

**No. 15/4/2010-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Anti-Dumping & Allied Duties**

**Udyog Bhavan, New Delhi-110011**

**Dated the 30<sup>th</sup> June, 2011**

**NOTIFICATION**

**Final Findings**

**(Sunset Review)**

**Subject: Anti Dumping Sunset Review Investigation concerning imports of Sodium Nitrite originating in or exported from China PR.**

**No.15/4/2010 - DGAD** : Having regard to the Customs Tariff Act, 1975 as amended from time to time and thereafter (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 (hereinafter referred to as Rules) thereof;

**A . BACKGROUND OF THE CASE**

1. Whereas the Designated Authority, having regard to the Customs Tariff Act, 1975 as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended had initiated the original investigation vide Notification No. 39/1/99-DGAD dated 4<sup>th</sup> November 1999. The Authority issued its final findings recommending imposition of definitive Anti Dumping Duty on imports of Sodium Nitrite (hereinafter referred to as subject goods) originating in or exported from China PR (hereinafter referred as subject country), vide Notification No. 39/1/99-DGAD dated 3<sup>rd</sup> November 2000 and such definitive duty was imposed by the Govt. of India vide Customs Notification No. 147/2000 dated 19<sup>th</sup> December 2000.
2. The Authority conducted a sunset review investigation vide initiation Notification No.39/1/99-DGAD dated 2<sup>nd</sup> December 2004. The definitive duties were recommended by the Designated Authority vide final findings Notification No. 39/1/99-DGAD dated

1<sup>st</sup> December 2005 and the definitive duties were imposed by the Department of Revenue vide Notification No. 03/2006-Customs dated 17<sup>th</sup> January 2006.

3. The Designated Authority initiated a mid-term review investigation vide Notification No. 15/24/2008-DGAD dated 17<sup>th</sup> November 2008. The definitive duties were recommended by the Designated Authority vide its final findings Notification No. 15/24/2008-DGAD dated 13<sup>th</sup> November 2009 and the definitive duties were imposed by the Department of Revenue vide Notification No. 143/2009-Customs dated 22<sup>nd</sup> December 2009.
4. In terms of Section 9A(5) of the Customs Tariff (Amendment) Act 1995, the antidumping 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 Delhi High Court in WP No 16893 of 2006 has held that sunset review is mandatory. Therefore, pursuant to the stated orders of the Hon'ble High Court, the Designated Authority initiated suo-moto another sunset review of the duties imposed on the imports of the subject goods originating in or exported from the subject country, in accordance with Section 9A(5) of the Act read with Rule 23 of Anti-dumping Rules, vide Notification No. 15/4/2010-DGAD dated 1st July, 2010, to examine whether cessation of the extant duty would lead to continuation or recurrence of dumping and injury.
5. After issue of the suo-moto initiation notification, M/s. Deepak Nitrite Ltd, the domestic industry, submitted an application requesting for review and continuation of the anti-dumping duties levied on the imports of the subject goods, originating in or exported from subject country. Post oral hearing, the domestic industry has submitted that the product under consideration continues to be exported to India at dumped prices from the subject country, both dumping margin and injury margin in the current POI are positive and domestic industry has suffered continued injury in spite of existing anti-dumping duties and requested for enhancement of the duties along with modification in the form of the duties. The request was based on the grounds that the domestic industry continued to suffer injury on account of dumping of the subject goods by the subject country and cessation of the extant anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The application was supported by M/s Punjab Chemicals Ltd who have subsequently submitted required information/data relating to costing and injury to the Authority.
6. Thereafter, the producers/exporters in the subject country, their government through their embassy in India, the importers and users in India, known to be concerned, were addressed separately to submit the relevant information in the form and manner prescribed and to make their views known to the Authority.

**B. PROCEDURE**

7. The procedure described below has been followed in this proceeding:

- (i) The Authority initiated the investigation as per Sec 9 (A) (5) along with Rule 23 of Anti-Dumping Rules.
- (ii) The Authority notified the domestic industry and Embassy/Representatives of China PR in India about the suo motu initiation of the investigation.
- (iii) After receipt of the substantiated application from the domestic industry, the Designated Authority sent copies of initiation notification dated 1st July, 2010 to the Embassy/Representatives of the subject country in India, known exporters from the subject country, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within prescribed time limit. Copies of the letter, non confidential version of the application and questionnaire sent to the exporter were also sent to the Embassy of subject country along with a list of known exporters/ producers with request to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time.
- (iv) Copy of the non-confidential version of the application filed by the domestic industry was made available to the known exporters and the Embassy of the subject country in accordance with Rule 6(3) supra.
- (v) Exporters Questionnaire was sent to the following known exporters from subject country in accordance with the rule 6(4) to elicit relevant information:
  - 1. China National & Chemicals I/E Corpn, China.
  - 2. Wuhan Chemicals I/E Corp., China;
  - 3. Yunnan Provincial Chemicals I/E Corporate, China;
  - 4. Jiagmen Chemicals I/E Company, China;
  - 5. Kunming Imports & Export Corpn
  - 6. China Hunan Chemicals Imp. & Exp. Corpn.
  - 7. Shanxi Jiaocheng Hongxing Chemical Co., Ltd.
- (vi) No response or submission has been filed by any of the producers/exporters from the subject country.
- (vii) Importers Questionnaire was sent to the following known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4):
  - 1. Ahmedabad Chemicals
  - 2. Asiatic industries
  - 3. Aries Dyechem Inds.
  - 4. Bakul Aromatics & Chemicals Limited
  - 5. B. I. Mehta

6. Caffil Pvt. Ltd.
7. Dintex Dyechem Limited
8. Dynamic Industries Limited
9. Enzel Chem ( I ) Pvt. Ltd
10. Farmson Pharmaceuticals Guj. Ltd..
11. Indocol Chem Ltd
12. Island Veerchemie
13. Jansons Limited
14. Ketul Chem Pvt. Ltd.
15. Metrochem Industries
16. Manish Chemicals
17. Parsin Chemicals Limited
18. Prabava Exports
19. Ravi Dyewear Co. Ltd.
20. Roha Dyechem
21. Savakashi Dye – O – Fab
22. SU – Vi Chemicals Ltd.
23. Suven Pharmaceuticals Limited

- (viii) No response or submission has been filed by any importers in India.
- (ix) No response or submission has been filed by any other interested party other than the domestic industry.
- (x) The product under consideration, Sodium Nitrite, is classified under Chapter 28 under Sub-heading 283410. However Customs classification is indicative only and not binding on the Authority.
- (xi) The import data for the period of investigation and preceding three years has been procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S). The domestic industry had furnished import data based on IBIS source. The data provided by DGC&IS have been relied upon by the Authority for the purpose of this investigation since same has been found to have reported higher volume of imports of subject goods from the subject country .
- (xii) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

- (xiii) The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered by the domestic industry and to work out optimum cost of production and cost to make and sell the subject goods in India, so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to domestic industry.
- (xiv) It was noted that the domestic industry have maintained all statutory books of accounts. Since information relied upon is from the books of accounts, the Authority has adopted the information verified from the books of accounts maintained by the companies.
- (xv) The Authority held a public hearing on 22.02.2011 to hear the interested parties orally, which was attended by the domestic industry and their representatives. The interested parties were given opportunity by the Designated Authority to submit written submissions/rejoinders in support of the submissions made by them orally.
- (xvi) The arguments raised in the written submissions/rejoinders received from interested parties have been considered, wherever found relevant, in this finding;
- (xvii) Investigation was carried out for the period starting from 1.04.2009 to 31.3.2010 (POI) and the Injury analysis has been done for the period 2006-07, 2007-08 and 2008-09.
- (xviii) The Authority has considered all views expressed and submissions made by interested parties to the extent they are relevant for the present investigation.
- (xix) In accordance with Rule 16 of the anti-dumping Rules, the Authority issued a Disclosure Statement on 21<sup>st</sup> June, 2011 disclosing thereby essential facts of the subject investigation under consideration of the Authority.
- (xx) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- (xxi) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded this finding on the basis of the facts available.
- (xxii) \*\*\* in this disclosure statement represents information furnished by the interested parties on confidential basis and so considered by the authority under the Rules.
- (xxiii) The exchange rate adopted for the POI is Rs. 48.3=1 US \$.

## B.1 Comments/Views on the Disclosure Statement

### Comments/Views by the Domestic Industry

8. Only the Domestic Industry has furnished comments. The relevant comments expressed thereon by the Domestic Industry, as mentioned below, have been duly examined and addressed in the respective para in this finding:
- a. It appears that a wrong sales turnover ratio has been adopted by the Authority for determination of NIP and apportionment method in respect of manufacturing overheads, administrative expenses, interest cost and selling expenses has also been changed.
  - b. Based on various facts disclosed in the disclosure statement, the petitioner has *assessed the dumping margin and injury margin determined by the authority* and finds that there are significant differences in the figures. It is also noted that since the normal value is based on cost of production of the domestic industry, the difference in non injurious price has direct implications on the CNV determined by the Authority.
  - c. The product is attracting benchmark form of duty on imports from China. The petitioner requests the authority to kindly recommend the same form of duty in the present sunset review.

### Examination by the Authority

- a. The issues raised by domestic industry regarding determination of non injurious price (NIP) have been examined and the Authority notes that the NIP has been determined by the Authority in line with the Anti Dumping Rules and as per the consistent practice of the DGAD.
- b. As already stated in the procedure at para 8 above of this finding, the Authority has relied upon DGCI&S data since the same was found to have reported higher volume of imports of the subject goods from the subject country as compared to the data from the IBIS source relied upon by the Domestic Industry. In view of the above reasons the calculation of net export price and landed value determined by the Authority differs with the same claimed by the domestic industry. Further, NIP and CNV determined by the Authority is in line with the AD Rules and consistent practice of the DGAD. Therefore, dumping margin and injury margin calculated by the Authority ought to differ with the claim by the domestic industry.

C. **PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’**

9. Product under consideration in the present sun set review investigation, as in the earlier investigations, is Sodium Nitrite, which is an oxidizing as well as reducing agent. It is a white crystalline powder mostly used in pharmaceutical industries, dye industries, lubricants, construction chemicals, rubber blowing agent, heat transfer salts, meat processing, textiles etc. The subject goods are produced by using nitric acid obtained from nitrous oxide (nox gas) or ammonia at high temperature in presence of catalysts. The nitrous oxide is further absorbed in caustic soda/soda ash to get sodium nitrite. The product is odorless and soluble in water. This being a sunset review, investigation covers the products covered in the original investigation.
10. Sodium Nitrite is classified under heading 2834.10 of the Customs Tariff Act, 1975. However, the customs classification is indicative only and in no way binding on the scope of the subject investigation.

**Submissions made by the Domestic Industry**

- 11.1. The Domestic Industry has represented as follows with regard to product under consideration and like article:
  - i) There is no known difference between the subject goods manufactured by the domestic industry and the subject goods imported from the subject country, which can have any impact on price, usage, quality etc.
  - ii) The technology and primary production process employed by domestic industry and the producers of the subject country are comparable; however, the producers fine-tune their production process based on available facilities and necessities.

**Examination by the Authority**

- 11.2 The product under consideration Sodium Nitrite is classified under Chapter 28 under Sub-heading 2834.10 of the Customs Tariff Act.
- 11.3 The product under consideration produced by the Indian industry and imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. In view of the similarity in manufacturing process and substitutability, the Authority therefore holds that the two are required to be treated as alike and one product for the purpose of defining the ‘product under consideration’ as per Rule 2(d) of Anti-Dumping Rules. Moreover the present investigation being a sunset review, the scope of the product under consideration remains same as in the original investigation.

D. **Standing and scope of the Domestic Industry**

**Submissions made by the Domestic Industry**

12. The following submissions have been made by the domestic industry with regard to standing issue:
- i) There are two more producers of the product under consideration namely M/s National Fertilizer Limited and Rashtriya Chemicals and Fertilizers Limited besides themselves.
  - iii) The domestic producers expressly supporting the application account for more than 50 per cent of the total production of the like product produced by the domestic industry. Production of the petitioner constitutes a major proportion in Indian Production and thus constitutes domestic industry within the meaning of the Anti Dumping Rules.
  - iii) There is no need to prove the standing in a sunset review investigation under Rule 23.

**Examination by the Authority**

13. After suo motu initiation of the subject sun set review investigation, M/s Deepak Nitrite has submitted the substantive application. The application was supported by M/s Punjab Chemicals & Crop Protection Ltd, another domestic producer of the subject goods. Subsequently, the supporting company has also furnished the required costing and injury information. It has also been stated by M/s Deepak Nitrite in its application that apart from themselves and M/s Punjab Chemicals, there are two other companies, which are known to have created capacities to produce the subject goods in India namely M/s. National Fertilizer Limited and M/s. Rashtriya Chemicals and Fertilizers Limited. The Authority requested the Department of Chemicals and Petrochemicals to provide the information with regard to the domestic producers and production of the subject goods in the country. But, no information has been made available to the Authority.
14. The Authority also requested M/s. National Fertilizer Limited and M/s. Rashtriya Chemicals and Fertilizers Limited to provide their production, costing and injury information. But, no information was furnished by them or expressed any views regarding support or opposition. In view of the above position, the Authority has relied upon information provided by the petitioner and the supporting company constituting domestic industry and assessed the production volumes of remaining producers and their support and opposition to the petition. On the basis of the verified information, the Authority notes that M/s Deepak Nitrite constitutes 88.07% of the domestic production and together with M/s Punjab Chemicals, constitutes 92% of the domestic production of the subject goods. Therefore, the Authority holds that for the purpose of this investigation, the petitioners individually as well as with the supporting industry, constitute domestic industry within the meaning of the Anti Dumping Rules.

**E. De Minimis Limits**

15. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources, the import of the subject goods from the subject countries are above the de-minimis level.

**F. Dumping Determination**

**Examination of Market Economy Claim And Determination of Normal Value**

**Submissions of the Domestic Industry**

16. 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.
  - ii) The Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.
  - iii) According to these Rules, the normal value in China can be determined on any of the following basis:
    - (a) the price in a market economy third country,
    - (b) constructed value in a market economy third country,
    - (c) the price from such a third country to other country, including India.
    - (d) the price actually paid in India, adjusted to include a reasonable profit margin.
    - (e) the price actually payable in India, adjusted to include a reasonable profit margin.
  - iv) Normal value must be “comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country”. In order to arrive at normal value on this basis, the complete & exhaustive verifiable information on all domestic sales made by a co-operating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade) are required. In view of the above, the petitioner could not consider price from such third countries to other countries for the reasons (a) information is not available; (b) the price so adopted must be a price in the ordinary course of trade; (c) such information would also require cooperation from a producer in such third country.

- v) 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. India has been considered as an appropriate surrogate by other Investigating Authorities too.
- vi) The normal value in China can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. The petitioner has, therefore, claimed constructed normal value for the subject country based on the information available for the domestic industry.

### **Examination by the Authority**

17. The Authority, notes that in the past China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure of Anti-dumping Rules, China PR is treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.
18. 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 prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-
  - a. the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
  - b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
  - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and,
  - d. the exchange rate conversions are carried out at the market rate.
19. The Authority notes that in the present case no response has been received from any producer/exporter from China PR. None of the exporters/producers from the subject country have cooperated with the Authority and responded to the present investigation. Further none of the interested parties have provided any other alternate basis on which normal value can be determined. In view of the above position and considering China as

a non market economy, the Authority has constructed the normal value based on facts available by adopting the cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. Accordingly, the normal value (CNV) has been constructed at US \$ \*\*\* per MT.

G. **EXPORT PRICE**

20. With regard to export price, the Authority observed that none of the exporters from the subject country has cooperated in the subject investigation. Therefore, the Authority has considered weighted average export price based on the DGCI&S import data. The weighted average CIF price of imports of the subject goods from China PR, as per DGC&IS data for the POI comes to Rs \*\*\* per MT. In the absence of response from producers/exporters from the subject country, the following adjustments amounting to Rs. \*\*\*/- (USD \*\*\* per Mt) have been made to arrive at net export price: -

- (a) Ocean freight @ US\$ \*\*\* pmt
- (b) Marine insurance @ \*\*\*% of CIF value
- (c) Commission @ \*\*\*% of FOB value
- (d) Port expenses @ \*\*\*% of FOB value
- (e) Inland freight @ \*\*\*% of FOB value
- (f) Bank commission @ \*\*\*% of FOB value
- (g) Chinese VAT @ \*\*\*% of FOB value

Based on the above data the net ex-works export price of the exports from China PR has been determined by the Authority as Rs. \*\*\*/- per Mt.

H. **Dumping Margin**

21. On the basis of the constructed normal value and net export price determined, as explained above, at ex-factory level, the dumping margin arrived at for all exporters of the subject goods from the subject country during POI is as given in table below:

China (US\$ per MT)	On CNV basis
Normal value	***
Net Export price	***
Dumping margin amount US \$	***
Dumping margin %	***
Dumping Margin (Range %)	5 - 15

**I. Likelihood of continuation/recurrence of dumping**

**22. Submissions of domestic industry**

- China has continued dumping of subject goods despite anti-dumping duty. The dumping margin in the original investigation, mid-term investigation as also in the current investigation remained significant.
- Volume of exports has remained at significant level. Continued exports even after imposition of anti –dumping duty at significantly dumping levels clearly shows the need for continuation and modification in the form of duty.
- Third country dumping- China is dumping the subject good in other third country.
- China is having ample production capacity to meet the entire domestic demand in India.

**Examination by the Authority**

23. The Authority examined the likelihood of recurrence/ continuation of dumping as follows:
- (a) No response/submission was made by either the producers/exporters from the subject country or by the Indian importers of the subject goods.
  - (b) In spite of the anti-dumping duty in force, the Chinese exporters command a significant share in the Indian market.
  - (c) The landed price of imports, even with anti dumping duty, is lower than the domestic selling price.
  - (d) Chinese exports causing positive price undercutting (with ADD as well as without ADD), although in both the situations price underselling is marginally positive. Further, dumping margin is positive and above de-minimis.
  - (e) The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimis.
  - (f) Based on the information provided by the domestic industry, the Authority notes that the US Authority vide their investigation No. 701-TA-453 (Final) and 701-TA-1136-1137 (Final) dated August 2008, concerning imports of Sodium Nitrite from China and Germany, has also imposed anti-dumping duty against China. This is indicative of the potential and psyche of the Chinese producers/exporters to dump the subject goods in

to India in a more intensified manner, in the event of cessation of the existing anti-dumping duty imposed by India, causing further injury to the domestic industry.

- (g) From the information provided by domestic industry, Authority further notes that China has tremendous production capacity of the subject goods, far exceeding demand in India. In the event of cessation of the existing anti-dumping duty, it would not be difficult for the Chinese producers/exports to completely replace the producers in the Indian market.
- (h) Based on the information available in World Trade Atlas that during the POI the Average price of Chinese exports of the subject goods to world over is US\$ 0.46 per KG, whereas exports to India is at US\$ 0.44 per Kg. The export price to India which is dumped price is marginally lower than the world average export price. The Authority notes that deriving its strength from its huge production capacity, China is dumping the subject goods not only in India but also in other countries as well. In the event of cessation of the existing anti-dumping duty, it would not be difficult for the Chinese producers/exports to completely capture Indian market by replacing the Indian producers.

#### J. **INJURY AND CAUSAL LINK DETERMINATION**

- 24. The domestic industry has alleged continued dumping and injury and requested for enhancement of the anti-dumping duty in force. The subject sun set review investigation is for assessing the situation of continued dumping and injury or likelihood of dumping and injury and for reviewing the necessity for continuance/enhancement of the anti dumping duty in force for further period of five years.
- 25. 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.
- 26. 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.

27. 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.”

**Examination by the Authority**

28. 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.

- (A) **VOLUME EFFECT:** Volume effect of dumped imports and impact on domestic industry:

**Demand and Market shares**

29. 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 throughout the injury period.

**Figures in MT**

Demand	2006-07	2007-08	2008-09	2009-10
Sales of Domestic Industry	22,227	24,844	21,828	25,466
Captive Consumption	***	***	***	***
Sales of other Indian Producers	2,813	2,813	2,813	2,813
Import from China	5,839	4,183	8,309	11,332

Import from EU (Country attracting anti dumping duty)	2,268	2,423	1,503	2,595
Imports - Other Countries	2	120	396	89
Total Demand	33,806	35,048	36,202	43,604

### **Import Volume & market share**

30. 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.

Imports - MT	2006-07	2007-08	2008-09	2009-10
Import from China	5,839	4,183	8,309	11,332
Share of Chinese Imports in relation to (%)				
➤ Total imports in India	72.00	62.19	81.40	80.85
➤ Demand in India	17.27	11.94	22.95	25.99
➤ Production of Indian Industry	21.63	14.39	29.67	34.18

31. 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 and consumption in India.

### **Production, capacity and capacity utilization**

32. The Authority notes from the table below that production, capacity of the domestic industry have increased during the POI as compared to the base year. However capacity utilization marginally increased as compared to the base year.

Particulars	Unit	2006-07	2007-08	2008-09	POI
Installed capacity of DI	MT	38,500	40,500	43,500	47,500
Total Production	MT	31,396	33,885	32,003	39,293
Capacity utilization DI	%	81.55	83.67	73.57	82.72

The Plant and machinery are commonly used for manufacturing of Sodium Nitrite and Sodium Nitrate by the domestic Industry, in view of that the combined production capacity of the domestic industry has been assessed by the Authority by taking into account both the products.

**Sales of the Domestic Industry:**

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

Particulars	Unit	2006-07	2007-08	2008-09	POI
Domestic sales of DI	MT	22,227	24,844	21,828	25,466
Indexed	%	100	112	98	115

The Authority notes that the sales volume of the domestic industry shows increasing trend during the POI as compared to the base year as well as the immediate preceding year,

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

Market Share in Demand (%)	2006-07	2007-08	2008-09	POI
Sale of Domestic Industry	65.75	70.89	60.30	58.40
Captive Consumption	***	***	***	***
Sales of other Indian Producers	8.32	8.03	7.77	6.45
Imports - China	17.27	11.94	22.95	25.99
Imports – EU attracting ADD	6.71	6.91	4.15	5.95
Imports - Other Countries	0.01	0.34	1.09	0.20

The Authority notes that the market share of the domestic industry has decreased during POI as compared to the base year as well as the immediate preceding year. The share of the supporting company and other domestic producers has declined throughout the injury period. The Authority also notes that the share of Chinese exports has increased during the POI as compared to the base year as well as the immediate preceding year. The Authority notes that decline in share of domestic industry in demand has been captured

by imports from China PR. Further, even when the anti dumping duties remained in effect, the volume of imports has not got impacted by the existing anti dumping duties.

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

35. 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 :**

36. The price undercutting/underselling and price suppression/depression effects are examined below:

<u>Price undercutting (without anti-dumping duty)</u>	<u>Rs/MT</u>
NSR	***
Landed Price	***
Price undercutting Rs	***
Price undercutting % (Range)	10 - 20
<u>Price underselling (without anti-dumping duty)</u>	
NIP	***
Landed Price	***
Price underselling Rs	***
Price underselling % (Range)	0 - 10

<u>Price undercutting (with anti-dumping duty)</u>	<u>Rs/MT</u>
NSR	***
Landed Price	***
Price undercutting Rs	***
Price undercutting % (Range)	5 - 15
<u>Price underselling (with anti-dumping duty)</u>	
NIP	***
Landed Price	***
Price underselling Rs	***
Price underselling % (Range)	0 - 10

### **Price Suppression and Depression**

Particulars	Unit	2006-07	2007-08	2008-09	2009-10
Cost of Sales	Rs/MT	***	***	***	***
Selling Price	Rs/MT	***	***	***	***
Landed Price	Rs/MT	***	***	***	***

The Authority notes that landed price of imports is 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 marginally less than the non-injurious price, thus resulting in marginally positive price underselling. Further, price suppression/depression effect is also absent.

### **K. Examination of other Injury Parameters**

37. 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**

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

Particulars	Unit	2006-07	2007-08	2008-09	POI
Cost of Sales - Domestic	Rs/MT	***	***	***	***
Indexed	%	100	93	115	85
Selling price - Domestic	Rs/MT	***	***	***	***
Indexed	%	100	106	174	131
Profit/( Loss) - Domestic	Rs/MT	***	***	***	***
Indexed	%	-100	-48	80	65
Profit/( Loss) - Domestic	Rs Lacs	***	***	***	***
Indexed	%	-100	-54	78	75
Profit before Interest and Taxes on Domestic Sales	Rs Lacs	***	***	***	***
Indexed	%	-100	-34	135	114
Cash Profit	Rs Lacs	***	***	***	***
Indexed	%	-100	-43	115	113
Return on Capital Employed	%	***	***	***	***
Indexed	%	-100	-36	129	107

- i) The profit, cash profit and return on capital employed (ROCE) have shown significant improvement in POI as compared to base year. However, profit, cash profit and return on capital employed (ROCE) have declined in POI as compared to preceding year.

**Inventories:**

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

	2006-07	2007-08	2008-09	POI
Average stock	***	***	***	***
Indexed	100	49	16	16

The Authority notes that average inventories with the domestic industry have substantially declined during POI in comparison to base year, however, the same marginally increased during POI in comparison to immediate preceding year.

**Employment and wages**

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

		2006-07	2007-08	2008-09	POI
Employment	Nos.	***	***	***	***
Trend	Indexed	100	100	77	78
Salary & wages	Rs. Lacs	***	***	***	***
Trend	Indexed	100	170	180	199

The Authority notes that the employment level of the domestic industry shows a decline whereas salary & wages paid by the domestic industry increased.

**Productivity**

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

		2006-07	2007-08	2008-09	POI
Productivity per day	MT	***	***	***	***
Trend	Indexed	100	109	104	125
Productivity per Employee	MT	***	***	***	***
Trend	Indexed	100	109	135	161

Productivity has increased significantly during the POI compared to the base year as well as the immediate preceding year, in tandem with production and employment.

**Dumping Margin**

42. 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**

43. The Authority notes that the domestic industry has shown positive growth in terms of increase in production, domestic sales, capacity utilization, profit, profitability, ROCE, productivity and decrease in inventory.

### **Ability to raise capital investments**

44. The Authority notes that the domestic industry is a multi product company. Their ability to raise further investment is not a significant factor in this case.

## **L. Likelihood of continuation/recurrence of injury**

### **Submissions of domestic industry**

45. The domestic industry has made the following claims with regard to likelihood of recurrence of injury:-
- a) The imports are still continuing in significantly increased volumes and are being reported at low and dumped prices.
  - b) The circumstances, which were prevalent at the time of previous investigations, are very much in existence even till date. There has been no change in the circumstance, which could suggest that the dumping would not recur at the aggravated level at which it was at the time of previous investigations.
  - c) Imports from European Union are also attracting anti dumping duty.
  - d) Considering the huge production capacities of the subject goods in the subject country and the export orientation of Chinese producers and the increasing demand for the subject goods in India, in all likelihood any reduction or revocation of the anti-dumping duty may lead to spurt in the dumped imports injuring the domestic industry.
  - e) Positive price undercutting even after considering the anti-dumping duties in force indicate the likely adverse price effect of dumped imports on Domestic Industry in the event of expiry of the anti dumping duty in force. In the event of revocation of anti dumping duties, the domestic industry would face much bigger threat of imports from the subject country.
  - f) Chinese exporters are exporting the subject goods to the third countries in significant volumes. This is evident from the price at which the goods have been exported to a number of other countries. Reasons for such dumping in the third country market are to be seen in the surplus capacities of the product in the subject country.

- g) The capacities created by producers in China are significantly high. There are 92 producers of Sodium Nitrite in China. Huge volume of exports being made by the Chinese producers in third country markets makes it evident that the volume of imports into India would increase significantly in the event of revocation of anti-dumping duty.
- h) Chinese producers have huge capacities of Sodium Nitrite and have been exporting substantial quantities to India as well as third countries. It is noted that the domestic industry is facing continuous dumping of subject goods from China. However, there is no reason or justification to believe that revocation of the duty would not lead to increased or continued dumping at large scale with consequent severe injury to the domestic industry.
- i) The present form of duty is ineffective and needs to be modified to fixed form expressed in US\$.

#### **Examination by Authority**

46. Authority has examined the likelihood of the continuation/recurrence of injury to the domestic industry as follows:
- i) No response/submission was made by either the producers/exporters from the subject country or by the Indian importers of the subject goods.
  - ii) The Authority notes that imports of product under consideration from the subject country has substantially increased during period of investigation as compared to base year as well as preceding year and has remained significant over the current injury period in absolute terms.
  - iii) The imports of the subject goods from the subject country continued to be at dumped prices in spite of existing anti dumping duties.
  - iii) Price undercutting both with and without Anti-dumping duty is positive and substantial.
  - iv) Price Underselling effect with AD duty and without AD duty is positive. However, it is less than 1% with duty.
  - v) The overall economic health of the domestic industry has improved in terms of various economic parameters such as production, capacity utilization, domestic sales, profits, cash profits, return on capital employed etc.
  - vi) The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimus.

- vii) The domestic industry, in their earlier submissions, had represented for conversion of present anti dumping duties from benchmark form to fixed form, expressed in US\$. But, in their comments on the disclosure statement, issued by the Authority, the domestic industry has requested the Authority for recommending the bench mark form of duty.

**M. OTHER KNOWN FACTORS & CAUSAL LINK**

47. The Authority has examined the submissions with regard to the significance and relevance of causal link in a sunset review investigation. It is important to note under Section 9A(5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. It was examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted as follows:

**Volume and Prices of imports not sold at dumped prices**

48. The Authority observes that the imports of the product under consideration from Europe are also attracting anti dumping duty. Imports from other countries not attracting anti dumping duty are de-minimis during the POI.

**Trade restrictive practice and competition between the foreign and domestic producers**

49. 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**

50. 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**

51. 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	2009-10
Exports Sales	MT	***	***	***	***

**N. Magnitude of Injury and Injury margin**

52. 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. Thus compared, the injury margin is worked out as under:

Particulars	Unit	Amount
NIP	Rs/MT	***
Landed Price	Rs/MT	***
Injury margin	Rs/MT	***
Injury margin	%	***
Injury margin (Range)	Index	0 - 10

**O. Indian industry's interest and other issues**

53. 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.
54. 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, therefore, would not affect the availability of the product to the consumers.

**P. CONCLUSIONS**

55. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings 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. No response/submission was made by either the producers/exporters from the subject country or by the Indian importers of the subject goods.

- b. In spite of the anti-dumping duty in force, the Chinese exporters command a significant share in the Indian market.
- c. The landed price of imports, even with anti dumping duty, is lower than the domestic selling price.
- d. Chinese exports causing positive and substantial price undercutting (with ADD as well as without ADD), although in both the situations price underselling is marginally positive.
- e. During POI, as compared to preceding year, the domestic industry has shown declining trend in some of the major economic parameters such as sales, profit, profitability, cash profit and ROCE. However, during POI, in comparison with base year, there is a marked improvement in the overall economic health of the domestic industry, showing positive growth in terms of increase in production and domestic sales, increase in capacity utilization, increase in profit and profitability, increase in ROCE, increase in productivity and decrease in inventory.
- f. 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 marginally positive.
- g. The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimis.
- h. Based on the information provided by the domestic industry, the Authority notes that the US Authority vide their investigation No. 701-TA-453 (Final) and 701-TA-1136-1137 (Final) dated August 2008, concerning imports of Sodium Nitrite from China and Germany, has also imposed anti-dumping duty against China. This is indicative of the potential and psyche of the Chinese producers/exporters to dump the subject goods into India in a more intensified manner, in the event of cessation of the existing anti-dumping duty imposed by India, causing further injury to the domestic industry.
- i. From the information provided by domestic industry, Authority further notes that China has tremendous production capacity of the subject goods, far exceeding demand in India. In the event of cessation of the existing anti-dumping duty, it would not be difficult for the Chinese producers/exports to completely replace the producers in the Indian market.
- j. Based on the information available in World Trade Atlas that during the POI the Average price of Chinese exports of the subject goods to world over is US\$ 0.46 per KG, whereas exports to India is at US\$ 0.44 per Kg. The export price to India which is dumped price is marginally lower than the world average export price. Deriving its strength from its huge production capacity, China is dumping the subject goods not only in India but also in other countries as well. In the event of cessation of the existing anti-dumping duty, it would not be difficult for the Chinese producers/exports to completely capture Indian market by replacing the Indian producers.

56. The domestic industry has represented for conversion of present anti dumping duties from benchmark form to fixed form, expressed in US\$. But, the Domestic Industry did not furnish any substantive data/documents to justify the requirement of change of form of the duty. Moreover the improvement in the overall economic health of the domestic industry does not warrant any modification in the form of the existing anti-dumping measures. Thus in view of above position, the Authority does not consider it appropriate to modify the form of measure from reference price basis to fixed quantum basis.

**Q. Indian industry's interest and other issues**

57. 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.
58. 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, therefore, would not affect the availability of the product to the consumers.

**R. Recommendations**

59. 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 is required to be extended and the quantum of the anti-dumping duty is required to be modified in respect of imports of the subject goods from the subject country as recommended by the Authority vide Final Findings Notification No.39/1/1999-DGAD dated 01.12.2005 published in the Gazette of India, Extraordinary, Part-I, Section-I, and notified by the Central Government vide Notification No.3/2006-Customs dated 17.01.2006.
60. Having examined the current dumping and likelihood of dumping to be imminent in case of withdrawal of the current measure in place and since none of the exporters from the subject country has cooperated and provided the required information/data, 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 difference between the amount indicated in Col. 8 of the duty table given below and the landed value is recommended to be imposed on all imports of the subject goods originating in or exported from China PR:-

Sl No	Customs Sub heading	Description	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit of measurement	Currency
1	2	3	4	5	6	7	8	9	10
1	2834 10	Sodium Nitrite	China PR	China PR	Any	Any	515.94	MT	USD
2	2834 10	Sodium Nitrite	China PR	Any	Any	Any	515.94	MT	USD
3	2834 10	Sodium Nitrite	Any country other than China PR	China PR	Any	Any	515.94	MT	USD

**S. Further Procedures**

61. 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 under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.
62. 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**