petro Products and M/s Jet sons in their support letters, it has been later clarified by the company and their consultants that it was an inadvertent mistake and the companies are engaged in the production of Saccharine. Further, available details of domestic production are provided at appropriate places.

16. Rule 2(b) under the Rules provides as follows:-

"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry"

17. Thus, in a situation where information with regard to domestic producers as a whole is not available, the Rules require the Authority to consider those producers whose collective output constitutes a major proportion of the total domestic production. Therefore, having regard to the legal provisions and facts & circumstances of the present case, the Authority considers that M/s Vishnu Chemicals Ltd. constitutes domestic industry for the purpose of the present investigation within the meaning of the AD Rules. The Authority has examined the contentions of all interested parties during their post disclosure submissions and notes that

during the process of investigation, all the submissions of various interested parties have been analysed in the final findings. It is also noted that the other industries representing other domestic producers had given the letter of support to the Authority. Their other submissions have been dealt by the Authority at the appropriate headings in this Final Finding.

E. DUMPING MARGIN

E.1. Views of Domestic Industry

18. The domestic industry has submitted that the normal value may be determined for all exporters/producers from China PR as per rules applicable for non-market economy country.

19. In order to arrive at normal value on the basis of “comparable price” of market economy third country, the Designated Authority shall require complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade). The Applicant has requested to consider India as an appropriate surrogate country for Chinese producers, because the accurate and adequate information for India is easily accessible. Other Investigating Authorities have been considering India as appropriate surrogate country and there is no factual basis which restricts the same.

20. The normal value in China PR can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. The normal value has been determined accordingly on the basis of cost of production in India, duly adjusted, in view of the fact that the selling price is a loss making price.

E.2 View of exporters/importers and other interested parties

E.2.1 View of Exporter M/s Shanghai chemical industries

21.

- Since Chinese exporters follow a different manufacturing process hence increase in price of OTS does not increase the cost of production of Chinese exporters.

- During the original investigation, the petitioner was not the producer of the subject material.
- While submitting Constructed Normal Value, petitioner has failed to assign any value corresponding to the cost elements claimed in the computation statement. OTS has been considered as raw material, which is not used at all by the exporters. Detailed methodology for calculation has not been disclosed.
- It is well known world wide that Chinese cost of production is comparatively lower. In India, also the same seems to be much lower for other domestic producers as they are producing the subject good from basic stage.

E.2.2 Views of the Domestic industry

Normal Value

22. The Designated Authority has constructed the normal value in the Final Findings (final findings of the original investigation) by considering the raw material for manufacture of Saccharin at the international prices, the consumption norms and conversion costs of the domestic industry and reasonable profit. Petitioner requests the Designated Authority to kindly consider the same in this investigation also.

With regard to difference in the process or starting raw material, petitioner submits that the Designated Authority is required to determine normal value for the like article and not the normal value for the identical article. There is no material difference in the imported product and the product supplied by the domestic industry. Such being the case, there is no justification in arguing that normal value based on Indian costs cannot be determined, particularly when the Chinese producers have been treated non market economy companies.

Export Price

23. The Petitioner has provided detailed calculations of export price in the petition filed based on information released by DGCI&S and IBIS. Petitioner requests the Designated Authority to kindly consider this information for determination of export price. Information provided by the sole responding exporter should not be adopted, unless the same is cross verified with the Indian customs data and its credibility & correctness

established on the basis of the same. Following adjustments are required to be made in this regard:

- i. Ocean freight,
- ii. marine insurance,
- iii. China port expenses,
- iv. China inland freight,
- v. VAT loss to Chinese seller
- vi. Bank Charges
- vii. Export packing

Dumping Margins

24. Comparison of normal value with export price would show that the dumping margin in the present case is materially higher than the dumping margin earlier established. This clearly shows that the quantum of anti dumping duty earlier imposed is required to be enhanced.

Following the issuance of disclosure statement, the responding exporters from the China PR have reiterated their earlier submissions with regard to calculation of dumping margin to them. They have reiterated the fact that the domestic producers follow the OTS route whereas SFC (the responding exporter) is using the PAN route. They have also requested the Authority to grant the market economy treatment to the producer and exporter. The domestic industry on the other hand has requested the Authority to confirm the dumping margin mentioned in the disclosure statement.

E.3 Examination by the Authority

25. Under Section 9A(1)(c) of the Act, 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 to 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);*

E.4. Normal Value in China PR

26.1 In anti-dumping investigations concerning imports originating in China PR, normal value shall be determined in accordance with Paras 7 & 8 of Annexure I of the AD Rules. The Authority notes that Para 7 of Annexure 1 of AD Rules provides that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin...”

Further Para 8 of Annexure 1 of the AD Rules (as amended) provides that:

“8 (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in subparagraph(3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes 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 is a non-market economic country;

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority

that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).”

26.2 The Designated Authority, as per para 8 (2) of the annexure 1 of AD rules for the purpose of assessing the normal value proceeded with the presumption that any country that has been determined to be or has been treated as a non-market economy for the purposes of anti-dumping investigations by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economy country. In the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by WTO members such as EU and USA. In the instant case China PR has been proposed to be investigated as a non-market economy country.

26.3 As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove the contrary. The cooperating exporters/producers of the subject goods from People’s Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

26.4 The Authority sent copies of the questionnaires to all the known exporters for the purpose of determination of normal value. Responses have been received from one producer and related exporter and they

have claimed Market Economy Treatment (MET). Response information to the questionnaire was filed by the following producers/exporters:

1. M/s Shanghai Fortune Chemicals Co. Ltd., China PR (SFC) and M/s Majestic International Trading Co. Ltd., Hong Kong (Majestic)

During the original investigations, the Authority had stated in the final findings

“It was noted that there is overall production control on saccharin in China PR. The control was in form of production and allocation of quota for export and domestic sales. Every year, the State Economic and Trade Commission or National Development & Reform Commission issues the production quota to each saccharin producer. Each month the saccharin producers should submit their production quantity to the sugar association. At the end of each year the sugar association will carry out verification for the year’s production of saccharin. If any enterprise produces more saccharin than the quota assigned to it then the sugar association reports the matter to local economy and trade commission and State Economic and Trade Commission takes action against the enterprise through local government. To monitor export quotas, the China Chamber of Commerce and Medicine & Health Products importers and exporters is responsible. For each export sales, the saccharin exporter should send export contract to the chamber, the chamber will verify and sign on the contract. Thereafter the exporter can declare their goods to the China Customs. “

Further, the Authority had noted that

“ The Authority notes that every year National Development and Reforms Commission issues the production quota to five producers of saccharin and each month the saccharin producers are required to submit their production quantity to the sugar association. At the end of each year, the sugar association carries out verification of production of saccharin. In case an enterprise produces and sells in the domestic market more saccharin than the quota assigned to it, then the sugar association report the matter to Local Economy and Trade Commissioner and action is taken against the enterprise through local government. For monitoring the export quotas the China Chamber of Commerce and Medicine & Health Products Importers and Exporters is responsible. For each export sales the saccharin exporter is required to send export contract to the Chamber, the Chamber verify and sign on the contract thereafter only the exporter can send the goods to the China Customs for export purpose. “

And the Authority had concluded after physical verification that

“It has been contended that the production control on saccharin is for the purpose to put check on pollution, however, the Authority is of the view that had control been to check pollution only then the production quota would have declined over the years whereas in this case the production quota kept on increasing. Secondly, for pollution control some regulatory mechanism was required to be put in place but by restricting sales of saccharin in domestic market how pollution control can be achieved is not understandable.

The Authority also notes that the exporters of Saccharin are receiving subsidy income from the Government, however, the same could not be traced in the accounts of all the cooperating exporters.

In view of the fact that there is a production, selling control in China PR and only a small portion of production is allowed to be sold in domestic market and rest of the production necessarily need to be exported and also that for exceeding the quota allocated for domestic sales, there is penalty provision whereas for exceeding the export sales the target only need to be approved by State Economy and Trade Commission, and also further that there is subsidy available to the exporters of saccharin, the Authority holds that the Saccharin exporters and producers are not operating in accordance with market economy principle in China PR and failed to rebut the presumption that they are working in non-market economy. “

The present investigation is a review investigation. The responding exporter had participated in the previous investigation as well. Further, the Designated Authority is required to determine normal value in respect of like article in accordance with the Rules. The Authority notes that the responding exporter could not establish that is required to be granted market economy status. Nor has the exporter established that the observations made by the Designated Authority at the time of original investigations are no longer true. Therefore, the exporter is proposed to be treated as a non market economy company.

26.5. The Authority is, therefore, unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 for determination of normal value for the Chinese exporters. The normal value in respect of all exporters/producers from China PR is determined as per Rules relating to non-market economy as contained in para 7 of Annexure 1 of AD Rules.

As per para 7 of Annexure 1 of AD Rules, the Authority is required to determine normal value on the basis of 'price or constructed value in the market economy third country or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product.'

In this regard, the Authority notes that

- i) Normal value cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available. It should be noted that such normal value must be "comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country". In order to arrive at normal value on this basis, the Designated Authority requires complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidence (including all information on ordinary course of trade). Principles of fair comparison as laid down under Article 2.4 of the Agreement are also relevant and required to be respected. The Petitioner was not able to procure such information from a producer in market economy third country nor has any other party provided any such information.
- ii) the price in third country, or price from such third countries to other countries cannot be adopted for the reasons that (a) information is not available; (b) the price so adopted must be a price in the ordinary course of trade; (c) such information would also require cooperation from a producer in such third country.
- iii) the price from such third countries to India can not be adopted for the reason that (i) such prices are influenced by the prices from China; (ii) the prices are below estimates of cost of production.

The Petitioner has submitted that India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country results in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country. India has been considered as an appropriate surrogate by other Investigating Authorities also.

The Authority notes that the normal value in China can be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. Price in India cannot be determined for the reason that the selling price is significantly below the cost of production. The normal value must therefore be determined on the basis of cost of production, duly adjusted for selling, general & administrative expenses and profit.

27. The Authority, in view of the above is constrained not to grant market economy status to any individual company and finds it appropriate to determine the normal value as per Para 7 of Annex-I of the AD Rules treating China PR as a non-market economy country. Further, the Authority notes that the Applicant did not provide information regarding the evidence of price or constructed normal value in a market economy third country. The information regarding the price from a market economy third country to other countries was also not made available. Besides, the prices from market economy third country to India could not be adopted since majority of imports to India were either by China PR or transshipped subject goods of Chinese origin from third countries. In view of the above, the Authority finds it appropriate to construct the normal value considering the cost of production in India, duly adjusted, reflecting the raw material prices and optimum conversion costs, selling, general administrative expenses and reasonable profit. The raw materials for manufacturing Saccharin at the international price, the consumption norms of the domestic industry and reasonable profit have been considered for constructing the normal value for all exporters/producers of China PR.

28. The normal value is therefore determined as US\$ ***/ Kg for all exporters/producers from China PR.

29. The Authority notes that only one of the exporter M/s Majestic International Trading Co. Ltd (Hongkong) with their manufacturer M/s Shanghai Fortune Chemicals Co Ltd, China PR has responded to this investigation and the Authority has accepted the export price of the responding exporter along with all adjustments as claimed by the exporter.

30. Apart from the sole responding exporter, no other exporter has submitted any replies to the initiation notification and has responded in the form and manner as per exporters questionnaire. Only two importers have responded to this initiation and have submitted the questionnaire in the form and manner required in the exporters questionnaire. However, it is noted that one of the exporters have not imported the subject goods during the POI while the other one has imported only a minuscule quantity

of subject goods during the POI. On the basis of the information submitted, the Authority cannot determine the export price of subject goods from the subject country from data submitted by importer. In view of this, the Authority has determined the export price of subject goods from subject country from the Transaction wise data made available by DGCI&S. Appropriate adjustments have been made from the CIF price to determine ex factory export price of the subject goods from subject country.

31. Continued dumping and likelihood of continued dumping:

The present investigation is a mid term review investigation and the Designated Authority is required to examine whether quantum of anti dumping duty is required to be modified (enhanced). The Designated Authority is required to examine the need for the continued imposition of the anti-dumping duty and whether the quantum of anti dumping duty is required to be modified. Though the Designated Authority is not required to examine likelihood of continuation of recurrence of dumping, nevertheless, the Applicant has provided information to show that dumping is likely to continue and cause injury to the domestic industry in case the present anti dumping duties are not enhanced appropriately. Followings are relevant in this regard –

- (a) Volume of exports have remained significant vis-à-vis original investigations, as would be seen from the table below –

Year	Imports from China (in MT)
2004-05	1560
2005-06	1804
2006-07	1133
POI	434

- (b) The dumping margin determined in the original investigation were as follows:

	Dumping Margin (%)	Fixed (\$ per MT)
Original Investigation		
Shanghai Fortune	26.75	717.21
Other cooperating	43.05-49.65	807.77-1127.67
Residual	135.53	2151.33

- (c) The volume of exports in the post POI period is also quite significant. In fact, the volume of imports declined somewhat only because of Olympics (because a number of plants were directed to suspend production). Once the Olympics were over, the production resumed to normal levels and Indian market is once again witnessing spiraling imports from China PR.
- (d) Continued exports even after imposition of duty at significantly dumping levels clearly show the need for enhancement in the benchmark.

32. Considering the normal value and export price determined as detailed above, dumping margin has been determined in respect of imports reported in India during the investigation period. The dumping margin has been determined as below:

Particulars	Unit		
		Cooperating (M/s Shanghai Fortune Chemicals Co Ltd, China PR , producer with M/s Majestic International Trading Co. Ltd (Hongkong) as exporter	Residual
Normal Value	US\$/kg	***	***
Export Price	US\$/Kg	***	***
Dumping Margin	US\$/Kg	***	***
Dumping Margin %	%	16.36	140.20

F. INJURY AND CAUSAL LINK DETERMINATION

F.1. Views of the Domestic Industry

33. The proper interpretation and understanding of Article 11.3 of the ADA, Section 9A (5) of the Act and Rule 23 of the AD Rules is that the main intent behind the mid term review is to consider whether (a) anti dumping duty in force is required to be withdrawn, (b) anti dumping duty in force is required to be enhanced or reduced. The focus in the mid-term review, that too where the application is for enhancement in the quantum of anti dumping duty should to on (a) justification for continuation of anti

dumping duty, and (b) justification for enhancement in the quantum of anti dumping duty. In the present case:

- a) The domestic industry has suffered continued injury inspite of existing anti dumping duty thus establishing the need for continuation of anti dumping duty.
- b) The injury would be likely to continue in the event of revocation or reduction in the quantum of duties.
- c) The current benchmark duty is no longer sufficient to address the injury to the domestic industry; the non-injurious price of the domestic industry has substantially increased; and therefore the quantum of anti dumping duty is required to be modified/enhanced.
- d) While the cost of production has increased over the period, due to increase in the price of raw material, the benchmark has remained the same.
- e) Exchange rate Shows significant variation since the imposition of existing duty.

F.2 Views of exporters, importers, users etc

34. On behalf of M/s Shanghai Fortune Chemicals Ltd.

- a) It has been contended that Domestic industry has failed to show decline in sales, output, market share, productivity & capacity utilization, and magnitude of dumping. Further:
 - i. The petitioner himself concedes that the anti dumping duties imposed in the original investigations have helped the domestic industry improve its performance on various parameters. Thus, it must be concluded that the domestic industry is no longer suffering an injury on account of dumped imports from China.
 - ii. When imports from China fell, cheaper imports from other countries went up. Thus the injury can only be on account of imports from countries other than China.
 - iii. The Authority shall not consider post POI data from determining dumping per se or for determining the likelihood or recurrence of dumping.
 - iv. M/s SFC use different raw material inputs, their production process is less energy intensive and does not require the extensive handling of toxic materials. The IBIS data contained in the petition shows a higher figure for imports from China for the period October 06- May 07, (255 Mt) than it shows for October 06-September 07 (198.3 MT).
 - v. The market share of the petitioner did not rise because market share for other domestic manufacturers and of other countries

increased by more than 125% during this time period. The injury alleged by the domestic industry is the result of factors other than imports from China.

b) On behalf of M/s Artek Surfin Chemicals and M/s Grauer & Weil :

- i. The data submitted by M/s Vishnu Chemicals is inaccurate and manipulated. The company manufacturing of saccharine only in 2005-06, but in the instant investigation, they have claimed a production of 56 MT in 2004-05 which has been stated to be the base year.
- ii. The company has achieved a production volume of 550 MT in 2008-09 as against 45 MT in 2005-06 indicating a growth of 1299%. The selling price per MT has increased from Rs.145/- per kilo to Rs.384/- per kilo. Thus, there is no injury to them by the high priced imports.
- iii. The petitioner should submit its claim of production and sales of 56 MT of saccharine during 2004-05 by way of an affidavit.
- iv. The import data as well as assessed demand as claimed by the petitioner are far from fact. The following table shows the comparison:

Sl.	Particular	Unit	2004-05	2005-06	2006-07	POI
			Volume	Volume	Volume	Volume
1.	Imports claimed as	MT	1054	1009	831	782
2.	Imports Website of Deptt. Of Commerce	MT	1670	1844	1552	
3.	Assessed Demand claimed as	MT	1250	1172	1192	1332

- v. The year 2006-07 has been a remarkable year for the petitioner. During this period, the landed value from China was Rs.139.61 per kg. or Rs.171.68 per kg. inclusive of ADD. As against the domestic selling price of Rs.80.13 as per the audited annual accounts, the petitioner was not prevented from selling their products at prices higher than Rs.80.13 per kilo. Since there was no price under cutting, there was not question any price injury to the petitioner.
- vi. As per the monthly summarized import data for the period 1st April, 2007 to 31st March, 2008 from IBIS, Mumbai, the assessable value

in case of imports from all countries went upto Rs.382.85 per kilo from Rs.153.77. In case of China, it went upto Rs.402.48 per kilo in March, 2008 from Rs.168.49 per kilo in April, 2007. Thus, in view of the increased landed prices there is no injury.

- vii. The petitioner should provide indexed information regarding cost and sales.
- viii. The Authority is requested to adopt the financial year 2007-08 as the POI for this review.

35. Following the issuance of disclosure statement the responding exporters have reiterated their earlier submissions with regard to quantity, value and rate figures for the subject imports within the POI. They have added that due to change in the level of imports during the POI, an inflated level of domestic demand has been mentioned in the disclosure statement which has made the domestic industry's performance during the POI look less impressive than it actually is. They have added that this change has bearing on the purposes of injury determination. Further, it has been mentioned that no attribution analysis regarding the injury being caused by the steep price in imports from the other countries. They have also requested the Authority to examine ever increasing number of cheaper imports in entering India from other countries.

The domestic industry on the other hand has reiterated their submissions given prior to the disclosure statement. They have added in their post disclosure statement that all the imports from Taiwan should be taken as transshipment of Chinese product. With regards to the various injury parameters they have reiterated their earlier submissions and have requested the Authority to confirm the same in the Final Findings. They have also requested the Authority that the revised duty may be recommended in terms of US\$.

F.3. Examination by the Authority

36. The investigation is for review, continuance and enhancement of anti dumping duty in force in view of claim of the domestic industry of continued dumping and consequent injury and likelihood of continued dumping and consequent injury.

37. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like article; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to

production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

38. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the AD Rules states as follows:

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

39. The Authority has taken note of the arguments of the interested parties on injury examination and addressed the issues including those raised subsequent to the disclosure statement at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.

40. For the purpose of assessing present state of injury, the Authority has examined the volume and price effects of dumped imports of the subject goods from subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between the dumping and injury, if any. Transaction by transaction data from DGC&IS and IBIS has been obtained and analyzed for the product for the injury period. Accordingly the volume and price effects of dumped imports have been examined as follows:

A. **Volume Effect**

a) **Assessment of Demand**

For the purpose of assessment of the domestic consumption/demand of the product under consideration, the Authority added the sales volume of the domestic industry and other Indian producers to the total imports into India, which has been summarized as under:

Particulars	Unit	2004-05	2005-06	2006-07	October
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					06- Sep 07
Sales of Domestic industry	MT	56	42	159	185
Sale of other Producers	MT	140	190	263	328
Imports from subject country	MT	1560	1804	1133	434
Import from Other Countries	MT	5	12	371	777
Total demand	MT	1761	2049	1925	1724

The Authority notes that the demand has increased upto 2006-07 and then has been at almost the same level of the base year. It has been asserted by the domestic industry that total imports have not been captured. However, the authority has relied on the transaction by transaction data as provided by DGC&IS. The Authority notes that the major chunk of the demand is still being taken away by dumped imports from the subject country as well as imports from other countries, which are approx 70% of the total demand despite the anti dumping duty in place. Some of the imports from other countries being mere transshipment from subject country cannot be ruled out.

b) Import Volume & market share

Annexure-II (ii) of the AD Rules provides that with regard to volume of the dumped imports, the designated authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India.

The Authority has determined the volume of imports based on DGCI&S data, as shown in the following table:

Imports - As per T/T DGCI &S		2004-05	2005-06	2006-07	Oct06-Sep07
China (Attracting ADD)	Mt	1560.26	1804.45	1132.67	433.71
Other Countries	Mt	4.65	12.25	370.86	777.14
Total known Imports	Mt	1564.91	1816.70	1503.53	1210.85
<i>Trend(Indexed)</i>	Indexed	<i>100</i>	<i>116</i>	<i>96</i>	<i>77</i>
Market share in Imports					
China (Attracting ADD)	%	99.70	99.33	75.33	35.82
Other countries	%	0.30	0.67	24.67	64.18

Share in demand		2004-05	2005-06	2006-07	Oct06-Sep07
Sales of Domestic industry	%	3.21	2.06	8.26	10.75
Sales of other Indian Producers	%	7.92	9.27	13.64	19.03
China	%	88.60	88.08	58.83	25.15
Other Countries	%	0.26	0.60	19.26	45.07

The authority has relied on the transaction by transaction data provided by DGC&IS. It is noted that in the total imports reported, the imports on account of products like certain mono hydrates, Dimethyl aminopropyl, Hermesetas original, Sodium citrate, Cytox, calcium sachrine etc are also included. To arrive at the imports of PUC, imports on account of above products have been excluded. The position is as follows:

Year		2004-05	2005-06	2006-07	Oct06-Sep07
Total Imports	MT	1669.749	1844.507	1552.207	1233.339
Other products included in total imports	MT	104.77	27.809	48.556	22.333
Total imports of PUC	MT	1564.979	1816.698	1503.651	1211.006
Imports of PUC from China	MT	1560.258	1804.447	1132.674	433.713
Import of PUC from other countries	MT	4.721	12.251	370.977	777.293

It is seen from the above that the share of imports from China have gone down. The domestic industry has asserted that it is evident from the above that the volume of imports from China PR and its share in demand has increased both in absolute and relative terms as compared to the base year in spite of anti-dumping duties in force till 2005-06. After that there is a sudden increase in imports from other countries. This is precisely because of the fact that China started routing its import through third countries like Taiwan etc. This has however, been asserted by the domestic industry that the imports coming from Chinese Taipei are mere transshipments of the Chinese material and because of the duty, these transshipments are taking place. The authority notes that the share of the domestic industry as well as of other producers have increased during the injury period.

It has been contended by the domestic industry that there was a fall in imports of the subject goods from China PR as some of the polluting

industries in China PR, including those of Saccharin manufacturers, were asked to shut down their plants before start of Olympics in China PR.

c) Production, capacity and capacity utilization

Capacity Utilisation	Unit	2004-05	2005-06	2006- 07	October 06- Sep 07
Capacity	kg	360000	600000	600000	600000
Production	kg	56495	44603	167545	185369
Capacity Utilisation	%	15.69	7.43	27.92	30.89

The Authority notes that the production was started by M/s Vishnu Chemicals in the year 2004 and the same had been verified in the original investigation having POI (Jan-Dec 04) and based on excise returns submitted by the company to the Authority. The Authority notes that Domestic industry has increased its capacity in 2005-06 to 600000 kg, but its capacity utilization has remained as low as 30.89% only. This is the situation even after the imposition of duty, clearly evidencing that the amount of duty is quite low and has failed to provide relief to the domestic industry from cheap imports from the subject country.

d) Sales:

Sales volumes of domestic industry are given in the following table: -

Particulars	Unit	2004-05	2005-06	2006- 07	October 06- Sep 07
Domestic Sales	MT	56.50	42.20	159.09	185.37
Total demand	MT	1761	2049	1925	1724

It is noted that sales volume of the domestic industry apparently shows an increasing trend over the injury period but it is also noted that the increase in sales is also due to increase in demand of the product concerned in India. When these sales figures are compared with the demand in the corresponding period, then it is found that the increase has been negligible.

B) Price Effect of the Dumped imports on the Domestic Industry

- i) The impact on the prices of the domestic industry on account of imports from the subject country have been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the

non-injurious price (NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject country.

- ii) A comparison for subject goods during the period of investigation was made between the landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission offered by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry by appropriately considering the cost of production for the product under consideration during the POI. The position is as follows:

Particulars	Units	2004-05	2005-06	2006- 07	October 06- Sep 07
Landed price	Rs./Kg	133.32	131.47	147.61	189.14
Net Sales Realization of Domestic industry	Rs./Kg	***	***	***	***
Price undercutting	Rs./Kg	***	***	***	***
Price undercutting range	%	12-17	8-13	22-27	-2 to3
Cost of sales	Rs./Kg	***	***	***	***
Price underselling	Rs./Kg	***	***	***	***
Price underselling range	%	41-46	64-69	44-49	45-50

The Authority notes that:

- a. the imports from China PR are marginally undercutting the prices of the domestic industry during POI, however it was significant in earlier years.
- b. the applicable benchmark price was lower than the selling price of the domestic industry during the period of investigation. Thus, imports were cheaper even after the addition of prevailing ADD.

Price suppression

Particulars	Unit	2004-05	2005-06	2006-07	October 06- Sep 07
Selling price	Rs/Kg	***	***	***	***
Cost of sales	Rs/Kg	***	***	***	***

(iv) In order to assess whether the imports from the subject country were suppressing/ depressing the prices of the domestic industry, the Authority compared the trends in selling prices and cost of sales, as seen in the table above. It is noted that the increase in the selling price (24.18%) was less than increase in the cost of production (35.24%) over the injury period.

(v) The Authority notes that imports from the subject countries were undercutting the prices of the domestic industry. As a direct consequence, the domestic industry was prevented from selling the product at a price, which would have enabled it to recover its cost of production and earn a reasonable profit. This led to deterioration in the performance of the domestic industry in terms of profits, cash profits and return on investment.

C. Examination of other Injury Parameters

38. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analyzed hereunder as follows:

(a) Profit/loss, return on investment and cash flow – The return on investment, profit/loss before and after interest, return on investment and cash profit has moved as shown in the table below:

Particulars	Unit	2004-05	2005-06	2006-07	October 06- Sep 07
Profit /(Loss)					
Cost of Sales	Rs/Kg	***	***	***	***
<i>Indexed</i>		100	159	129	135
Selling price	Rs/Kg	***	***	***	***
<i>Indexed</i>		100	95	121	124

Profit/(Loss)	Rs/Kg	***	***	***	***
<i>Indexed</i>		-100	-242	-139	-150
Profit/(Loss)	Rs/Lacs	***	***	***	***
<i>Indexed</i>		-100	-181	-391	-481
PBIT	Rs/Lacs	***	***	***	***
<i>Indexed</i>		-100	-191	-406	-514
Return on Capital Employed-NFA	%	***	***	***	***
<i>Indexed</i>		(100)	(150)	(132)	(163)

The Authority notes that:

- i. The domestic industry has been incurring losses throughout the injury period. The profitability is continuously deteriorating. This is precisely because of the fact that cost of production is increasing but there is no corresponding increase in the selling price of the product.
- ii The domestic industry is still facing a situation of negative returns.

(b) Inventories:

Inventories with the domestic industry have been as under:

	Unit	2004-05	2005-06	2006-07	October 06- Sep 07
Average stock	MT	***	***	***	***
<i>Indexed</i>		100	67	78	158

The Authority notes that the inventories showed a declining trend in 2005-06 but again started increasing in 2006-07 and reached to the level of 11.32 MT in the POI.

(c) Employment, wages and productivity

Particulars	Unit	2004-05	2005-06	2006-07	October 06- Sep 07
Employment	Nos.	***	***	***	***
Trend	<i>Indexed</i>	100	85	105	105
Production	MT	***	***	***	***
Productivity Per	kg	***	***	***	***

Employee					
Productivity per Employee	Indexed	100	93	282	312
Wages	Rs. Lacs	***	***	***	***
Trend	Indexed	100	83	75	212

The Authority noted significant changes in wages level during POI from the previous year. The Productivity expressed in terms of production per employee shown improvement in view of increase in production.

(d) Dumping margin – The Authority notes that the dumping margin determined against the subject country is significant, even when the anti-dumping duty is in force.

(e) Ability to raise capital investments – The Authority notes that the Applicant Company is suffering financial losses and is finding difficult to raise capital.

Conclusion on injury

41. Views of the petitioners:

It has been submitted that in case some of the parameters does not show injury –

- a. this being MTR, material deterioration is unnecessary,
- b. what is relevant now is whether
 - i. the existing measure is sufficient to counteract the dumping which is causing injury;
 - ii. the dumping margin is positive inspite of current anti dumping duty,
 - iii. injury margin is positive inspite of current anti dumping duty,
 - iv. the performace of the domestic industry has improved to reasonable levels.
- c. The decisions of the CESTAT are also relevant, which clearly establish (a) positive price undercutting and injury margin justify extension of anti dumping duty, (b) profit is one of the important parameters of injury to the domestic industry.
- d. Inspite of significant demand, the domestic industry has not been able to produce and sell to the extent of capacities. Further, the domestic industry continues to suffer losses. Thus, continued adverse performance in respect of production, capacity utilisation, sales volumes, profits, return on investment and cash flow

establish that the domestic industry is still faced with injurious dumping.

- e. Deterioration in performance is not required to be seen in MTR.
- f. Price undercutting – price undercutting is clearly positive. Argument of the parties is without any evidence.

42. Views of the exporters

- a) Performa IV A shows an increase in Production capacity, Production, sales, market share.
- b) Although, DI's losses have increased to 151 indexed units in the POR from 100 in 2004-05, but annexure II para (iv) of the rules requires an analysis of "all" the factors, and here, here DI is unable to show decline in 6 factors- sales, output, market share, productivity and capacity utilization, magnitude of dumping.
- c) If at all there is an injury to DI, then it is not due to subject imports as subject imports have reduced after the imposition of the duty, imports have fallen by more than 81% and market share of imports to 14.56% and DI is showing an improvement in various volume parameters.
- d) IV –A shows that imports from other countries have increased from more than 15000%, their market share has also increased to 47.29%.
- e) Landed prices of imports from China is higher than those from other countries.

43. Views of The importers

- a. Director's report of the petitioner notes 2006-07 as a historical year where there has been good product demand and effective price realization.
- b. There has been no price undercutting, when landed value of imports was Rs. 139.63/KG and domestic selling price was Rs.80.13, as per audited annual accounts.
- c. Lower sales realization is attributable to the increase in the production by the petitioner in 2006-07 and hence cost of production might have come down.
- d. DI is able to meet only 25% of the domestic demand, petitioner producing 149 MT in 2006-07, and total production of supporter, is estimated to be 300 MT, total demand of the country may be 2000 MT. DI is incapable to meet the domestic demand thus making exports inevitable.

- e. Just before the imposition of duty, landed price of imports was Rs. 140, whereas that of DI, Rs. 80/KG. Despite of that DI was making profit.
- f. POI chosen by the petitioners is very calculative; price of subject goods has started increasing from 2007 onwards. To substantiate this import data from 1st Apr'07 to 31st Mar '08 from IBIS, Mumbai has been provided.
- g. Petitioners of the original investigation, who had allegedly suffered the injury, and duty is based upon their data, have refrained from participating in the investigation. Indexed information as to cost and sales has not been provided.

Examination by the Authority and Conclusions on injury and causal link

44. The Authority has verified the data in respect of the domestic selling price for the year 2006-07. It was noted that though the total volume in respect of the PUC was reflected correctly, the Sales value was taken in respect of one plant only thereby showing much less selling price than the actual. The authority also notes that the cost of production went down in the year 2006-07 in comparison to the year 2005-06 and the Domestic selling prices went up during the same period, however the selling price did not recover the cost of production. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury including the points raised by the various interested parties subsequent to the disclosure, the Authority concludes that:

- i) The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from the subject country is substantial and above de-minimis.
- iii) The Authority notes that there are 14 injury parameters laid down under the law. It is clearly understood and is by now a settled position that improvement in one or more parameters does not imply "no injury". In fact, deterioration or adverse performance in one or more parameters is sufficient to establish injury. With regard to volume effect due to dumping of subject goods from subject country, it is noted that various

parameters like production, sales, market share in demand and capacity utilization do not show any adverse effect and many of these parameters show improvement during the injury period. However, this needs to be seen in light of very low base of production during the initial period of injury period when the company had just set up their plant. This is summed up in the very low capacity utilization of the domestic industry during the injury period.

- iv) With regard to the price parameters, it is noted that the dumped imports from China PR are marginally undercutting the domestic prices. However, there is a significant price underselling with reference to import prices of subject goods from China PR. Moreover, there is a significant price suppression also as selling prices during the injury period have increased by 24% while cost of sales have gone up by 35%. With regard to other parameter, it is noted that the domestic industry continues to reel under the losses which have increased by more than 300%. The PBIT and return on investment has become more adverse during this period.
- v) Parameters such as employment and wages do not reflect injury. However, this is to be seen in the context of the nature of the petitioner company (hiring & firing of manpower can not be an overnight feature of the petitioner). Thus, on the basis of the above analysis, it is concluded that the domestic industry continues to suffer from material injury because of import of dumped imports of subject goods from subject country.

Likelihood of continuation or recurrence of Dumping and injury

45. The Authority notes that dumping is continuing from China PR in spite of the antidumping duty in force and the domestic industry continues to suffer material injury due to such dumped imports. There is no evidence/information on record to suggest that dumping and consequent injury to the domestic industry is unlikely to continue. Therefore, further examination of the likelihood of recurrence of dumping and injury has not been carried out.

G. Indian industry's interest and other issues

46. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the product in India. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practice, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of the anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the products to the consumers. The consumers could still maintain two or even more sources of supply.

47. The purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

H. Conclusions:

48. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- a. The subject goods are entering the Indian market at dumped prices and dumping margins of the subject goods imported from China PR is significant and above de-minimis limits prescribed. The subject goods continue to be exported to India at dumped prices in spite of existing anti dumping duties.
- b. Considering the facts available on record, the subject goods are likely to enter Indian market from subject country at dumped prices, should the present measures be withdrawn.
- c. The situation of domestic industry deteriorated further in spite of existing anti dumping duties.

- d. The deterioration in the performance of the domestic industry is because of dumped imports from China PR.
- e. The current level of anti dumping duty is insufficient to address continued dumping and consequent injury to the domestic industry and thus the anti-dumping duty is required to be modified as recommended below.

I. Recommendations

49. Having concluded that the product continues to be exported at dumped prices, the current dumping margin and injury margin establishes the need for revision in the anti-dumping duty in force, the situation of the domestic industry continues to be fragile and there is likelihood of continuation or resumption of dumping and injury on account of imports from China PR, if the duties are revoked, the Authority is of the opinion that the measure is required to be extended and the quantum of Anti-dumping duty is required to be modified in respect of imports from China PR as specified in the duty table below. For the purpose of determining injury margin, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation.

50. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount indicated in Col 9 of the table below is recommended to be imposed on all imports of subject goods originating in or exported from China PR.

Duty Table

	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount (in USD)	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
(1)	29251100	Saccharin	All grades	China PR	China PR	Shanghai Fortune Chemicals Co. Ltd., China	Majestic International Trading Co. Ltd.	0.96	Kg	US\$
(2)	29251100	Saccharin	All grades	China PR	China PR	Any combination other than Sr no (1)		3.99	Kg	US\$
(3)	29251100	Saccharin	All grades	China PR	Any other than China PR	Any	Any	3.99	Kg	US\$
(4)	29251100	Saccharin	All grades	Any other than China PR	China PR	Any	Any	3.99	Kg	US\$

51. Landed value of imports for the purpose shall be the assessable value as determined by Customs under the Customs Act, 1962 and all duties of customs except duties levied under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

52. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

R. Gopalan
Designated Authority