

**No. 15/20/2010-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES**

NOTIFICATION

Udyog Bhavan, New Delhi - 110011
Dated 7th December, 2011

Final Finding

Subject: Sun Set Review of Anti-dumping duties imposed on imports of Saccharin originating in or exported from China PR.

No.15/20/2010-DGAD : 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 Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter referred to as the Rules) thereof;

A Background of the Case

1. The Authority, having regard to the Act and the Rules, had recommended imposition of anti-dumping duty on the imports of Saccharin classified under Sub-heading 2925.11 of Chapter 29 of the Customs Tariff Act, 1975 (hereinafter referred to as subject goods), originating in or exported from China PR (hereinafter referred to as subject country), vide the final findings Notification No.14/27/2004-DGAD dated 03.01.2007.
2. On the basis of the recommendations of the Authority, definitive anti-dumping duty was imposed by the Central Government vide Notification No. 41/2007-Customs dated 19.03.2007 on the imports of the subject goods from the subject country.
3. Subsequently, the Authority conducted a Mid Term Review (MTR) and recommended modifications of the duties vide the Findings Notification No 15/15/2008-DGAD dated 6th Nov 2009. The modified duties were imposed by the Central Government vide Custom Notification No. 136/2009 dated 9th Dec 2009.
4. The petition in the original investigation was filed by M/s AS Enterprises, Mumbai, M/s Swati Petrochemicals Pvt. Ltd., Thane and M/s Shree Vardayani Chemical Industry Co. Ltd., Gujarat and their supporters

representing All India Saccharin Manufacturers' Association and the MTR petition was filed by M/s. Vishnu Chemicals Ltd, Hyderabad.

5. Under Section 9A(5) of the Customs Tariff (Amendment) Act, 1995 the anti-dumping duties imposed, shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In this regard, Hon'ble High Court of Delhi in WP No 16893 of 2006 had held that sunset review is mandatory. Therefore, pursuant to the above orders of the Hon'ble Court and in accordance with Section 9A(5) of the Act read with Rule 23 of the Rules, the Designated Authority initiated suo motu the present sunset review investigation to examine whether cessation of the duty would lead to continuation or recurrence of dumping and injury.
6. After initiating the present sun set review investigation suo motu, the Authority received a duly substantiated petition for sun set review from the All India Saccharin Manufacturers' Association, on behalf of the domestic industries, namely M/s Vishnu Chemicals Limited, Hyderabad, M/s Swati Petrochemicals Pvt. Ltd., Thane & M/s Shree Vardayani Chemical Industry Co. Ltd., Gujarat, requesting for review, enhancement and continuation of the duties claiming that the domestic industry continued to suffer injury on account of dumping by the subject country. The request was based on the grounds that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The petitioner had claimed with prima facie evidence in this regard and had requested for review, enhancement and continuation of the duties on imports of subject goods from the subject country. The petition was supported by M/s AS Chemopharma Pvt Ltd and M/s Amita Chemicals, but without any data.
7. The scope of the present sun set review investigation covers all aspects of the previous notifications.

B. Procedure

8. The procedure described below has been followed with regard to the present investigation:
 - a. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2).
 - b. The Authority provided copies of the non-confidential version of the application of the domestic industry to the known exporters and the Embassy of subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application of the domestic industry was also provided to other interested parties, wherever requested.

- c. The Authority forwarded a copy of the public notice to the following known exporters (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2) & 6(4) of the Rules:
- Suzhou Industry Zone Yotech Chemical Industrial Co. Ltd.
 - Kaifeng Xinghua Fine Chemical Factory.
 - Tianjin Changie Chemical Co. Ltd.
 - Shanghai Fortune Chemical Co. Ltd.
- d. The following producers/exporters filed exporter's questionnaire response/MET responses:
- M/s Tianjin Changie Chemical Co. Ltd.
 - M/s Shanghai Fortune Chemical Co. Ltd.
 - M/s Majestic International Trading Co.
 - M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory.
 - M/s Tianjin North Food Co. Ltd.
- e. Subsequently, at a much belated stage, Exporters and MET questionnaire responses were also filed by M/s Tianjin Sanqian Science & Technology Group Company and M/s Fairland Trading co Ltd, the share holding parent companies of M/s Tianjin Changie Chemical Co. Ltd.
- f. The Authority forwarded a copy of the public notice to the following known importers of the subject goods in India in accordance with the Rule 6(4) of the Rules:
- M/s Eagle Trading Company.
 - M/s Colgate Palmolive India Ltd.
 - M/s General Import Co India.
 - M/s Jagmohandas & Sons Sarvotham Care Ltd.
 - M/s Speciality Chemicals.
 - M/s C J Shah & Co.
 - M/s Grauer & Weil India Ltd.
 - M/s Nandlal Bankatlal Pvt Ltd.
 - M/s Nectar Drugs P Ltd.
 - M/s Procter & Gamble Hygiene And Health.
 - M/s Sun Shine Cosmetics Ltd.

- M/s Neeru Marketing P Ltd.
 - M/s Artek Sunfin Chemicals Ltd.
- g. In response to initiation of the investigation, M/s Grauer & Weil India Ltd filed importers questionnaire response.
- h. Subsequently another importer namely M/s Eljay Impex Pvt. Ltd. filed questionnaire response after being asked by the Authority, since they are involved in the imports of subject goods from one of the respondent producer/exporter from subject country. However, M/s Eljay Impex Pvt. Ltd failed to furnish relevant information required by the authority.
- i. Submissions were also received from M/s Sandeep Organics Pvt Ltd and addressed in this finding.
- j. The Authority made available the non-confidential version of the evidences presented by various interested parties in the form of a public file for inspection by the interested parties as per Rule 6(7) of the Rules.
- k. Exporters, producers and other interested parties who have not responded to the Authority, nor supplied information relevant to this investigation have been treated as non-cooperating interested parties.
- l. A Market Economy Treatment (MET) questionnaire was also provided to the known producers/exporters of the subject goods from the country and the Embassy of China PR with the request to provide relevant information to the Authority within the stipulated time.
- m. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, including the period of investigation. The transaction wise import data received from the DGCI&S has been relied upon by the Authority in this finding.
- n. Information was sought from the domestic industry to determine non-injurious price based on the cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- o. The Authority held a public hearing on 19.08.2011 to hear the interested parties orally. The interested parties present at the time of

hearing were advised to file written submissions of the views expressed orally and were also given an opportunity to file rejoinder to the views expressed by other interested parties. The written submissions and rejoinders received from interested parties, to the extent considered relevant by the Authority, have been considered in this finding.

- p. On the spot verification of the data provided by the domestic industry and the cooperating producers/exporters of the subject goods of the subject country was carried out to the extent considered necessary by the Authority.
 - q. In accordance with Rule 16 of the Rules supra, the essential facts of the present investigation were disclosed by the Authority to the known interested parties vide letter dated 22nd November, 2011 and comments received on the same, to the extent considered relevant by the Authority, have been considered in this finding.
 - r. Investigation has been carried out for the period starting from 1st April, 2009 to 30th June, 2010 (POI). The examination of trends in the context of injury analysis covered the periods from 2006-2007, 2007-2008, 2008-2009 & the POI.
 - s. *** in this finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
 - t. The Exchange rate adopted by the Authority in this disclosure statement is 1USD = 47.88 INR
9. The Exporters/MET questionnaire responses filed by the following producers/exporters were not accepted by the Authority on the grounds stated against each:

a. **M/s Tianjin North Food Co. Ltd.**

M/s Tian Jin North Food Co. Ltd, China PR, filed only exporter's questionnaire response and did not claim market economy treatment. They claimed to have produced and exported the subject goods to India during the POI through M/s Farmasino Pharmaceutical (Jiangsu) Co Ltd and M/s Ville Mode International Ltd, or their subsidiaries in China respectively. As per the information furnished in the exporter's questionnaire response they did not export the subject goods to India during the POI. They stated in the response that neither they exported during POI nor they have plans to export the subject goods to India during and after POI. The Authority notes that M/s Tian Jin North Food Co. Ltd, China PR did not export the subject goods to

India during the POI and claimed to have exported only through traders/exporters and their subsidiaries in China, who did not file exporter's questionnaire response. Subsequently, after being pointed out by the Authority, an exporter's questionnaire response was submitted by M/s Tian Jin North Food Co. Ltd, China PR, on behalf of M/s Ville Mode International Ltd, without relevant information/documents and authorization. Since, without complete responses filed by the exporters, the export chain is incomplete in which case export price, dumping margin etc cannot be determined, the exporter's questionnaire response filed by M/s Tianjin North Food Co. Ltd for themselves and for Ville Mode International Ltd, being incomplete, have not been accepted by the Authority.

b. M/s Tianjin Changie Chemical Co. Ltd.

M/s Tianjin Changie Chemical Co. Ltd, China PR filed both exporters questionnaire and MET responses. In the exporters questionnaire response M/s Tianjin Changie Chemical Co. Ltd claimed to have produced the subject goods and exported to India directly. But, it was also claimed that their share holding parent companies namely M/s Tianjin Sanqian Science & Technology Group Company and M/s Fairland Trading Co Ltd are also engaged in the export/domestic sales of the subject goods during the POI. But, questionnaire responses were not filed by the related companies involved in the exports of the subject goods to India during the POI, despite being pointed out by the Authority vide letter dated 5th August, 2011. Instead of filing questionnaire responses on behalf of the share holding parent companies, the respondent producer/exporter vide their letter dated 19th August, 2011 intimated that the share holding parent companies are special purpose vehicles. They further informed that it is the same team in Tianjin Changie that runs the share holding parent companies and their involvement in the sales of the subject goods is to make some revenue for the share holding parent companies. Since questionnaire responses were not filed by the share holding parent companies involved in the exports of the subject goods to India during the POI, despite being pointed out by the Authority, the questionnaire responses filed by M/s Tianjin Changie Chemical Co. Ltd, were not accepted by the Authority and the decision of the Authority was communicated to the respondent producer/exporter vide letter dated 30th August, 2011.

c. M/s Tianjin Sanqian Science & Technology Group Company and M/s Fairland Trading co Ltd

Subsequently, after the decision of the Authority regarding non-acceptance of their responses was communicated to M/s Tianjin Changie Chemical Co. Ltd, at a much belated stage, vide their letter dated 19th September, 2011 exporters and MET questionnaire responses were filed by M/s Tianjin Sanqian Science & Technology Group Company and M/s Fairland

Trading co Ltd, the share holding parent companies of M/s Tianjin Changie Chemical Co. Ltd. But, since anti-dumping investigations are time bound, the same were not accepted by the Authority being belated and the decision of the Authority was communicated to them vide letter dated 11th October, 2011. Thereafter, as requested by M/s APJ-SLG, their consulting firm, a personal hearing was also granted by the Authority on 11th November, 2011 and they were informed that such belated responses cannot be accepted.

C. Scope of the Product under consideration and like article

Submissions by the Domestic Industry

10. The following submissions have been made by the domestic industry with regard to the scope of the product under consideration (PUC) and like article:

- Present investigation being sun set review; the scope of the product under consideration must remain same as that of the original investigation.
- There is no difference in subject goods produced by the domestic industry and the subject goods produced in and exported from China PR and are like articles in terms of the Rule 2(b) of the Rules.
- There is no material difference in the production process employed by the Chinese producers and the Indian producers of the subject goods.
- The product is being misclassified and imported in a number of other customs sub-headings such as the following and need to be addressed by the Authority while conducting the investigation:

SN	Customs classification	SN	Customs classification
1	28261200	6	29142120
2	29151100	7	29420090
3	29251100	8	30049099
4	29251900	9	33069000
5	29252990	10	38249090

Submissions by the producers/exporters/other interested parties

11. No relevant submission has been made by the respondent producers/exporters/other interested parties with regard to the scope of the product under consideration (PUC) and like article.

Examination by the Authority

12. The product under consideration (PUC) in the present investigation is Saccharin originating in or exported from China PR. Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar. Primarily there are two types of Saccharin i.e. soluble and insoluble. 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 situations where saccharin will be dissolved, the powder form which has been grounded and spray dried is used in dry mixes and pharmaceuticals. It is slightly soluble in water. Insoluble form of saccharin is used in many pharmaceutical and medical applications. Saccharin is used in a variety of industry such as food and beverage, personal care products, table top sweeteners, electroplating brighteners, pharmaceuticals, etc. Saccharin is more than 500 times sweeter than sugar. All forms of Saccharin are within the scope of the present investigation. Being a sun set review; the PUC is the same as in the earlier investigations.
13. Saccharin is classified under Chapter 29 of the Customs Tariff Act, 1975 under sub-headings No. 29251100. The domestic industry claimed imports of subject goods under several other tariff sub-headings as well, which has been examined below. However, the Customs classification is indicative only and not binding on the scope of the investigations.
14. The present investigation being a sun set review investigation and anti-dumping duties, as earlier recommended by the Authority, being in force on the imports of the subject goods from the subject country, the Authority considers that the scope of the PUC in the present investigation remains the same as that of the original and the mid-term review investigations, as per Rule 2(d) of Anti-Dumping Rules. Moreover, none of the interested parties have made any submission requesting modification (including curtailment) in the scope of the review.
15. With regard to the submission of the domestic industry that the product is being misclassified and imported in a number of other customs sub-headings, the Authority notes that the Customs classification is indicative only and not binding on the scope of the investigation. However, the Authority checked up the data from DGCI&S and other sources and observed that the imports of the subject goods have taken place from the subject country, including other countries, during the POI, under several customs sub-headings as claimed by the domestic industry.

D. Scope of the Domestic Industry and Standing

Submissions by the Domestic Industry

16. The following are the submissions made by the domestic industry with regard to scope of the Domestic Industry and Standing:

- (i) The scope of domestic industry and standing are not relevant in a sun set review.
- (ii) The participating producer's share of production of subject goods constitutes 74% of the total Indian production, and hence a major proportion, of the subject goods in India. Together with the share of the supporting producers, it constitutes 84% of the total Indian production of the subject goods. In view of the above the petitioner satisfies the criteria of standing under the Rules.

Submissions by the producers/exporters/other interested parties

17. No relevant submission has been made by the respondent producers/exporters/other interested parties with regard to domestic industry and standing.

Examination by the Authority

18. The Authority notes that no relevant submission has been made by any interested party contrary to the views offered by the domestic industry. Further efforts were also made by the Authority to ascertain the detailed information with regard to domestic producers/production of the subject goods in the country from the concerned administrative department. However no information was made available to the Authority. In view of the above position and having regard to the Rules and information on record, the Authority holds that M/s Swati Petrochemicals Pvt. Ltd., Thane, M/s Shree Vardayani Chemical Industry Co. Ltd., Gujarat and Vishnu Chemicals Limited, Hyderabad, represented by the All India Saccharin Manufacturers' Association, constitute domestic industry for the purpose of the present sun set review investigation within the meaning of the Rules.

E. Issues relating to Confidentiality

Submissions made by the producers/exporters/other interested parties

19. The following are the submissions made by the producers/exporters/other interested parties concerning confidentiality:
- (i) Excessive confidentiality claimed by the domestic industry and allowed by the Authority.
 - (ii) Consolidated information of domestic industry should not be allowed to be kept confidential.
 - (iii) Information available in the public domain should not be allowed to be kept confidential.
 - (iv) DGCI&S data does not represent business proprietary information of the applicants and therefore they cannot claim confidentiality for the same.
 - (v) Shanghai Fortune submitted post disclosure that no import statistics reveal the name of the exporters and it not understood how the domestic industry has accessed such information.

Submissions by the Domestic Industry

20. The following are the submissions made by the domestic industry with regard to the issue of confidentiality:
- i. The petitioner has claimed confidentiality after showing due cause. On the contrary, responding exporters themselves have claimed confidentiality on facts such as product brochure and product catalogues which are available in the public domain.
 - ii. The injury information cannot be disclosed considering that out of three companies constituting domestic industry, one company is a listed company and has significantly higher production. It would be very easy for the petitioners themselves to gather substantial commercial information about the other two companies. Furthermore, disclosure of price related information such as profit, return on capital employed, cash flow, cost of production, selling price, etc would cause serious prejudice to the interest of the domestic industry.

- iii. The DGCI&S data is not confidential as the same is available publicly on the website.

Examination by the Authority

21. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

22. With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

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

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

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

23. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to “respective interested parties”, while non-confidential facts are required to be disclosed to all interested parties. At no stage the Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests.

24. With regard to the contention of the interested parties that consolidated information of domestic industry should not be allowed to be kept confidential, the Authority notes that if any consolidated data, if disclosed, may enable the interested parties to derive the confidential constituent data, the same can not be revealed in the best interest of the interested parties. Post disclosure the producers/exporters/importers/other interested

parties reiterated that aggregated data of domestic industry cannot be kept confidential. The Authority reiterates that if any consolidated data, if disclosed, may enable the interested parties to derive the confidential constituent data, the same cannot be revealed. As regards their post disclosure submission that calculations of the Designated Authority based on information obtained by the Designated Authority cannot be confidential, the Authority notes that any calculation based on confidential information of any interested party or any other confidential source cannot be disclosed.

25. In view of the above, the Authority notes that confidential information can not be disclosed to the interested parties with competing and conflicting interests, unless the same is available in the public domain. However the non-confidential information has been disclosed to the interested parties.
26. As regards the contention of Shanghai Fortune that the import statistics of the concerned exporter has been revealed, the Authority notes that the domestic industry has furnished information based on Chinese Customs data on confidential basis, which contains the relevant details concerning the concerned exporter as well as other exporters from China PR. Thus, the argument of the concerned exporter is baseless.

F. Miscellaneous Submissions

Miscellaneous submissions by the producers/exporters/importers and other interested parties

27. The following miscellaneous submissions have been made by producers/exporters/importers/other interested parties:
 - i. Adequate protection has been given to Domestic Industry for 5 years, the Domestic Industry should have improved its weakness.
 - ii. The domestic industry has contended that goods are imported under duty exemption scheme. Such assumption and presumption cannot be the basis of imposition of ADD.
 - iii. Imports from Taiwan have been included with imports from China by wrongly alleging transshipment of goods through Taiwan.
 - iv. The issue of circumvention is not relevant in a Sunset Review investigation.
 - v. Duty cannot be modified in a Sunset Review.

Miscellaneous submissions by the Domestic Industry

28. The following miscellaneous submissions have been made by the domestic industry:
- (i) The Anti-dumping duty was not imposed because of some weaknesses. The Anti-dumping duty was imposed because of dumping causing injury. The dumping continues and the volume of imports from China is quite significant. As regards injury, the performance of the domestic industry improved because of anti-dumping duty imposed but did not reach a level where it should have because of low quantum of anti-dumping duty. The performance of domestic industry would once again deteriorate if the anti-dumping duty is revoked.
 - (ii) The domestic industry has provided relevant evidence to the Authority showing imports of Saccharin under DFIA scheme.
 - (iii) Significant imports of Saccharin have been reported in the current injury period from Taiwan. Research undertaken by the domestic industry demonstrates that these products do not appear to be originating in Taiwan and in fact, are transshipments from this country.
 - (iv) Circumvention of duty is directly relevant to Sunset Review. If imports could continue, albeit in low volume, because of circumvention practices, it follows that significant imports shall take place in the absence of anti-dumping duty.

Examination by the Authority

29. The miscellaneous submissions made by the interested parties have been examined and addressed by the Authority as follows:
- (i) The Authority notes that the anti-dumping measures are intended to neutralize the injurious effects caused by dumping and to create conditions of fair trade. The recommendation of anti-dumping measures is guided by the parameters laid down in law.
 - (ii) The Authority notes that the anti-dumping measures are imposed on the imports of the subject goods originating in or exported from the subject country. Taiwan is not a subject country in the present investigation.

- (iii) The Authority notes that the domestic industry has furnished documents showing imports of subject goods as “corrosion inhibitors” under duty exemption scheme.
- (iv) The Authority notes that the issue of circumvention of duty is beyond the purview of the Anti-dumping Rules.
- (v) With regard to the submission by the producers/exporters that duty cannot be modified in a sunset review, the Authority notes that in terms of Section 9 A (5) and Rule 23 of the Anti-dumping Rules, the Designated Authority shall from time to time review the need for continued imposition of the anti-dumping duty. The Authority’s power to review the need for continued duty also encompasses the power to decide the mode and quantum of duty commensurating the magnitude of dumping margin and injury margin, whichever is less, during the review period.

G. Post Disclosure Comments/Submissions

Domestic Industry

- 30. Post disclosure, the domestic industry has mostly reiterated their earlier submissions. They also pointed out that the landed price seems to be wrongly calculated.

Producers/exporters/importers/other interested parties

- 31. The following are the post disclosure comments/submissions received from the producers/exporters/importers/other interested parties:

APJ-SLG on behalf of Tianjin Changjie Chemical Co. Ltd, M/s Tianjin Sangian Science & Technology Group Company, M/s Fairland Trading co Ltd and M/s China Pingmei Shenma Group Kaifeng Xinghua FineChemical Co. Ltd. (formerly known as M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory)

- a. Authority’s statement that none of the Saccharin producers in China PR can be entitled for MET treatment since saccharin production and sale in China PR is State regulated is wrong. The regulation of Chinese Government in production and sales of Saccharin is purely because of environmental reasons.
- b. The domestic industry is selling the subject goods more than non-injurious price. In such a situation, there cannot be any claim of injury. Moreover, capacity, production, sales value and volume,

profits and return on capital increased significantly and hence there is no case for current injury.

- c. Aggregated data of domestic industry and the calculations of the Designated Authority based on information obtained by the Designated Authority cannot be confidential.
- d. The Authority has not followed procedure of paragraph 7 of Annexure- I strictly in terms of the decision of the Hon'ble Supreme Court in the case of Shenyang Mastshushita S. Batttery Co. Ltd. reported at 2005 (181) ELT 320 (SC). Constructed normal value cannot be kept as confidential.
- e. The export price of M/s Xinghua could not have been rejected as full information about receipt of export price was evidenced through normal banking channel.
- f. The Authority has not dealt with the issue of captive consumption by the domestic industry.

M/s Lakshmi Kumaran Sridharan on behalf of M/s Shanghai Fortune Chemicals Co., Ltd, China PR (“SFC”) and M/s Majestic International Trading Company Limited, (MIT) Hong Kong

- a) The reasons stated by the Authority for rejecting the export price of Shanghai Fortune Chemicals Co., Ltd, China PR (“SFC”) and M/s Majestic International Trading Company Limited, (MIT) Hong Kong are factually incorrect. The low volume of exports to India during POI was due to the 15 months POI fixed by the Authority and not stage managed. There is no legal provision which authorizes the authority to disregard the export transactions of a co-operating exporter merely because of the fact that the quantity exported by him during POI was lower as compared to the pre and post POI period.
- b) Duty cannot be modified in a Sunset Review.
- c) There is no rationale to compare the quantity and export price of a cooperating exporter with the total exports of the subject goods from

China PR and arrive at a conclusion that the export price of the cooperating exporter is not reliable.

- d) The allegation of domestic industry that the respondent exporters have stage managed the transactions period during the POR is baseless. From 20th month of the levy of duty till 51st month of the levy of duty the export quantity of the respondent exporter was consistently very low and cannot be termed as stage managed. The respondent exporter could not have foreseen that DGAD would initiate Sunset Review 6 months prior to schedule expiry of duty and fix POI for 15th months.
- e) The concerned exporter has not stage managed its exports during the POI. After revision of duty pursuant to the MTR, the other exporters might have been forced to reduce their price to match with that of the concerned exporters.
- f) The export prices of the respondent exporter cannot be treated as 'much higher' as they had exported to other countries at or around the same price in several transactions.
- g) No import statistics reveal the name of the exporters and it not understood how the domestic industry has accessed such information.
- h) The export price of the respondent exporter cannot be rejected by the authority since the provisions under Explanation (b) to Section 9 A (1) is not attracted. Further, Section 9 A (6A) mandates that the margin of dumping shall be determined on the basis of the records concerning normal value and export price maintained and information provided, by such exporter or producer. Rejection of export price of the respondent exporters for the reason that they are much higher is against the statutory provisions.
- i) The net sales realization of the domestic industry is much more than the NIP of the domestic industry. Thus, the basic objective of levying anti-dumping duty has been achieved and therefore, there is no basis for continuing the duty any further.

Examination by the Authority

32. The post disclosure submissions and the submissions concerning dumping, injury, likelihood of dumping and injury & causal-link etc, considered relevant by the Authority, have been addressed by the Authority in the respective areas of this final finding.

H. De Minimis Limit

33. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources, as well as the data furnished by the cooperating exporters from China PR, the import of the subject goods from the subject country is above de minimis level.

I. Determination of Dumping Margin

I.1 Examination of Market Economy Claims

34. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non-market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise producers/exporters in their country to provide the required information.
35. 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 PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporter/producer of the subject goods from 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:-

- i. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labor, 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;
 - ii. 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;
 - iii. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
 - iv. The exchange rate conversions are carried out at the market rate.
36. In the present investigation, the following producers/exporters of subject goods from subject country claimed market economy treatment by filing MET questionnaire response;
 - a. M/s Pingdingshan Coal Group Kaifeng Xinghua. Fine chemical Factory.
 - b. Tianjin Changjie Chemical Co Limited.
 - c. M/s Tianjin Sanqian Science & Technology Group Company.
 - d. M/s Fairland Trading co Ltd.
37. The domestic industry submitted that the factual matrix remains the same in the original and review investigations and therefore the Chinese companies should not be entitled for Market Economy Treatment.
38. The responses filed by M/s Tianjin Changjie Chemical Co Limited and their related companies namely M/s Tianjin Sanqian Science & Technology Group Company and M/s Fairland Trading co Ltd have not been accepted by the Authority for reasons already explained in this final finding.
39. As far as M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory is concerned, the Authority had not granted MET status to them in the original investigation. M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory is a 100% State owned enterprise. During the on the spot verification they informed that M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory was established in February 2001 by the State owned Assets Supervision and Administration Commission of Kaifeng City, under the State owned Pingdingshan Coal Group and it

belongs to the State owned Assets Supervision and Administration Commission of Kaifeng City. It was further informed that with effect from 14th October, 2011 Xinghua has been restructured as a limited company and renamed as M/s China Pingmei Shenma Group Kaifeng Xinghua Fine Chemical Co., Ltd after being taken over 100% by M/s China Pingmei Shenma Group Co Ltd, another State owned company. They also informed that Saccharin production in China is State regulated and all the producers of Saccharin in China are State owned.

40. Although M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory was stated to have been originally established in February 2001, their own web site information states that they have more than 40 years of history in Saccharin production. When this was brought to their notice during the verification, they had no plausible answer. Even while commenting on the verification report vide their letter dated 31st October, 2011, they offered no comments on this issue. However, subsequently vide another letter dated 4th November, 2011 they informed that for advertisement purpose Xinghua has mentioned that it has 40 years of history taking the original factory's history in to account, although from legal point of view Xinghua was established in the year 2001. The above stated information proves that M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory was originally set up much earlier than what they claimed to be.
41. As regards change in the name and structure of the enterprise from Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory to China Pingmei Shenma Group Kaifeng Xinghua Fine Chemical Co., Ltd, although they furnished copies of the Enterprise Name Change Approval Notice dated 16th September, 2011 issued by the Kaifeng City Industrial and Commercial Administration Bureau, Business Licence for Enterprises as Legal Person Registration certificate dated 14th October, 2011 and the Articles of Association of the company, they could not furnish the relevant documents showing the date on which the decision was taken by the State machinery to change the name and structure of the enterprise.
42. Although M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory claimed Market Economy Treatment (MET), they failed to furnish information/ documents in support of their MET claim for verification purpose. Instead, at the time of verification, they provided a letter dated 18th October, 2011, stating that they are not interested in pursuing their claim of Market Economy Treatment. Nonetheless, the Authority notes that none of the Saccharin producers in China PR can be entitled for MET treatment since Saccharin production and sale in China PR is State regulated.

43. Post disclosure it has been contended by the producers/exporters that regulation of production and sales of Saccharin by the Chinese Government is purely because of environmental reasons and therefore Authority's statement that none of the Saccharin producers in China PR can be entitled for MET treatment is wrong. Basing on documents furnished by M/s Xinghua the Authority notes that the entire production of Saccharin in China PR is in the State sector. Moreover, it has been acknowledged by the above named respondent producer/exporter themselves that the production and sale of Saccharin in China PR is State regulated, be it may for environmental purposes. The Authority notes that whatever may be the purpose of state regulation, the very fact that there is State regulation controlling production and sale of the subject goods, directly or indirectly, State interference in the administrative and commercial transactions and decision making process of the producers/exporters cannot be ruled out. In view of the above position, the authority notes that none of the Saccharin producers in China PR can be entitled for MET treatment.

J. Normal Value for China PR

Submission by the Domestic Industry

44. The following are the views of the domestic industry in this regard:

- (i) China is a non-market economy and treated so by the members of the WTO. Factual matrix remains the same since the original and review investigations. Chinese companies should not be considered for Market Economy Treatment.
- (ii) The Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.
- (iii) India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country would result in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country. For the purpose of calculation of Normal Value, India should be considered as the surrogate country.

Examination by Authority

45. Para 7 of Annexure I of the Anti-dumping Rules provide that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed

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

46. The Authority notes that none of the interested parties, including the domestic industry, have placed any material fact before the Authority to select an appropriate market economy third country for the above purpose. The domestic industry has submitted that they have made efforts to collect information on price and cost data of the subject goods in market economy third countries but no publicly available information could be collected in this regard. It has also been argued that for determination of normal value based on third country cost and prices, the Authority would require complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country, which the applicant is unable to obtain. The responding Chinese companies have made no claim with regard to an appropriate market economy third country. Therefore, the domestic industry has submitted that India should be treated as an appropriate surrogate country for China in this matter and the normal value should be determined accordingly.
47. Post disclosure the producers/exporters/importers/other interested parties submitted that Authority has not followed procedure of paragraph 7 of Annexure- I strictly in terms of the decision of the Hon'ble Supreme Court in the case of Shenyang Mastshushita S. Batttery Co. Ltd. reported at 2005 (181) ELT 320 (SC). Constructed normal value cannot be kept as confidential. In view of the non-market economy status of the responding producers/exporters from China PR and since no interested party has provided the data of any appropriate third country, the Authority has adopted the third option available in Rule 7 of Annexure I of the Anti-dumping Rules, which provides for adoption of 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 and construct

the normal value in respect of China PR. Accordingly, the ex-works Normal Value of the product under consideration for China PR is constructed by the Authority on facts available. Since the major elements of the CNV are based on the most efficient domestic industry's data, the CNV cannot be disclosed.

48. The Authority constructed the Normal Value taking into account consumption norms of domestic industry and international prices of major raw materials. Further, duly adjusted conversion cost and SGA expenses of the domestic industry have been adopted for determination of the constructed normal value. After adding a reasonable profit margin of 5% constructed normal value is determined as US\$ *** per Kg in respect of the China PR.

K. Determination of Export Price

49. The exporter's questionnaire responses filed by M/s Tian Jin North Food Co. Ltd, China PR, M/s Tianjin Changjie Chemical Co Limited, M/s Tianjin Sanqian Science & Technology Group Company and M/s M/s Fairland Trading co Ltd have not been accepted by the Authority for reasons already explained in this final finding.

M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and M/s Majestic International Trading Co, Hongkong (exporter)

50. M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and M/s Majestic International Trading Co, Hongkong (exporter) are related companies who filed exporter's questionnaire response. No MET response was filed by them. The Authority notes that while M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) exported only *** MT of the subject goods to India during the POI directly, through their related company namely M/s Majestic International Trading Co, Hongkong (exporter) they exported only *** MT of the subject goods to India during the POI. Together, the related respondent companies claimed to have exported only *** MT of subject goods to India during the POI. However, based on the information provided by them, the Authority notes that they exported *** MT of the subject goods to India during the period prior to POI and ***MT of the subject goods to India during post-POI period.
51. The Authority further notes that while they exported the subject goods to India pre-POI at an average price of US \$ ***/KG, during the POI they exported the subject goods to India at an average price of US \$ ***/KG and post POI they exported the subject goods to India at an average price of US \$ ***/KG. Further, the Authority notes from the information furnished by the concerned respondent producer/exporter that during the POI they have sold the subject goods in their domestic market at an average price of US\$

*** /KG and made third country exports at an average price of US\$ *** /KG. Moreover, as per the data available in the World Trade Atlas, the Authority notes that during the POI the total export of subject goods to India from China was *** MT at an average price of US\$ *** /KG.

52. The domestic industry alleged that M/s Shanghai Fortune Chemical Co Ltd has stage managed its exports and exported very small quantum of the subject goods to India during the POI at prices much higher than the prevailing prices, although during the periods prior to the POI and post POI, they exported huge quantity of the subject goods to India at much lower prices. The domestic industry alleged that the above stated producer/exporter has stage managed the entire transactions to obtain a favorable dumping margin in the sun set review investigation. The volume of exports made by Shanghai Fortune during the POI is extremely low as compared to the total exports of the subject goods from the subject country. The prices claimed by Shanghai Fortune are much higher than the prices reported in imports into India. The concerned respondent company was provided with a copy of the non-confidential copy of the submission of the domestic industry, but the reply was not found to be satisfactory.

53. The post disclosure comments/submissions of the concerned exporters with regard to their export price are addressed by the Authority as below:

a. As regards the post disclosure comment/submission of the concerned exporter that there is no rationale to compare the quantity and export price of a cooperating exporter with the total exports of the subject goods from China PR, the Authority notes that in view of the contention of stage managing of exports by the concerned exporters, the Authority has relied upon other available evidences including the data available in the World Trade Atlas. The reference to such information was to corroborate the behavior of the concerned exporter vis-a-vis the rest of the exporters of the subject goods from the subject country during the POI. Moreover, the present investigation being a sunset review investigation, the Authority is required to examine whether dumping is likely to continue or recur in the event of revocation of the duty.

b. As regards the post disclosure contention of the respondent exporters that they could not have foreseen that DGAD would initiate a Sunset Review 6 months prior to schedule expiry of duty and fix a POI for 15th months, the Authority notes that under Section 9A(5) of the Customs Tariff (Amendment) Act, 1995 the anti-dumping duties imposed,

shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In this regard, Hon'ble High Court of Delhi in WP No 16893 of 2006 had held that sunset review is mandatory. Therefore, pursuant to the above orders of the Hon'ble Court and in accordance with Section 9A(5) of the Act read with Rule 23 of the Rules read with the Trade Notice No. 1/2008 dated 10th March, 2008, the Designated Authority initiated suo motu the present sunset review investigation to examine whether cessation of the duty would lead to continuation or recurrence of dumping and injury. Moreover, it is the consistent practice of the Authority to fix the period of investigation (POI) ranging from 6 months to 18 months.

c. As regards the contention of the exporter that they have not stage managed their exports during the POI and rather, after revision of duty pursuant to the MTR, the other exporters of the subject goods from the subject country might have reduced their price to match with that of the concerned exporters, the Authority notes that the average export price of the concerned exporters during the pre-POI period was US \$^{***}/KG, during the POI it was \$^{***}/KG and post POI it was US \$ ^{***}/KG. If the POI export price of the concerned exporter was normal and not stage managed and if other exporters of the subject goods from the subject country have reduced export price to match their export price, then their export price during the pre-POI and post-poi should have been more or less at the same level as that of their export price during the POI and should not have shown such significant variation.

d. As regards the contention that the concerned exporter had exported to India and other countries at or around the same price in several transactions, the Authority notes that it is required to examine the data in its entirety and not on selective basis. However, the Authority further notes that during the POI the concerned exporter made third country exports at an average price of US\$ ^{***}/KG, which is much less than that of their export average export price to India during the same period.

e. The Authority notes that the rejection of the export price of the concerned exporter is not solely based on "much higher price", but the

same is based on evidences available with the Authority which indicates that there are significant variations in the export prices during the relevant period, clearly suggesting that prices are not in the normal course of trade but rather stage managed, with the primary motive to obtain favourable results. The authority had requested the concerned importers in India to file importers questionnaire response in the prescribed format. But, while one of them filed a deficient response through the same consultants as that of the concerned exporters, the other did not file at all. This also indicates that the exports made by the concerned exporters are stage managed in connivance with the concerned importers.

54. In the circumstances, the Authority notes that the export transactions of M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and M/s Majestic International Trading Co, Hongkong (exporter) to India during POI do not appear to be normal and reliable. Therefore the Authority does not accept the export price of M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and M/s Majestic International Trading Co, Hongkong (exporter). Post disclosure it was submitted that the reasons stated by the Authority for rejecting the export price of Shanghai Fortune Chemicals Co., Ltd, China PR (“SFC”) and M/s Majestic International Trading Company Limited, (MIT) Hong Kong are factually incorrect. The low volume of exports to India during POI was due to the 15 months POI fixed by the Authority and not stage managed. It was also submitted by the concerned interested parties that there is no legal provision which authorizes the Authority to disregard the export transactions of a co-operating exporter merely because of the fact that the quantity exported by him during POI was lower as compared to the pre and post POI period. As already explained in this finding, the Authority notes that M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and their related party M/s Majestic International Trading Co, Hongkong (exporter) seems to have stage managed their exports to India during the POI. Their exports to India during POI do not appear to be normal and reliable as compared to their exports during the period prior to POI and post POI. In view of the above position, the Authority does not accept the export price of M/s Shanghai Fortune Chemical Co. Ltd, Shanghai (producer/exporter) and their related party M/s Majestic International Trading Co, Hongkong (exporter), being unreliable. The Authority further notes that it’s decision not to accept the unreliable export price of the concerned producers/exporters is well within its power mandated by the Rules.

**M/s Pingdingshan Coal Group Kaifeng Xinghua Fine Chemical Factory
(Producer/Exporter)**

55. The following were observed by the Authority during on the spot verification and intimated to the respondent producer/exporter for comments:

- i. The respondent producer/exporter could not produce the export documents in respect of the transactions invoiced on the exporters/traders in Hongkong and Taiwan, although the consignments were exported to India directly from their factory.
- ii. During the verification, in respect of the exports made by them the producer/exporter was requested to furnish documents in support of realisation of export proceeds from the concerned Indian buyers. But, instead of providing relevant documents for verification purpose duly translated in to English language, they informed that the foreign exchange realisation certificates issued by the Chinese Banks do not provide for the names of the Indian buyers from whom export proceeds have been realised.
- iii. They provided a statement which shows that in respect of many invoices the export proceeds have been credited to the account of the Indian parties who have entered in to sales contract with the respondent producer/exporter and not the actual Indian buyers.
- iv. In respect of many transactions the export proceeds have been realised from certain parties who are not connected with the export transactions.
- v. During verification, it was stated by the respondent producer/exporter that they do not claim VAT refund and did not provide the copies of VAT invoices. But, certain documents provided by them showed refund of VAT.

56. The following comments have been received from M/s APJ-SLG on behalf of the respondent producer/exporter vide their letter dated 31st October, 2011:

- i. At the time of verification only the intimation letters from the banks, which do not carry the name of payee, were provided to the Authority for verification and not the notice for settlement.
- ii. With regard to the invoices where the export proceeds have been realized from certain parties who are not connected with the export transactions it is submitted that when Xinghua signed contract with the clients, Xinghua did not know that the contracted clients

would arrange the payment through third parties. As advised by the clients later on Xinghua invoiced the third party and the third party made the payment.

iii. During POI Xinghua received VAT refund at ***% of the FOB price.

57. Subsequently, on behalf of the respondent producer/exporter, M/s APJ-SLG vide their letter dated 4th November, 2011 furnished two statements of exports to India, claiming one to have been certified by the Agricultural Bank of China and another by the Industrial and Commercial Bank of China. The stated statements are neither signed by the concerned bank authority nor do they contain the date of issue. Surprisingly, while during the on the spot verification the respondent producer/exporter failed to demonstrate with documentary proof the realization of export proceeds from the concerned Indian buyers in the normal banking channel and their own records showed realization of export proceeds in respect of many export transactions from unconnected sources and subsequently, in their comments on the verification report they acknowledged the receipt of export proceeds from such sources, in the statements now furnished by them they claim to have received export proceeds from the Indian buyers.
58. Post disclosure it was argued by M/s Xinghua that full information about receipt of export price was evidenced through normal banking channel and therefore their export price could not have been rejected by the Authority. The Authority notes that the information furnished by the respondent producer/exporter is contradictory. Moreover, the information furnished by the respondent producer/exporter post verification cannot be accepted without being verified. In view of the above, the Authority does not grant individual dumping margin to the respondent producer/exporter.
59. The Authority notes that since none of the respondent producers/exporters in the subject investigation qualify for grant of individual dumping margin, the Authority has determined the export price as per "facts available" in terms of Rule 6(8) of the Anti-dumping Rules. For this purpose, the volume of imports as per DGCI&S data has been relied upon by the Authority. The adjustments to the CIF prices have been made as per facts available on record. The net export price as determined by the Authority is US \$ ***/Kg.

L. Dumping Margin

60. Comparing the constructed normal value and export price at ex-factory level as determined above, the dumping margin for the producers/exporters of subject country is determined by the Authority as follows:-

Particulars	Rs/Kg	US\$/Kg
Normal value	***	***
Net Export price	***	***
Dumping Margin	***	***
Dumping Margin %	***	***
Dumping Margin% Range	50-60	50-60

M. INJURY AND CAUSAL LINK DETERMINATION

Submissions of Domestic Industry

61. The Domestic Industry has made the following submissions with regard to the injury and causal link:
- i. Demand has increased over the injury period and so has the imports in spite of Anti Dumping Duty being in force.
 - ii. The share of Domestic Industry has not shown the growth in the same way or same rate at which the demand has grown.
 - iii. Significant price undercutting exists after considering the current Anti-dumping duties and even without considering the prevailing Anti-dumping duties,
 - iv. A comparison between the cost of production of the Domestic Industry and landed price of import shows that landed price of import are substantially below the cost of Domestic Industry.
 - v. In spite of duty being in force, the imports from China PR is very high and significant. The share in demand has remained on the higher level throughout the injury period. Due to this, Domestic Industry is unable to increase its market share to the extent which it could have in absence of imports from the subject country.
 - vi. Cost of sales increased considerably during the injury period. Even though the selling price has also increased over the injury period, the increase in the selling prices is far below the desired levels, considering the past losses and reasonable expectation of the domestic industry to earn reasonable profits.
 - vii. If sales of the Domestic Industry are segregated between large scale end consumers and other customers, it would be seen that profitability of the Domestic industry in respect of other customers (where the domestic industry is facing continued competition from China PR) shows substantial lower profitability, or even financial losses. Consequently, profitability of the Domestic Industry has substantially remained adverse. As the circumstances prevailing in the year 2008-2009 were affected because of Olympics, the same should not be considered while examining the performance of the Domestic Industry.

- viii. As a result of low profitability, performance of the Domestic Industry in terms of Return of Investment and cash flow has also remained fragile. The return on investment as well as cash flow remained considering low throughout the injury period.
- ix. Productivity of the Domestic Industry has declined significantly over the injury period.
- x. Inventory level has increased significantly over the injury period despite significant demand of subject goods in the country.
- xi. The performance of the domestic industry has improved because of anti-dumping duty imposed. The volumes of imports remained significant because of low quantum of imports.
- xii. Price undercutting and injury margin are clearly parameters of injury.
- xiii. There is no concealment of captive production of Vishnu Chemicals. The information is on record of the Authority.

Submissions of producers/exporters/importers/other interested parties

62. Following arguments have been advanced by the producers/exporters/importers/other interested parties in respect of injury and causal link determination:
- i. Improvement in all injury factors is evident. Demand has shown significant increase from base year. Capacity utilization of the Domestic Industry is 79% which is best attained in the recent past.
 - ii. Market share of imports from China has increased by 4.59% but the same is due to increase in demand.
 - iii. Domestic Industry increased its production capacity as well as production. Domestic Industry has increased its production by 196% and its share increased by 8% during the POI.
 - iv. In spite of increase in production and capacity utilization, the Domestic Industry is not in the position to meet the current demand.
 - v. Price undercutting as claimed by Domestic Industry is per se not an injury factor. Gypsum Plaster Board Final finding is referred where despite price undercutting and positive dumping margin, no material injury was concluded as there was an overall improvement in the performance of the Domestic Industry.
 - vi. Selling price has kept on increasing throughout the POI, profitability has increased enormously, and productivity has gone up by 92% over the injury period. No. of employees and wages paid to them have increased by 54% and 662% respectively. Inventory should be seen as percentage of the

- sales as the volume of sales has increased. It shows decline over the injury period.
- vii. ROCE has improved by 126% over the injury period. It has been the consistent practice of the Designated Authority not to recommend the continuation of ADD if NSR of the Domestic Industry is more than the NIP during the period of review.
 - viii. Claim of 30% ROCE is baseless and not the consistent practice of Designated Authority. 22% ROI on NFA and working capital has been the practice of the Designated Authority which should be followed.
 - ix. Causal link between the dumped imports and the injury to the DI is missing. Maximum imports from China took place during the POI and the performance of DI in terms of capacity utilization production sales profit etc was also at its peak during the POI itself.
 - x. The captive production of Vishnu Chemicals has been concealed in the petition. If the actual production figures of domestic producers are replaced by the figures provided in the petition, there will be a drastic change in the trend of demand, market share of domestic industry and market share of the subject imports. The captive production shall not be excluded while analyzing the injury parameters merely because they chose not to sell their production in the domestic market but to use it for making some other downstream product. Designated Authority in the Anti dumping investigation of Phosphorous based Chemical compound made analysis after including captive consumption.

Examination by the Authority

63. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.
64. Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide 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 products; and (b) the consequent impact of these imports on domestic producers of such products. 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 product 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.

65. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the Anti Dumping 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.”

66. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate 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 suppress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
67. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.
68. The present investigations are Sun Set Review investigation of anti dumping duties in force. Rules 23 provide that provisions of Rule 11 shall

apply, mutatis mutandis basis in case of a review as well. The Authority has therefore determined injury to the domestic industry considering, mutates mutandis, the provisions of Rule 11 read with Annexure II. Further, since anti dumping duties are in force on imports of the product under consideration, the Authority considers that the fact of existing anti dumping duties on the product on imports from China PR is required to be considered while examining injury to the domestic industry. The Authority has examined whether existing measure is not sufficient to counteract the dumping which is causing injury.

69. 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 on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority has examined injury to the domestic industry by considering information relating to Vishnu Chemicals Limited, Shree Vardayini Chemical Ind. Pvt Ltd and Swati Petro Products Pvt Limited, the three domestic producers of subject goods constituting domestic industry under the Rules. The Authority notes the concern of the parties about analysis of injury parameter and has addressed the same by undertaking analysis of all mandatory injury parameters.
70. With regard to the submission that in spite of increase in production and capacity utilization, the Domestic Industry is not in a position to meet the current demand for the subject goods, the Authority notes that imposition of the anti-dumping measures does not prevent or restrict the imports of the subject goods. The intent of the anti-dumping measures is to create a level playing field for the domestic producers vis-a-vis the dumped imports.
71. The interested parties have contended that the Authority should not recommend continuation of ADD if NSR of the Domestic Industry is more than the NIP during the period of review. The Authority notes that although in the present case the NSR of the domestic industry is more than the NIP determined by the Authority, nevertheless NSR is not the only parameter to decide the imposition/continuation of anti-dumping duties. Furthermore, the present investigation being a sun set review; the focus of the investigation is on likelihood of continuation/recurrence of dumping and injury and not actual injury.
72. It has been alleged that the domestic industry has concealed in its petition the captive consumption of the subject goods by one of its constituent industries namely M/s Vishnu Chemicals. Post disclosure it was contended by the producers/exporters/importers/other interested parties that the Authority has not dealt with the issue of captive consumption by the domestic industry. The Authority notes that M/s Vishnu Chemicals produces insoluble saccharin and converts the same in to soluble

saccharin. Both the varieties of the subject goods are marketed by M/s Vishnu Chemicals. The Authority further notes that both the varieties constitute PUC and the cost and price difference between the two is negligible.

73. Post disclosure it has been contended by the interested parties that the domestic industry is selling the subject goods more than non-injurious price and capacity, production, sales value and volume, profits and return on capital increased significantly and hence there is no case for current injury. The Authority notes that although in the present case the NSR of the domestic industry is more than the NIP determined by the Authority, nevertheless NSR is not the only parameter to decide the imposition/continuation of anti-dumping duties. Moreover, improvement in capacity, production, sales value and volume, profits and return on capital does not make the domestic industry ineligible for the protection of anti-dumping measures. The Authority notes that the improvement in the economic health of the domestic industry, whatsoever, is primarily due to the anti-dumping duty in force. Nonetheless, the present investigation being a sun set review; the focus of the investigation is on likelihood of continuation/recurrence of dumping and injury and not actual injury.
74. 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 on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority notes the concern of the parties about analysis of injury parameter and has addressed the same by undertaking analysis of all mandatory injury parameters.

VOLUME EFFECT: Volume effect of dumped imports and impact on domestic industry:

Demand and Market Share

75. The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed can be seen in the table below. It is seen that demand of the product in the country shows an increasing trend.

Figures in MT

Demand	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Sales of Domestic Industry	344	395	414	685	547.93

Industry					
Captive Consumption	-	-	-	-	-
Sales of other Indian Producers	89	143	186	363	290
Import from China	1067	561	913	1891	1513
Imports - Other Countries	376	992	112	86	69
Total Demand	1876	2091	1625	3025	2420

Import Volume & market share

76. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India.

Figures in MT

Imports – MT	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Import from China	1067	561	913	1891	1513
Share of Chinese Imports in relation to (%)					
➤ Total imports in India	68.75	36.85	88.32	95.61	95.61
➤ Demand in India	56.88	27.35	56.18	62.51	62.52
➤ Production of domestic Industry	334	140	202	186	186

The Authority notes that there has been significant increase in imports in spite of existing anti-dumping duties. Subject imports also have increased in relation to production.

Production, capacity and capacity utilization

77. The Authority notes from the table below that capacity for the product under consideration was significantly enhanced in the POI. In spite of creating such a huge capacity and despite the anti-dumping measures in place and increasing demand in the domestic market, the Domestic Industry was not able to sell the subject goods in the market in proportion to the increase in demand.

Particulars	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Installed capacity of Domestic Industry	MT	970	970	970	1393	1114
Total Production	MT	319	400	452	1017	813
Capacity utilization Domestic Industry	%	33	41	47	73	73

Sales of the Domestic Industry:

78. Sales volume of domestic industry are given in the following table: -

Particulars	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Domestic sales of Domestic Industry	MT	344	395	414	685	548
Indexed	%	100	115	120	199	159

The Authority notes that the sales volume of the domestic industry shows increasing trend throughout the injury period.

Share of the domestic industry and various other parties in demand in India

79. Share of the domestic industry and various other parties in demand in India are as under:

Market Share in Demand (%)	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Sale of Domestic Industry	17.01	17.84	24.33	21.97	21.97
Sales of other Indian Producers	4.74	6.84	11.45	12	12
Imports – Subject Country	52.68	25.36	53.71	60.65	60.65
Imports - Other Countries	18.56	44.84	6.59	2.76	2.76

The Authority notes that the market share of the domestic industry has shown an increase, which is due to the increase in production because of the addition of the capacity, from the base year. It is noted that even though the market share increased to some extent in the investigation period from the base year, the same is still substantially lower than the market share of the subject country despite the anti-dumping duty in force. The Authority further notes that, with new production facilities commencing commercial production in the investigation period, the market share of the domestic industry should have increased to much higher levels than registered earlier. However, it is observed that the import of the subject goods from subject country has increased significantly.

B) **Price Effect** - Price effect of dumped imports and impact on domestic industry:

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

domestic industry have been compared with landed value of imports from the subject country. 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:

Price Undercutting and Underselling:

81. The price undercutting/underselling effects are examined below:

<u>Price undercutting (without anti-dumping duty)</u>	<u>Rs/Kg</u>
NSR	***
Landed Price	***
Price undercutting	***
Price undercutting %	***
Price undercutting % (Range)	20-30
<u>Price underselling (without anti-dumping duty)</u>	
NIP	***
Landed Price	***
Price underselling	***
Price underselling %	***
Price underselling % (Range)	20-30

<u>Price undercutting (with anti-dumping duty)</u>	<u>Rs/Kg</u>
NSR	***
Landed Price	***

Price undercutting Rs	***
Price undercutting %	***
Price undercutting % (Range)	10-20
<u>Price underselling (with anti-dumping duty)</u>	
NIP	***
Landed Price	***
Price underselling	***
Price underselling %	***
Price underselling % (Range)	10-20

The Authority notes that landed price of imports is far below the selling price of the domestic industry, thus resulting in significant price undercutting, both with and without ADD. However, the landed price of imports both with and without duty is substantially less than the non-injurious price, thus resulting in significant positive price underselling. Subsequent to the issue of the disclosure statement, the Authority noted that while calculating the landed value of imports, the Countervailing Duty (CVD) @ 16% was inadvertently included. The domestic industry also pointed out the same post disclosure. In view of the above, the landed value of imports is now rectified and calculated as Rs. *** after excluding the CVD.

Price Suppression and Depression

82. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of production. The data given below shows that the domestic industry has been prevented from increasing its selling price to the level of cost of production during POI as compared to the previous year, signifying price depression. The landed value of imports also declined significantly in the POI as compared to the preceding year. Therefore, the imports appear to have significant suppression effect on the domestic prices.

Particulars	Unit	2006-07	2007-08	2008-09	Apr	POI
					2009- June 10 (POI)	Annualised

Cost of production	Rs/kg	***	***	***	***	***
Selling Price	Rs/kg	***	***	***	***	***
Landed Price	Rs/kg	***	***	***	***	***

Examination of other Injury Parameters

83. 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, other economic parameters which could indicate existence of injury to the domestic industry have been analyzed hereunder as follows:

Profit/loss, return on investment and cash flow

84. The return on investment, profit/loss before and after interest and cash profit are as shown in the table below:

Particulars	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Cost of Sales – Domestic	Rs/kg	***	***	***	***	***
Indexed	%	100	155	209	155	155
Selling price – Domestic	Rs/kg	***	***	***	***	***
Indexed	%	100	189	292	208	208
Profit/(Loss) – Domestic	Rs/MT	***	***	***	***	***
Indexed	%	(100.00)	(65.59)	16.19	(13.89)	(13.89)

)				
Profit/(Loss) – Domestic	Rs Lacs	***	***	***	***	***
Indexed	%	(100)	(75)	19	(28)	(22)
Profit before Interest and Taxes on Domestic Sales	Rs Lacs	***	***	***	***	***
Indexed	%	(100)	(68)	53	(0.49)	(0.39)
Cash Profit	Rs Lacs	***	***	***	***	***
Indexed	%	(100)	(70)	38	(2)	(2)
Return on Capital Employed	%	***	***	***	***	***
Indexed	%	(100.00)	(48.94)	17.02	(0)	(0)

The Authority notes that even though profit, cash profit, selling price, ROCE showed some improvement till 2008-2009, it significantly declined thereafter to negative levels in the POI.

Inventories:

85. Inventories with the domestic industry have been as under:

Particulars	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Average stock	***	***	***	***	***
Indexed	100	176	316	836	836

The Authority notes that average inventories with the domestic industry have increased substantially during the POI in comparison to base year, despite anti-dumping duties in force and significant increase in demand of the subject goods.

Employment and wages

86. The employment and wages position of the domestic industry are as follows:

Particulars	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Employment	Nos.	***	***	***	***	***
Trend	Indexed	100	113	137	154	154
Salary & wages	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	156	381	437	350

The Authority notes that the employment level of the domestic industry has increased which is due to the addition of capacities during the investigation period. The Authority further notes that the wages paid have also increased over the period of injury.

Productivity

87. The Productivity position of the domestic industry is as follows:

Particular	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Productivity per day	MT	***	***	***	***	***
Trend	Indexed	100.00	126.44	142.53	320.69	256.32
Productivity per Employee	MT	***	***	***	***	***
Trend	Indexed	100	110.82	103.63	206.67	165.33

The Authority notes that productivity has increased throughout the period of injury.

N. Magnitude of Dumping Margin

88. The Authority notes that the dumping margin of the exports of the subject goods from the subject country is positive and above de-minimis.

Growth

89. The Authority notes that the domestic industry has shown positive growth in some of the economic parameters such as production, domestic sales, capacity utilization, productivity etc. However, profit, profitability, ROCE, etc still continue to be negative, although demonstrate some improvement. The Authority further notes that, imports from the subject country and its market share have increased continuously throughout the injury period. This situation exists in spite of Anti Dumping Duty in force.

O. OTHER KNOWN FACTORS & CAUSAL LINK

90. The Authority examined whether other known factors could have caused injury to the domestic industry as follows:

Volume and Prices of imports not sold at dumped prices

91. The Authority notes that Imports of product under consideration from other countries are either negligible or the export prices are higher.

Trade restrictive practice and competition between the foreign and domestic producers

92. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

Contraction of demand or Changes in the pattern of consumption

93. The Authority notes that there is no contraction in the overall demand during the period under consideration. Therefore, any possible decline in demand is not a factor, which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor does it appear that changes in the pattern of consumption could have inflicted the injury to the domestic industry.

Export performance

94. Export sales of the domestic industry have substantially increased during POI as compared to the base year. Therefore, trend in exports is not a possible cause of injury to the domestic industry. However, the data with respect to domestic sales has been examined separately.

Particulars	Unit	2006-07	2007-08	2008-09	Apr 2009- June 10 (POI)	POI Annualised
Exports Sales	MT	-	-	47	267	213

P. Likelihood of continuation/recurrence of dumping and injury

Submissions by Domestic Industry

95. The domestic industry has made the following submissions with regard to likelihood of continuation/recurrence of dumping and injury:-
- i. All the previous investigations i.e. original investigation as well as mid-term review investigation have established existence of significant dumping.
 - ii. The dumping margin determined by the petitioner for the current investigation period is also substantially high.
 - iii. China PR maintains huge capacities to produce Saccharin. More than 70% of the total Saccharin production in China is exported. China's current exports to world and unutilized capacities are much higher than gross demand in India. This implies that China PR independently has the potential to meet the whole demand of the product concerned in India.
 - iv. China is the major exporter of Saccharin in the world and is exporting the product to more than forty five countries.
 - v. The price at which the product under consideration has been exported from China PR to the global markets are considerably below the normal value in China PR.
 - vi. Subject goods originating in or exported from China PR and imported in to USA is also attracting anti-dumping duty.
 - vii. The authority in the MTR finding on Saccharin held that for exceeding the quota allocated for domestic sales, there is penalty provision in the

subject country, whereas for exceeding the export sales the target only needs to be approved by State Economy and Trade Commission.

- viii. The Indian market for the product under consideration is highly price sensitive. The consumers decide their source, with the price being the foremost consideration.
- ix. Subject country holds a significant market share in the Indian Market. There exists price undercutting even when comparison is made with landed price of imports including anti dumping duty in force.
- x. Considering the high capacities created and thereafter maintained by the Chinese producers, the Chinese producers are in a situation where they have no option but to look for export markets.
- xi. Existence of significant surplus capacities, significant exports to third countries at dumping prices, positive dumping margin, positive price undercutting, and positive injury margin collectively are sufficient to hold that domestic industry is likely to suffer injury in the event of cessation of anti dumping duties.
- xii. The difference in the China's global price and India is just US\$ 0.71. The dumping margin in case of India is however US\$ 3.76 per kg. Even if the Chinese producers export the product at global prices, the domestic industry would suffer significant injury, if the current anti dumping duty is withdrawn. The price undercutting without anti dumping duty considering the global export price is very significantly positive.

Submissions by producers/exporters/importers/other interested parties

96. The producers/exporters/importers/other interested parties have made the following submissions with regard to likelihood of continuation/recurrence of dumping and injury:-
- (i) Claim of likelihood is based on mere conjectures and has no sanctity of law or logic.
 - (ii) Dumping in third countries is not a valid ground unless Domestic Industry establishes that there is likelihood of dumping into India in the event of duties are discontinued. Normal value constructed by Domestic Industry in this context is imaginary, self serving and arbitrary as basis of constructing the same has not been disclosed in the NCV. Dumping Margin calculated for all countries is based on the same Normal Value as has adopted for India. It is not possible to have

same NV for all the countries. As far as Shanghai Fortune Company is concerned, it is not involved in dumping, US has also granted NIL rate of ADD to SFC which proves that SFC is not involved in dumping.

- (iii) Mere surplus capacity with an exporter cannot lead to a conclusion of imminent danger.
- (iv) There is no legal support for price attractiveness of Indian market. China's price to the rest of the world is higher than the prices in India, therefore cannot claim India to be a price attractive market.
- (v) Existence of ADD in other countries cannot be a reason for continuance of duty in India as the state of the Domestic Industry differs. US Domestic Industry was suffering injury and lost its market share unlike Indian Domestic Industry whose market share and profitability has increased significantly.
- (vi) Demand and supply situation in China is not supported by the claim of the Domestic Industry. Domestic Industry's evidence also states that Chinese govt. restricted the production to 450MT/month despite the demand of 500MT/month. Domestic Industry did not highlight that Chinese producers have been forced to produce much less than their excess capacities.
- (vii) Excess capacity has no relevance as the production and sale of subject goods are under the control of Govt of China as it involves production related issues.
- (viii) There is a huge gap between demand and supply, demand is 3145MT, whereas installed capacity of Domestic Industry is only 1288MT.
- (ix) In an SSR investigation, the authority has to analyse the injury parameters which existed at the time of original investigation and to compare them with the present scenario. In respect of some major parameters such as capacity utilization, domestic sales volume and sales value, cost of sales, selling, profit per loss per kg has increased substantially citing no injury to Domestic Industry.

Examination by the Authority

97. The present investigation is a sun set review of anti-dumping duties earlier imposed on imports of Saccharin from China PR. Under the Rules, the

Authority is required to determine whether continued imposition of anti-dumping duty is warranted. This also requires a consideration of whether the duty imposed is serving the intended purpose of eliminating injurious dumping. In this case, as there are continued dumped imports, the Authority is required to examine whether revocation of duty is likely to lead to continued dumping of the product. Exporters and producers from the subject country are exporting the subject goods to India for the past several years. The current dumping margin is significant. In the previously concluded investigation also dumping margin was significant. In such a situation, the Authority has no reason to believe that dumping will not intensify if the duty is revoked.

Level of current and past dumping margin

98. Considering the dumping margin determined by the Authority in the previous investigation and the dumping margin now assessed, it is quite evident that the exports were continued to be made at dumped prices and is likely to continue with revocation of anti dumping duties. Volume of imports has significantly increased even after imposition of anti-dumping duties. The volume of imports in the current investigation period is higher than even than the original investigation period. Further, the volume of imports is likely to increase further in the event of revocation of anti dumping duties, given the significant price undercutting and underselling during the injury period.

Price attractiveness of Indian market

99. The price at which the subject goods are being exported by China PR to India is an indicator of the likelihood of continuation of dumping. At the landed price in India, there is significant undercutting both with and without duty. Thus, with the revocation of anti dumping duties, the Indian prices would be too attractive to the Foreign Producers and there is strong likelihood that Indian consumers would import substantially due to increasing demand.

Export orientation of foreign producers

100. From the available information it is evident that the Chinese producers/exporters are very much export oriented. Further, the production and sale of the subject goods in China is State regulated. As per the information furnished by M/s Kaifeng Xinghua, the Authority notes that the planned target of Saccharin production in China for 2010 is *** MT out of which the domestic sale is restricted to only ***MT and the balance is open for exports. Considering the total demand for the subject goods in India which stands at 2420 MT in the POI (annualized), if the anti-dumping duties

are revoked, the entire demand in India can be catered by Chinese producers and the Indian producers.

AD duty imposed by USA on imports from China PR.

101. Apart from India, the import of Saccharin from China PR is also subjected to anti-dumping duty by the Government of USA. This is indicative of the typical commercial psyche of the Chinese producers/exporters. Gaining their strength from the huge production capacity and the quantity cap imposed on domestic sales by Government of China PR, the Chinese exporters will be in a strong position to dump the subject goods in India in a much intensified manner in the event of revocation of the anti-dumping duty.

Market share of China PR in the Indian market

102. The Authority notes that despite the anti-dumping duty in place, the market share of the subject country has increased significantly during the POI vis-à-vis the base year. During the POI the market share of the domestic industry has declined in comparison to the immediate preceding year, whereas the market share of the subject country has gone up significantly during the period, thereby capturing the share of the domestic industry.

Dumping in third countries

103. Based on World Trade Atlas data, the Authority notes that the average price of Chinese exports of the subject goods to world during the POI (US\$ ***/Kg) is almost at the same level as that of India (US\$ ***/Kg), which is below the constructed normal value of China PR. This proves that Chinese exporters are involved in dumping the subject goods not only in India and the USA but also in other countries. Thus, in the event of revocation of the anti-dumping duty by India, it would not be difficult for the Chinese exporters to export to India at the same level of price at which they have been exporting world over and still continue to dump and injure the domestic industry
104. Although from the data in the preceding paragraphs, it is evident that the overall economic health of the domestic industry has improved to some extent, considering the huge production capacity of subject goods in China PR (***)MT as per the copy of the Notice of Planned Target of Saccharin Production of 2010 of Ministry of Industry and Information of China PR provided by M/s Kaifeng Xinghua at the time of on the spot verification) and their export orientation and the increasing demand for the subject goods in India during annualized POI (2420MT) , in all likelihood any reduction or revocation of the anti-dumping duty may lead to spurt in the dumped

imports intensifying injury to the domestic industry. The Authority further notes that existence of significant surplus capacities with the Chinese producers/exporters, significant exports to third countries at dumped prices, positive dumping margin, positive price undercutting and positive injury margin collectively are sufficient to cause intensified dumping and injury to the domestic industry in the event of revocation of duty.

Q. Magnitude of Injury and injury margin

105. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI. Subsequent to the issue of the disclosure statement, the Authority noted that while calculating the landed value of imports, the Countervailing Duty (CVD) @ 16% was inadvertently included. Moreover, the issue has also been raised by the domestic industry post disclosure. In view of the above, the landed value of imports is now rectified and calculated as Rs. *** after excluding the CVD. Thus compared, the injury margin is worked out as under:

Particulars	Unit	Amount
Landed price of imports	Rs. per Kg	***
Non injurious price of the domestic industry	Rs. per Kg	***
Injury margin	Rs. per Kg	***
Injury margin %	-	***
Injury margin % range	-	40-50

R. Indian industry's interest and other issues

106. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in 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 practices, 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 the subject country in any way, and therefore, would not affect the availability of the product to

the consumers. The consumers could still maintain two or even more sources of supply.

107. 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 duties, therefore, would not affect the availability of the product to the consumers.

S. CONCLUSIONS

108. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in this final finding and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

(a) In spite of the anti-dumping duty in force, the Chinese exporters command a significant share in the Indian market.

(b) The landed price of imports, even with anti dumping duty, is lower than the domestic selling price.

(c) Chinese exports causing positive and substantial price undercutting and underselling (with ADD as well as without ADD).

(d) During the POI, the domestic industry has shown positive growth in some of the economic parameters such as production, domestic sales, capacity utilization, productivity etc. However, profit, profitability, ROCE, etc still continue to be negative, although demonstrate some improvement.

(e) The situation of domestic industry has improved due to the existing anti-dumping duties, but it is noted that even with the existing anti-dumping duties, the price undercutting is positive. Moreover, the injury margin is substantially positive.

(f) The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimis.

(g) Even though the domestic industry has improved its performance during the POI, the situation of domestic industry continues to be fragile and dumped imports from subject country continues to cause substantial injury to the domestic industry. Should the present anti-dumping duties be revoked, injury to the domestic industry is likely to continue and intensify.

T. Recommendations

109. Having concluded that there is likelihood of continuation and intensification of dumping and injury on account of imports of the subject goods from the subject country if the duties are revoked, the Authority is of the opinion that the measure, earlier recommended by the Authority in the final findings Notification No.14/27/2004-DGAD dated 03.01.2007, which was notified by the Central Government vide Notification No. 41/2007-Customs dated 19.03.2007, is required to be extended for a further period of five years and the quantum of the anti-dumping duty is required to be modified as notified earlier in the Mid Term Review (MTR) Final Findings vide Notification No.15/15/2008-DGAD dated 6th Nov 2009, notified by the Central Government vide Custom Notification No. 136/2009 dated 9th Dec 2009.

110. Having examined the current dumping and likelihood of dumping to be imminent in case of revocation of the current measure in place, the Authority recommends continued imposition of the anti-dumping duty, equal to the lesser of margin of dumping and margin of injury, as in the duty table given below, for a further period of five years in respect of the subject goods originating in or exported from China PR. Accordingly, the anti-dumping duty equal to the amount indicated in Col. 9 of the duty table given below is recommended to be imposed on all imports of the subject goods originating in or exported from China PR:-

SI No	Customs Sub heading	Description	Specification	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
1	2	3	4	5	6	7	8	9	10	11
1	29251100, 29151100, 29251100, 29251900, 29252990, 29142120, 29420090, 30049099, 33069000,	Saccharin	All Grades	China PR	China PR	Any	Any	2.69	Kg	USD

	38249090									
2	-do-	Saccharin	All Grades	China PR	Any	Any	Any	2.69	Kg	USD
3	-do-	Saccharin	All Grades	Any country other than China PR	China PR	Any	Any	2.69	Kg	USD

U. Further Procedures

111. Landed value of imports for the purpose shall be the assessable value as determined by the Customs Authority 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.

112. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Vijaylaxmi Joshi
The Designated Authority

