

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES**

NOTIFICATION

NEW DELHI, 2nd September, 2011

PRELIMINARY FINDINGS

Subject: Preliminary Findings of anti dumping investigation concerning import of Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA

14/17/2010-DGAD – Having regard to 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 thereof, as amended from time to time (hereinafter referred to as the AD Rules).

A. PROCEDURE

2. The procedure described below has been followed.
 - i. The Designated Authority (hereinafter referred to as the Authority), under the Rules, received a written application from Alkali Manufacturer's Association of India (AMAI), Delhi on behalf of the domestic industry, alleging dumping of Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA (hereinafter referred to as subject countries).
 - ii. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented.
 - iii. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject countries.
 - iv. The Authority notified the embassy of the subject countries in India about the receipt of dumping application before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the AD Rules.

- v. The Authority issued a public notice dated 20th August 2010 published in the Gazette of India, Extraordinary initiating anti-dumping investigation concerning imports of the subject goods.
- vi. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the Applicant) and industry associations and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.
- vii. The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India and advised them to make their views in writing within forty days from the date of the letter.
- viii. The Authority provided a copy of the non-confidential version of application to the known exporters and the embassy of the subject countries in India in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.
- ix. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the AD Rules:
- Shandong Haihua Group
 - Hebei Tangshan Sanyau Alkali Industry Company
 - Qinghai Alkali Plant (Zhejiang Glass)
 - Tianjin Soda Ash Plant

 - Jinshan Chemical Co.
 - Spin International
 - ANSAC, USA
 - Siman Ltd
 - Magadi Soda Company
 - Belvedere SRL Romania
 - Asha Trade Import Export
 - GHCL Romania
 - Allied Network Company Ltd
 - Asha Trade Import Export
 - FMC Industrial Chemicals
 - General Chemicals Industries Products
 - OCI Chemical Corporation
 - Solvay Soda Ash

- FMC Corporation
 - Solvay Sodi AD
 - Sisecam Soda Lukavac
 - Brunner Mond
 - Syrina Trade Company
 - ICI Pakistan Limited
- x. In response to the initiation notification, the following exporters/producers/associations from Subject countries have responded:
- Olympia Chemicals Limited, Pakistan
 - ICI Pakistan Limited, Pakistan
 - Magadi Soda Company, Kenya
 - Solvay, Romania
 - Embassy of Ukraine in New Delhi
 - ANSAC, USA
- xi. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:
- Gujarat Guardian Ltd
 - Advance Surfactants India Ltd.
 - Float Glass India Ltd
 - A.R. Stanchem Pvt. Ltd,
 - Alembic Glass Industries Ltd
 - Hind Silicates Pvt. Ltd.,
 - Deepak Nitrite Ltd
 - Taurus Chemicals (P) Ltd.
 - Hindusthan National Glass & Ind. Ltd
 - Kishoresons Detergents Pvt. Ltd.,
 - HindusthanUniliver Ltd.
 - J.J. Patel Industries,
 - Procter & Gamble Hygiene & Health Care
 - ShriramBharath Chemicals & Detergents (P) Ltd.
 - Albright Morarji&Pandit Ltd.
 - Modern Glass Industries,
 - Advatech Industries Pvt. Ltd.
 - AdarshKanchUdyog (P) Ltd.
 - Saint Gobain Glass Ltd.
 - Advance Lamp Component & Table Wares Pvt. Ltd
 - U.P. Glass Manufacturer Syndicate,
 - Pragati Glass Pvt. Ltd.,
 - Asahi India Glass Limited
 - Gora Mal Hari Ram Ltd.,

- Fena (P) Ltd.
 - Rohit Surfactants(P) Ltd.,
 - Shree Unicon Organics P. Ltd.,
 - Astral Glass Pvt. Ltd.
 - Pollachi Chamber Of Commerce & Industry,
 - Bdj Glass Industries Pvt. Ltd.,
 - VasundharaRasayan Ltd.,
 - Power Soap Ltd.,
 - ShriHari Industries,
 - Shanti Nath Detergents(P) Ltd,
 - Hindusthan National Glass & Industries Ltd.,
 - Advance Home & Personal Care Ltd.,
 - Jagatjit Industries Limited,
 - S. Kumar Detergent P. Ltd
 - Advance Surfactants India Ltd.,
- xii. In response to the initiation notification, the following importers /users have responded
- Chempex International,
 - Mahawar Iron Stores Pvt. Ltd.
 - SinochemImpex
 - India Float Glass Manufacturers Association
 - Saint Gobain India Pvt Ltd.
 - Hindustan Unilever Limited
- xiii 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.
- xiv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis.
- xv. Information was sought from the applicant companies.
- xvi. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;

- xvii Investigation was carried out for the period starting from 1st April 2009 to 31st March 2010 (POI). The examination of trends, in the context of injury analysis covered the period from April 2006–March 2007, April 2007-March 2008 April 2008-March 2009, and the POI.
- xviii An oral hearing of interested parties was held on 13.05.2011 subsequent to which written submissions and rejoinders were submitted by the interested parties. These submissions, to the extent relevant, have been fully examined in this findings.
- xix *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Views expressed by the domestic industry

3. The views of the domestic industry with regard to product under consideration and like articles are as follows.
- a) The product under consideration in the present application is Disodium Carbonate commonly known as Soda Ash.
- b) Soda Ash can be produced through synthetic route and natural route. The present petition includes all types and forms of Soda Ash. Further, it is produced in two forms, viz. Light Soda Ash and Dense Soda Ash. These two forms of soda ash are like articles. The issue has been examined by the Authority in the earlier concluded investigation against China. The Authority has considered the two grades as a single product.
- c) The difference in the costs and prices of light and dense soda ash is not so significant that the same calls for separate comparison for the purpose of determination of dumping margin.

Views expressed by interested parties

- 3 Light and Dense Soda Ash are different products and should be treated accordingly.

Examination by the Authority

- 4 The Authority has examined the issue as under :
- i. The product under consideration in the present investigation is Disodium Carbonate, also known as Soda Ash, having chemical formula Na_2CO_3 . Soda Ash is produced in two forms - Light Soda Ash and Dense Soda Ash. The difference in the two types

is bulk density. It can be produced through synthetic route and natural route, known as dissolution process. The present petition includes all types and forms of Soda Ash.

- ii. Soda Ash is an essential ingredient in the manufacture of detergents, soaps, cleaning compounds, sodium based chemicals, float glass, container and specialty glasses, silicates and other industrial chemicals. It is also widely used in textiles, paper, metallurgical industries and desalination plants. Soda Ash is classified under Chapter 28 of the Customs Tariff Act under subheading No.2836.20. The customs classification is, however, indicative only and is not binding on the scope of the present investigation.
- iii. Domestic industry claimed that light and dense soda ash are one product. The domestic industry also claimed that natural and synthetic soda ash is also one product. Some of opposing interested parties have however argued that light & dense soda ash is different product. It has also been argued that natural and synthetic soda ash are different products.
- iv. The Authority notes that the difference in light & dense soda ash is in bulk density. The product characteristics, production process, manufacturing technology, raw materials, plant & equipment, manpower, functions & uses, customs classification and pricing of the light & dense soda ash are however the same. It is possible that some end application might require light or dense soda ash only. However, difference in bulk density or inability of some of the consumers to interchangeably use light and dense soda ash cannot render the two dislike articles. These are merely two different forms of the product.
- v. As regards natural and synthetic soda ash, the Authority notes there is no difference in natural and synthetic soda ash in terms of product characteristics, functions and uses, customs classification and pricing of the product. The only difference is in terms of the routes of manufacturing. However the mere difference in production process cannot render two products dislike particularly when the resultant products are interchangeably used.

6. With regard to like article, Rule 2(d) of the AD Rules provides as under:

"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

7. The applicant claimed that there is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from subject countries are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing

process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods.

8. The Authority notes that there is no significant difference in subject goods produced by the Indian industry and those exported from subject countries. Even though the product is produced through a different route in Kenya and USA, the subject goods produced by the Indian industry and that imported from subject countries are technically and commercially substitutable. The consumers are using the two interchangeably. Subject goods produced by the petitioner companies are being treated as like article to the subject goods imported from subject countries in accordance with the anti-dumping Rules.

C. STANDING AND SCOPE OF DOMESTIC INDUSTRY

9. Authority notes that the standing of the petitioner to file the present petition has been contested by the interested parties. M/s Mauli Exports and M/s. Saint Gobain had filed separate writ petitions before Delhi High Court and Chennai High Court respectively, wherein the primary issue under challenge was in respect of standing of the petitioner to file the present petition and eligibility of the petitioner companies to be treated as “domestic industry”. While disposing of the writ petition, the Hon'ble High Court of Delhi ordered as follows –

“The petitioners are aggrieved by the initiation of Anti-Dumping investigation against imports of soda ash by respondent no.1. It is a case of the petitioners that initiation is on an application filed before respondent no.1 by respondent no.3 to 5 and such an application is not maintainable in view of Rule 5(1) read with Rule 2 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The petitioner no.2 has filed an application before respondent no.1 in this behalf. Learned counsels for respondents have submitted before us that the writ petition is pre-mature as the matter is already receiving the attention of respondent no.1. They have also drawn our attention to an order passed in WP(C) 7714/2009 on 24.03.2009 in a similar situation. In the order, it has been observed that the petitioner in such a situation can raise all the objections before the designated Authority so that the designated Authority can arrive at a conclusion whether it has the locus to proceed in the matter or not. If such an objection is accepted, the natural consequence of the same is the dropping of proceedings against the concerned party. It was left open to the designated Authority to pass orders on the jurisdictional aspects separately or along with the preliminary findings at its discretion. We are inclined to follow the same course of action. The concerned Authority would thus decide this jurisdictional issue as expeditiously as possible, preferably within eight weeks from today as the grievance made by the learned counsel for the petitioner is that, though no anti-dumping duty has been imposed as yet but the initiation of such an enquiry and the advertisement issued pursuant thereto has an impact on the imports.”

We make it clear that in the case of the order referred before us, the discretion in this matter would be with the designated Authority. The writ petition and the applications accordingly stand disposed.”

10. The Hon'ble High Court of Madras, vide their orders dated 29.4.2011, ordered as follows –

“Para 1 to 7

8. It is seen from the material records that the very same notification has been challenged before the Delhi High Court in W.P.(C) No.95 of 2011 and on 10.01.2011, a Division Bench of the Delhi High Court, following the earlier orders of that court in W.P.(C) No.7714 of 2009, dated 24.03.2009 inter alia passed an order to the effect that the petitioner in such a situation can raise all the objections before the designated Authority, so that the designated Authority can arrive at a conclusion as to whether it has the locus to proceed in the matter or not. Further, if such an objection is accepted, the natural consequence of the same is the dropping of proceedings against the concerned party. It was left open to the designated Authority to pass orders on the jurisdictional aspects separately or along with the preliminary findings at its discretion. It was also made clear that as in the case of the order referred to above, the court's discretion in that matter would be with the designated Authority.

9. In that view of the matter, considering the above circumstances and the submissions made by the learned counsel on either side, the interim order granted by this court on 25.02.2011 is modified to the effect that the investigation initiated by the 2nd respondent pursuant to the impugned notification dated 20.08.2010 shall go on. While considering the objections raised by the petitioner, the designated Authority shall pass orders on the jurisdictional aspects separately or along with the preliminary findings at its discretion after hearing the parties to the proceedings.

These Miscellaneous Petitions are disposed of accordingly”.

11. Pursuant to the above orders, the Authority held an oral hearing of the interested parties including the aforesaid petitioners on 13.5.2011. Opportunity was also provided to the interested parties for making written submissions on the issues including jurisdictional issues presented during the

hearing and rejoinders thereto. The Authority has duly examined these submissions and has considered it appropriate to pass a speaking order on the jurisdictional aspects along with the preliminary findings in view of the aforesaid orders of the Hon'ble High Courts of Delhi and Madras. The jurisdictional issues raised by various interested parties to the present proceedings have been examined as follows.

Submissions by interested parties

12. The interested parties have made the following submissions:

- a) The application filed before Authority by applicants is not maintainable in view of Rule 5(1) read with Rule 2.
- b) The investigation could not have been initiated as the application does not meet the requirement of standing under the Rules. Petition is defective as it has not been filed by or on behalf of the Indian "Domestic Industry" as required under the Rules. It is based on data from companies who should not be considered eligible domestic industry in term of Rule 2(b).
- c) Petition has been filed by an industry association and not by domestic industry's producer(s) at all. Though it is supported by four companies, only one of these companies, DCW Limited, is eligible domestic producer to qualify to file petition. DCW however accounts for less than 4% of total domestic production, which is significantly falls short of threshold of 25% as provided under Rule 5(3).
- d) With regard to reasons for imports given by Nirma, the interested parties have contended that import for captive use is irrelevant. Even captive use is a part of total domestic requirements which could be served by Domestic Industry and therefore must be considered in analysis of eligibility.

Submissions by domestic industry

13. The domestic Industry has submitted as follows:

- a) Petition has been filed by association of the producers of the subject goods. Thus, the petition should be deemed to have been filed on behalf of the domestic industry.
- b) The petition has express support from all Indian Producers, barring Tata Chemicals.
- c) DCW Ltd. does not have any related producer-exporter outside India. DCW is eligible domestic industry. There is no dispute that the company is eligible domestic industry.
- d) GHCL has a related company in Romania, who has exported Soda Ash to India over the current injury period. These exports have been directly made by

the company. The volume of exports made by the related exporter declined and were negligible as would be seen from the table below –

S. No.	Parameter	Unit	2006-07	2007-08	2008-09	2009-10
1	Romania Exports to India	MT	46,594	67,121	7,652	47,148
2	Related party's exports to India	MT	17,356	51,353	6,489	4,101
	(a) To GHCL, India or other related parties	MT	11,082	-	-	-
	(b) To other unrelated parties	MT	6,274	51,353	6,489	4,101
3	Production of GHCL, Romania	MT	1,92,616	1,79,792	1,69,756	91,730
4	Production of GHCL, India	MT	5,24,665	5,91,531	6,17,566	6,76,069

e) SCL/Nirma have related producer in USA. The US Company has exported Soda Ash to India only during the POI. The exports have been made only to Nirma.

S. No.	Parameter	Unit	2006-07	2007-08	2008-09	2009-10
1	US Exports To India	MT	123	629	830	32,679
2	Related party's exports to India	MT				
	(a) To Nirma, India or other related parties	MT	-	-	-	2,700
	(b) To other unrelated parties	MT	-	-	-	-
3	Production of Nirma, USA	MT				
4	Production of Nirma, India	MT	4,60,027	3,72,530	3,94,520	4,67,717

f) Tata Chemicals has a related producer in Kenya, US and Europe. Further, there are significant imports from Kenya. The Kenyan company is a subsidiary of Tata Chemicals. Tata Chemicals should be considered as ineligible domestic industry in view of imports from their related supplier in Kenya, volume of which is quite significant.

S. No.	Parameter	2006-07	2007-08	2008-09	2009-10
1	Kenya Exports to India	85,797	1,15,520	1,17,572	1,06,585
2	Production of Magadi		4,13,000	4,63,000	4,56,000
3	Production of Tata Chemicals	7,57,209	6,97,046	6,95,115	6,95,721

g) None of the petitioner companies' focus has shifted from production to trading/imports.

- h) Production by the petitioner companies constitute a major proportion in Indian production
- i) Domestic producers expressly supporting the application account for more than 50 percent of production of the like product produced by the domestic industry;
- j) Even though Tata Chemicals focus has not shifted to imports, the exports made by Magadi are quite significant;
- k) There is no justification for exclusion of GHCL and Nirma for the following reasons
 - a. insignificant volume of exports made by the related exporters/ producers of GHCL and Nirma;
 - b. GHCL itself has not imported. The volume of exports by the related producer have declined;
 - c. Nirma has imported the material due to some quality issues with the material and consumed itself in production of detergents;
 - d. the focus of both the companies have not turned to trading/imports. The focus continues to be production;
 - e. the injury information provided by these companies has not got distorted because of these imports.
- l) The Rules referred by ANSAC are no longer in force. The Rules have since been amended and relied upon.

Examination by the Authority

15. The Authority notes that standing of the petitioner to file the present petition has been contested by a number of interested parties. The Authority has examined the legal provisions and arguments made by various interested parties to decide whether the petitioner has sufficient standing to file the present petition and maintain the same under the Rules. The Authority has also examined whether the petitioner companies constitute domestic industry within the meaning of the Rules.

16. The Authority notes that standing of the petitioner is governed by Rule 5(3), which provides as follows –

“The designated Authority shall not initiate an investigation pursuant to an application made under sub-Rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) *it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -*

(i) *dumping,*

(ii) *injury, where applicable; and*

(iii) *where applicable, a causal link between such dumped imports and the alleged injury,*

to justify the initiation of an investigation.

Explanation - For the purpose of this Rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application”.

17. The Authority notes that an investigation cannot be initiated unless it is established that the application has been filed by or on behalf of domestic industry. Such a determination is required to be made on the basis of support for or position to the application by the domestic producers. Further, no investigation can be initiated if domestic producers expressly supporting the application account for less than twenty five percent of the total production of the like article “*by the domestic industry*”. The Authority notes that the Rules clearly distinguish between “domestic industry” and “domestic producer” and do not provide for a determination that the production of domestic producers expressly supporting the application should account for more than twenty five per cent of the total production “*by the domestic producers*”. The Rule further provides that the application *shall be deemed* to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion “*of the domestic industry*” expressing either support for or opposition, as the case may be, to the application. The Authority notes that this determination is also considering production of “domestic industry” and not “domestic producers”. The Authority also notes that it is the application (and not the applicants) which should have requisite standing.

18. The Authority thus notes that in order to determine whether the application before the Authority has sufficient requisite standing under the Rules, the Authority is first required to establish the scope of domestic industry. The Authority notes that the 25% and 50% conditions are required to be applied on production “of the domestic industry” as a whole. Such tests are not required to be applied by considering “production of domestic producers as a whole”. The Authority notes that the Rules clearly distinguish and differentiate between “domestic producer” and “domestic industry”. A domestic producer may not be a domestic industry by virtue of

Rule 2(b). Thus, it is important to decide whether various domestic producers constitute a part of domestic industry before deciding standing of the petitioner. The Authority further notes that the relevant issue under Rule 2(b) in the present case is whether a domestic producer is eligible to be considered as domestic industry in view of its own import of the product under consideration or its relationship with an importer or exporter.

19. Rule 2(b) prior to amendment dated 15th July, 1999 was as follows:

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

20. It is noted that there was no discretion to the Designated Authority under this Rule. The Rule after the amendment was as follows:

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

21. The Authority notes that this amendment provided a discretion to the Authority. Currently, after the latest amendment in 2009, the definition of the domestic industry is as under

*2(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof **[in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers only]** :*

22. The question of excluding or including a domestic producer from the ambit and scope of the domestic industry is of practical importance as the question arises whether or not they are really part of the domestic industry in the sense of Rule 2(b) of the AD Rules. This in turn may have an effect

on the standing of the applicants i.e. whether or not their (the domestic producers that have filed or supported the application) production reaches the necessary level of representativeness as stipulated under the AD Rules; as the output of domestic producers, which are excluded from the definition of the domestic industry because of their relationship to exporters or importers; or because of their own dumped imports, will not be taken into consideration while calculating total domestic production and when determining if the applicant along with supporting domestic producers represent a major proportion of such production.

23. The Authority notes that Rule 2(b) has been amended twice. The Rule 2(b) as enshrined in the AD Rules as on 1.1.1995 provided no discretion to the Designated Authority in such situations where one or more domestic producer has imported the product under consideration or is related to an importer or exporter of the product under consideration. However, WTO Agreement on Anti-Dumping and Municipal laws of other investigating authorities vested discretion to the investigating authorities in such situations, which were to be applied to the circumstances of a specific case. Rule 2(b) was amended with effect from 15th July 1999 vide Customs Notification No.44/1999 (N.T.) vesting discretion to the Designated Authority in such situations, which could be applied on case by case basis. Rule 2 (b) has further been amended recently as stated above.
24. It has been submitted by interested parties that Rule 2(b) out rightly excludes producers who have relationship with exporters or importer of alleged dumped article. It has also been submitted that the discretion available to the domestic industry prior to present Rules is no longer available to the Authority. The Authority notes that the Rule was amended in 1999 with a view to provide a discretion to the Designated Authority to decide whether a company who is itself importing the product under consideration or who is related to an exporter or importer should be included or excluded from the scope of the domestic industry. Further, mere fact of relationship of a domestic producer with an importer or exporter or import by such a producer is insufficient to exclude such a producer from the scope of the domestic industry. Authority is required to apply his mind so as to make objective determination of whether a domestic producer in such a situation should be considered as eligible or ineligible domestic industry. The Authority also holds that the current Rules continue to grant such discretion to the Designated Authority to decide on the merits of the case to include or exclude such a company. Such discretion as was granted vide amendment in 1999 has not been taken away by the amendment in 2009. This gets clearly established by the continued usage of word “may” under the amended definition of Rule 2(b). Thus, to the extent the interested parties have argued that the present definition of Rule 2(b) does not confer discretion on the Designated

Authority, the Authority holds that the present definition of Rule 2(b) grants discretion to the Designated Authority. Significant emphasis has been placed by the interested parties on the usage of word “only” in Rule 2(b). The Authority however holds that the issue is relevant only if the Designated Authority considers one or more applicant companies as ineligible. If the applicant companies are held as eligible domestic industry, the relevance and significance of the word “only” under Rule 2(b) become irrelevant.

25. The Authority considers that this discretion is consistent with meeting the situations wherein:-

- (a) Some domestic producers may not wish to support an anti-dumping application merely because they themselves are importing the product, or they are related to an importer or exporter of the product. Such domestic producers may even wish to force closure of other domestic producers in order to eliminate competition through unfair practice of dumping. One reason for vesting the discretion in the Authority could be to exclude such related entities, who may seek to thwart an attempt by the remaining domestic producers to seek redressal of injury caused to them on account of dumping by filing an anti-dumping application and seeking suitable relief against the unfair trade practice of dumping. If it were not so, the remaining domestic producers may not be able to meet the ‘Standing requirement’ as stipulated in the law to file an anti-dumping application and seek suitable remedy against the unfair trade practice of dumping. In short, the Authority considers that there was a need to exclude certain entities from the scope of domestic industry in order to enable the Authority to address injurious dumping in the Country.
- (b) One or more of the domestic producers might have imported the product under consideration or their related company might have imported or exported the product under consideration for one or more bona-fide reasons. Some of these reasons are listed below:
 - (i) imports made under advance license in order to compete in the international market in the downstream product;
 - (ii) imports made at the time of temporary suspension of production (due to variety of bona-fide reasons, such as fire, strike, natural calamities, etc.);
 - (iii) imports made to supplement the product line by importing a particular type which the applicant may not be producing and which might constitute a very small portion of its total business operations;
 - (iv) imports made for testing, research & development, seed-marketing purposes (imports of the product to test the quality

and other parameters when faced with low priced imports);

- (v) imports of the part of the product which does not form the core activity in the manufacturing of the product.

The Authority considers that it would be inappropriate to exclude such bonafide domestic producers from being treated as domestic industry.

26. Thus, the Authority is of the view that the modified Rule provides discretion to the Authority in the above mentioned situations. In other words, the AD Rules have been amended to provide discretion to the Authority to include a domestic producer in certain situations or to exclude a domestic producer in certain situations.

27. The Authority has relied upon the jurisprudence available on the subject that suggests the circumstances in which a related domestic producer may be included or excluded as follows:-

- (a) one of the important factors in this regard is the balance of business of the domestic producer between manufacturing and importing. If the company predominantly manufactures the product in India, it should be included. However, if the domestic producer closes or reduces its production and instead imports the product or the general emphasis of its business shifts from production to imports, it should be excluded.
- (b) if a domestic producer has shielded itself from the effect of dumping by resorting to imports from or exports to a related party, the company must be excluded.
- (c) if a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it must be excluded.
- (d) if inclusion of a domestic producer would distort the injury findings, it must be excluded.
- (e) if a domestic producer does not cooperate with the Authority, the Authority tends to consider such domestic producer as ineligible.

28. The Authority has also relied upon certain other authorities to arrive at a finding in this regard. In this context, the Authority notes that the text book written by M/s. Czako, Human and Miranda; inter alia, mentions the criteria applied by the other WTO members in such situations as follows:-

- (a) The percentage of domestic production of the product in question that is accounted for by the related producers.
- (b) Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping.
- (c) Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry.
- (d) The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities.
- (e) The ratio of import shipments to domestic production for the related producers.

29. The Authority considers that the purpose of the discretion to include or exclude certain domestic producers is to enable the Authority to come to an objective and undistorted determination with regard to the effects of dumped import on the domestic industry in India by excluding those domestic producers from the relevant domestic industry which have participated in injurious dumping. The investigating authorities may exclude a related producer, where the related parties either:

- (a) provoked or contributed to a fall in prices on the market,
- (b) are shielded from their effects, or
- (c) where they benefited unduly from them.

30. With regard to the first category, i.e. the participation in dumping practices, the Authority considers that several typical situations may be distinguished. On the one hand, the exclusion is indeed appropriate where the injury of a domestic producer is self-inflicted because imports from dumped producers reduced the use of domestic producers' own capacity, or resulted in the abandonment of domestic producers' projects designed to increase their own production.

31. The Authority further considers that exclusion of a domestic producer is prima facie not appropriate, if its participation in the dumping was an act of self-defence. Such a domestic producer should, therefore, be taken into account when defining the relevant domestic industry.

32. The Authority considers that domestic producers that import the dumped product or whose related exporter exports the dumped product or whose related importer imports the dumped product do not unduly benefit from dumping practices, if these imports do not represent a significant part of

their sales or market size. Indeed, no advantage occurs to such domestic producers because of the competition from other suppliers in the market. The Authority also notes that another distinction drawn by the Investigating authorities of other countries while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? The Authority considers that in the latter case, such company should be excluded from the scope of domestic industry. Another element which can be considered is whether or not the domestic producer in question is committed to production in the country of imports.

33. In view of the above, the Authority holds that the only relevant issue for determination is whether or not GHCL, Nirma, SCL and Tata Chemicals should be treated as eligible domestic industry.

34. In the instant case, there is no allegation that any of the domestic producers is related to an importer. The arguments of the interested parties are that SCL, Nirma and GHCL should be treated as ineligible domestic industry in view of their relationship with foreign producers/exporters in subject countries or, in case of Nirma, additionally because of imports made by Nirma. None of the opposing interested parties have given any reason why these companies should be treated ineligible domestic industry, barring the fact of imports or relationship itself. Their sole ground for exclusion seems to be the very fact of relationship or imports.

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

- (a) The application was filed by the M/s Alkali Manufacturers' Association of India (AMAI). AMAI is an association of producers of caustic soda (including chlorine) and soda ash.
- (b) DCW, GHCL, Nirma and Saukem have provided information relevant to injury to the domestic industry and have requested to be considered as "domestic industry" for the purpose of the present investigation. These companies are being treated as "participating companies". The petition has express support of all Indian Producers of soda ash during POI, except Tata Chemicals. Tata Chemicals has neither supported nor opposed the imposition of anti-dumping duties. It is however noted that Magadi Soda Company, Kenya is a 100% subsidiary of Tata

Chemicals and the company is participating in the present investigations by filing exporters' questionnaire response.

- (c) Post initiation and after holding of oral hearing, Tuticorin Alkali Chemicals (TAC) has filed its written submissions vide their letter dated 23rd May, 2011 supporting the application and requesting the Designated Authority to impose anti-dumping duties. It is noted that TAC has not participated in the proceedings by way of filing response to the initiation notification. It is also noted that they were not producing the subject goods during POI. The Authority has therefore not considered the submissions of TAC at this belated stage.
- (d) None of the petitioner companies are related to any of the importers of the product under consideration in India;
- (e) DCW Ltd. does not have any related producer-exporter outside India. The company has not imported the product under consideration, nor is the company related to any exporter or importer. There is no dispute that DCW is an eligible domestic industry. Petitioner has strongly contended that in the event the Authority holds that GHCL, Nirma and SCL are ineligible domestic industry, DCW alone shall constitute domestic industry, as the production of the company in that event shall constitute 100% of the "production by the domestic industry".
- (f) SCL and Nirma are undisputedly related companies.
- (g) Nirma has imported soda ash from its related supplier in USA. Barring Nirma, none of the petitioner companies have themselves imported the material from any of the subject countries during the entire injury period.
- (h) GHCL has a related company in Romania, namely S.C. GHCL Upsom. The related exporter of GHCL has exported Soda Ash to India over the current injury period. GHCL has also provided details of their related company in Romania regarding production and exports to India (volume information only). Details of exports made by related exporter over the injury period show that (a) these exports have been directly made by the Romanian company to unrelated Indian customers during the POI, and (b) the volume of exports by the company steeply declined over the injury period. Table below shows the volume of exports from Romania, exports by GHCL Upsom and other relevant details

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
A	(a) Exports by S.C. GHCL Upsom	MT	17,356	51,353	6,489	4,101
B	Exports to related parties	MT	11,082	-	-	-
C	Exports to unrelated Indian parties	MT	6,274	51,353	6,489	4,101
D	(b) Total imports from Romania	MT	46,594	67,121	7,652	47,148

2	Exports made by S.C. GHCL Upsom in relation to	MT	17,356	51,353	6,489	4,101
A	Indian production		0.85%	2.54%	0.32%	0.20%
B	Indian Consumption		0.80%	2.33%	0.29%	0.17%
C	Production of GHCL		3.31%	8.68%	1.05%	0.61%
D	Imports made by GHCL in relation to					
a	GHCL's production		2.11%	0.00%	0.00%	0.00%
b	Indian production		0.54%	0.00%	0.00%	0.00%
c	Indian consumption		0.51%	0.00%	0.00%	0.00%
3	Gross imports from Romania	MT	46,594	67,121	7,652	47,148
a	• Exports by GHCL Upsom	MT	17,356	51,353	6,489	4,101
b	• Exports by Other exporters	MT	29,238	15,768	1,163	43,047
c	Share of GHCL Upsom in total exports from Romania		37.25%	76.51%	84.80%	8.70%

36. The Authority holds that

- (i) GHCL Upsom is not the majority exporter of soda ash from Romania. Other exporters from Romania constitute majority exports from Romania.
- (ii) Exports by GHCL Upsom declined significantly in absolute terms as also in relation to imports from Romania.
- (iii) Exports by GHCL Upsom are quite insignificant when compared with total imports of soda ash in India, production of soda ash by GHCL and consumption of soda ash in India.
- (iv) The imports were not made by GHCL, India. The imports were made directly by unrelated consumers.
- (v) The volume of exports by GHCL Upsom is not so significant as to have caused or provoked injury to the domestic industry.
- (vi) Focus of GHCL continues to be on production. The company has not turned trader. Nor the company has unduly benefited from dumping. In fact, imposition of anti-dumping duty would imply imposition of anti-dumping duty on exports made by GHCL Upsom as well. The injury determination shall not get distorted by including GHCL within the scope of the domestic industry.
- (vii) None of the opposing interested parties have advanced any justification for exclusion of GHCL from the scope of the domestic industry, barring the fact of relationship itself.

37. SCL & Nirma have related producer in USA, namely Searles Valley Minerals. Details of exports made by related exporter over the injury period show that (a) these exports have been made only during the POI, (b) the exports have been made to Nirma, (c) Nirma has used this material for

self-consumption. Table below shows the volume of exports from US, exports by Searles Valley Minerals (related producer of Nirma and SCL in USA) and other relevant details

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

38. The Authority notes that

- (i) Searles Valley Minerals (related company of Nirma and SCL in USA) is not the majority exporter of soda ash from USA during the POI. Other exporters (non-related) from USA have a majority and much larger share in exports from USA.
- (ii) Exports by Searles Valley Minerals are insignificant when compared with total imports of soda ash in India, production of soda ash by Nirma (and Saukem) and consumption of soda ash in India.

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

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

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

2	Exports made by Magadi Soda (Kenya) in relation to	MT	85,797	1,15,520	1,17,572	1,06,585
	Indian production		4.19%	5.72%	5.79%	5.13%

Indian consumption		3.97%	5.24%	5.33%	4.32%
Production of TCL		11.33%	16.57%	16.91%	15.32%

40. From the above, the Authority notes that

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

41. It is, thus, seen that

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

and Saukem may be considered eligible to be treated as “domestic industry” for the purpose of the present investigations.

42. Thus, the Authority is of the view that it is appropriate to consider GHCL, Nirma, Saukem and DCW Limited as the domestic industry under Rule 2(b) of the AD Rules. Accordingly, the Authority has determined that the application satisfies the requirements of Rule 2(b) read with Rule 5(3) of the AD Rules.

D. Other issues

Confidentiality claims of the interested parties

43. Petitioner has claimed confidentiality on a number of information contained in the petition, stating that the same is business sensitive confidential information of the petitioner companies, which are not in public domain and disclosure of which can cause serious harm to the business interests of the petitioner companies. A number of interested parties have disputed the confidentiality claims of the petitioner. The Authority has carefully considered the arguments of the interested parties and petitioner. The Authority notes that the petitioner has now disclosed export volumes of the related exporters in its post hearing written submissions, a copy of which has been made available to other interested parties for their comments.
44. Anti-Dumping Rules permit an interested party to file information on confidential basis, if the interested party considers and satisfies the Authority that the information should be considered confidential information. An information can be confidential information by nature, if its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information, or it may be provided on confidential basis. The Authority is required to consider whether the supplier of information has given sufficient justification (good cause) in support of its confidentiality claim. If an interested party has given information on confidential basis, the Authority has directed that interested party to furnish non-confidential summaries thereof. The Authority further notes that such summaries are in sufficient detail to permit a reasonable understanding of the substance of the information submitted on confidential basis. However, in some cases, it is possible that such information is not susceptible of summarisation. If so, the interested party is required to give a statement of the reasons why summarization is not possible. The Authority further notes that if the Authority comes to conclusion that a request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Authority can disregard such information.

45. Having considered the legal provisions, WTO Agreement, information provided by the interested parties on confidential basis, non-confidential version of such information provided by these interested parties and reasons for confidentiality claimed by these interested parties, the Authority notes that the interested parties have adequately disclosed information on non-confidential basis, or have provided sufficient reasons for not disclosing the information on non-confidential basis.

E. DUMPING MARGIN

Submissions by the Domestic Industry

46. Submissions by the domestic industry are briefly as follows.

- (a) China and Ukraine should be treated as non-market economy countries for following reasons :
- (i) Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity
 - (ii) Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values:
 - (iii) Production of the product requires power and fuel as a major item of utility. It must be established by the exporters that the price of utilities reflect fair market values.
 - (iv) Market economy status cannot be given unless the responding exporters establish that their books are audited in line with international accounting standards:
 - (v) Market economy status cannot be granted even if one of the parameters is not satisfied.
 - (vi) It is not for the domestic industry or Authority to establish that the responding companies are indeed operating under market economy environment and are entitled for market economy treatment. It is for the responding Chinese exporters to establish that they are operating under market economy conditions.
 - (vii) In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.
- (b) Claim of Ukraine for grant of market economy status on the grounds that other countries have granted market economy status to Ukraine must be rejected for the reason that such market economy status to Ukraine have not been granted by other countries after following the detailed evaluation criteria laid down under the law.

- (c) Normal value in case of USA, Europe can be established on the basis of prices published in leading journal, Chlor Alkali.
- (d) Normal value in case of Pakistan can be determined on the basis of domestic prices of soda ash in Pakistan
- (e) Normal value in case of Kenya and Iran can be determined on the basis of estimates of cost of production in Kenya and Iran respectively.
- (f) Export price can be established on the basis of information provided by DGCI&S. The export price must be adjusted for expenses to determine ex-factory export price.

Submissions by other interested parties

47. Other interested parties have made the following submissions :

- a) Rules provide for the selection of appropriate third country, in a reasonable manner, keeping in view the level of development of the country and product under consideration.
- b) Ministry of Economy, Ukraine has stated that during 2007-10 Ukraine was not treated as a country with non-market economy by any member of the WTO. Since 2005, the market status of the Ukrainian economy was recognized by a number of WTO members, such as Europe, Brazil. Ukraine insisted on recognition of the market economy status.

Examination by the Authority

48. Questionnaire had been sent to known exporters/producers of the product in subject countries. Following exporters/producers have responded to the Authority and filed questionnaire response.

- a) Olympia Chemicals Limited, Pakistan
- b) ICI Pakistan Limited, Pakistan
- c) Magadi Soda Company, Kenya
- d) Solvay Sodi, Bulgaria

The Exporters Questionnaire Responses of the above named companies, to the extent found acceptable, have been duly considered for the purpose of provisional determination of normal value, export price and dumping margin.

49. The Authority notes that no exporter/producer from China PR, USA, Ukraine and Iran has submitted information in the form and manner prescribed. In the absence of cooperation from the producers/exporters of the said subject countries, the Authority proceeds provisionally determine normal value on the basis of best information available on record.

50. Accordingly, the Authority has determined normal value, export price and dumping margin in respect of producers/exporters of the subject countries as follows:

Normal Value

China PR

51. The Authority notes that no producer/exporter from China PR has submitted EQR nor has submitted requisite information in regard to normal value and market economy status.
52. China has been treated as a non-market economy (NME) country in various Anti-Dumping investigations subject to rebuttal of the presumption of NME by the exporting country or individual exporters in terms of the AD Rules. As per Paragraph 8 of Annexure I of the AD Rules, 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) of Paragraph 8 and establish the facts to the contrary. However, none of exporters/producers of the subject goods in China have cooperated with the Designated Authority nor provided any information and evidence as mentioned in sub-paragraph (3) of paragraph 8.
53. In the absence of any Exporter's Questionnaire Response and the market economy questionnaire response and in the absence of rebuttal of non-market economy presumption, the Authority is unable to consider whether the one or more Chinese producers could be granted market economy status in the present case. The Authority therefore considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value in case of China for the purpose of Preliminary Findings.
54. Para 7 of Annexure I of the AD Rules provides that
- "In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated Authority in a reasonable manner, keeping in view the level of development of the*

country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

55. The Authority indicated in the initiation notification that the applicant claimed the constructed normal value in case of China PR on the basis of cost of production in India duly adjusted including adjustment on Selling, General & Administration expenses and profit, in terms of Para 7 of Annexure I to the Rules. However, no producer/exporter from China PR has furnished any comment in this regard. In the absence of information regarding alternative methods laid down in the said para of Annexure I, the Authority has constructed the normal value for producers in China PR on the following basis:

- a) Prices of coke have been considered on the basis of international prices and other raw materials on the basis of the domestic industry's information duly verified.
- b) Consumption of raw materials per unit of production has been considered on the basis of the most efficient domestic producer.
- c) Conversion costs have been considered on the basis of the most efficient domestic producer.
- d) Selling, general & administrative costs (including interest costs) have been taken on the basis of the most efficient domestic producer.
- e) Profit has been added @ 5% of ex-factory cost excluding interest.

Accordingly, normal value for all exporters/producers of China PR is provisionally determined at US \$ ***/MT

UKRAINE

56. The Authority indicated in the initiation notification that the applicant claimed the constructed normal value in case of Ukraine on the basis of cost of production in India duly adjusted including adjustment on Selling, General & Administration expenses and profit, in terms of Para 7 of Annexure I to the Rules. The Authority notes that no exporter/producer has submitted information regarding normal value in the form and manner prescribed. No interested party from Ukraine has furnished comments either in accordance with para 7 of Annexure I. On the other hand, Government of Ukraine has contended that Ukraine be treated as market economy country for the purpose, considering that one or more WTO members have recognised Ukraine as a market economy.

57. As regards normal value in case of Ukraine, the Authority notes that none of the producers in Ukraine have filed questionnaire response. Further, the Government of Ukraine has claimed that normal value should be determined in accordance with market economy principles and has referred to market economy status granted by other WTO members. The Govt. of Ukraine has however not made any claim as provided under Para 8(3) or 8(4) of Annexure-I. No documents have been provided to establish that any WTO member has granted market economy status to Ukraine after following the evaluation criteria laid down under Para 8(3) of Annexure-I and by publication of such evaluation in a public document. The Authority therefore proceeds with para-7 of Annexure-I to the Rules for determination of normal value in case of Ukraine. In the absence of information regarding alternative methods laid down in the said para of Annexure I, the Authority has constructed normal value for the producers / exporters of Ukraine on the following basis:

- a) Prices of coke have been considered on the basis of international prices and other raw materials on the basis of the domestic industry's information duly verified.
- b) Consumption of raw materials per unit of production has been considered on the basis of the most efficient domestic producer.
- c) Conversion costs have been considered on the basis of the most efficient domestic producer.
- d) Selling, general & administrative costs (including interest costs) have been taken on the basis of the most efficient domestic producer.
- e) Profit has been added @ 5% of ex-factory cost excluding interest.

Accordingly, normal value for all exporters / producers of Ukraine is provisionally determined at US \$ ***/MT

EU

Solvay Sodi AD, Bulgaria

58. The Authority notes that Solvay Sodi AD, Bulgaria has filed Exporter's questionnaire response vide which it is stated that Solvay Chemicals International (SCI) commercialises Soda Ash produced by Solvay Sodi AD in India. It is further stated that SCI is the legal entity that processes the orders, issues invoices and receives payments from the customer. However, it is noted that SCI has not filed the questionnaire response, as a result of which the export chain is not complete. Further, it is noted that Solvay has seven plants in EU producing Soda Ash. However, details in respect of plants other than Devnya have not been furnished on the ground that exports to India are normally made from Devnya plant. In the circumstances, the Authority has not considered the information regarding domestic sales, exports to India, etc. furnished in the said Exporter's questionnaire response. Further, the Authority notes that no other producer/exporter from EU has filed Exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for

provisional determination of normal value for all exporters/producers of EU including Solvay Sodi AD. Accordingly, the Normal value in case of EU has been determined on the basis of average prices during the POI published in Chlor Alkali, an international journal which periodically publishes the prices of Soda Ash prevailing in EU. The Normal value at ex-factory level so determined works out to US \$298.75/MT.

Normal value in case of USA

59. The Authority notes that no producer/exporter from USA has filed Exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the AD Rules for provisional determination of normal value for all exporters/producers of USA. Accordingly, the Normal value in case of USA has been determined on the basis of prices periodically published in Chlor Alkali, an international journal which periodically publishes the prices of Soda Ash prevailing in USA. The Normal value at ex-factory level so determined works out to 202.78 US\$ per MT.

Normal value in case of Iran

60. The Authority notes that none of the producers in Iran have responded to the initiation nor filed exporter's questionnaire response. The Authority has therefore determined the Normal Value for Iran as per facts available on record in terms of Rule 6(8) of the AD Rules. The Authority notes that there is no information available in public domain like international price journals including Chlor alkali with regard to the prevailing prices of soda ash in Iran. In view of non-cooperation by the Iranian producers and in the absence of any information on published prices, the Authority has determined normal value for Iran by way of construction as mentioned below: –

- a) Prices of coke have been considered on the basis of international prices and other raw materials on the basis of the domestic industry's information duly verified.
- b) Consumption of raw materials per unit of production has been considered on the basis of the most efficient domestic producer.
- c) Conversion costs have been considered on the basis of the most efficient domestic producer.
- d) Selling, general & administrative costs (including interest costs) have been taken on the basis of the most efficient domestic producer.
- e) Profit has been added @ 5% of ex-factory cost excluding interest.

The normal value so determined works out to US\$ ***/MT for all exporters /producers of Iran.

Pakistan

61. The Authority notes that two exporters of Pakistan namely, ICI Pakistan Limited and Olympia Chemicals Limited, Pakistan have submitted exporter's questionnaire response furnishing details of domestic sales of subject goods during the POI.

ICI Pakistan Limited

62. ICI Pakistan limited has reported total domestic sales of *** MT of subject goods during POI for the total invoice value of *** PKR i.e. US\$ ***. Thus the per unit value works out to US\$ *** /MT. Adjustment has been claimed on insurance, storage, handling, taxes on domestic profit, head office allocated general and administration expenses, selling and distribution, cost of holding finished goods and cost of credit. The Authority, for the purpose of preliminary findings, has admitted the said domestic sales, subject to verification, as the basis of normal value in terms of the relevant provisions under the Rules. The Authority has also admitted the adjustments claimed by the exporter except taxes on domestic profit and head office allocated general and administration expenses which are generally not claimed nor admitted as adjustments so far as normal value is concerned. Thus the normal value at ex-factory level is provisionally determined at PKR *** MT i.e. US\$ ***/MT subject to verification.

Olympia Chemicals Limited, Pakistan

63. Olympia Chemical limited, Pakistan has reported total domestic sales of *** MT of subject goods during POI with unit value of PKR ***/MT i.e. US\$ ***/MT. The Authority, for the purpose of preliminary findings, has admitted the said domestic sales, subject to verification, as the basis of normal value in terms of the relevant provisions under the Rules. Adjustment has been claimed on inland freight, commission and credit cost. The Authority, for the purpose of preliminary findings, has admitted the adjustments as claimed, subject to verification. Adjustment has been claimed on inland freight, commission and credit cost. The Authority, for the purpose of preliminary findings, has admitted the adjustments as claimed. Thus the normal value at ex-factory level is provisionally determined at PKR ***/MT i.e. US\$***/MT, subject to verification.

Non Cooperative exporters

64. The Authority has adopted normal value of US\$ ***/MT (Higher of the two cooperative exporters) for non cooperative producers /exporters from Pakistan.

Kenya

Magadi soda Company limited

65. The Authority notes that only one producer/exporter from Kenya i.e. Magadi Soda company Limited, has submitted the exporter's

questionnaire response. Details of volume and value of subject goods sold in the home market including month wise sales have been furnished. The exporter has also furnished the cost of production/sales of subject goods. The Authority notes that the exporter company produces both the subject goods and also salt, a by-product. The Authority further notes that the expenses allocated to the by-product seem to be on the higher side as compared to the expenses allocated to the subject goods. In view of the above, the Authority has provisionally computed the cost of production/sales of the subject goods at ex-factory level pending verification by taking the entire expenses of the company after adjusting the sale proceeds of the by-product. The authority observes from the statement of domestic market sales furnished in Appendix 1 that the volume of sales below per unit (Fixed and Variable) cost of production plus SGA costs during POI represents more than 20% of the volume sold in transaction under consideration, whereby the same may not be treated as being in the ordinary course of trade by reason of price in terms of para 2 of Annexure 1 to the Rules. Therefore the Authority has disregarded these sales for determination of normal value. The Authority has considered only those sales which are above the per unit cost. Accordingly, the domestic selling price net of VAT is provisionally determined at US\$ ***/MT. After making adjustments on account of discounts, packing, internal freight, royalty, handling and credit cost as claimed by the exporter, normal value at Ex-factory level has been provisionally determined at US\$ ***/MT subject to verification.

Non Cooperative Exporters

66. The Authority notes that no other exporter/producer have responded to the Authority in present investigation. For the non-cooperative exporters/producers the Authority has provisionally determined the normal value at the same level as that of cooperative exporter .i.e. at **US\$ ***/MT.**

EXPORT PRICE

China, Ukraine, USA and Iran

67. The authority notes that none of the exporters/producers of subject goods from China PR, USA, Iran and Ukraine has responded to the Designated Authority in the form and manner neither prescribed nor has furnished the requisite information to determine the export price. In the absence of requisite information from the exporters of the said countries, the Authority has determined the export price in respect of these countries on the basis of best information available on record in terms of Rule 6(8) of the AD Rules. The authority has relied upon DGCI&S import data for the purpose of arriving at the weighted average CIF value of imports from the said countries during the POI. Adjustments on account of ocean freight, insurance, commission, port expenses, inland freight and bank charges, as claimed by the

petitioner, have been considered to arrive at the net export price in respect of the said countries. Accordingly, export price at ex-factory level for all exporters of China is determined at US\$ 133.28/MT, for all exporters of Iran at US\$ 144.49/MT, for all exporters of USA at US \$ 107.21/MT and for all exporters of Ukraine at US \$ 127.37/MT.

Pakistan

ICI Pakistan Ltd.

68. Weighted average export price (CIF) to India has been provisionally determined at US\$ ***/MT as per data provided by the exporter in Appendix 3A of the exporter's questionnaire response. Price adjustments have been claimed on insurance, handling, selling and distribution, taxation, port charges, service charges, interest on advance receipt and overseas freight. The authority has provisionally admitted the adjustments claimed by the exporter except taxation, as the same is generally not claimed nor admitted. Accordingly the export price at ex-factory level is provisionally determined at US\$***/MT, subject to verification.

Olympia Chemicals Ltd.

69. Weighted average export price (CIF) to India has been provisionally determined at US\$ ***/MT as per data provided by the exporter in Appendix 2 of the exporter's questionnaire response. Price adjustments have been claimed on inland freight, handling, and overseas freight. The authority has provisionally admitted the adjustments claimed by the exporter. Accordingly the export price at ex-factory level is provisionally determined at US\$***/MT, subject to verification.

Non Cooperative exporters

70. The authority notes that no other exporter from Pakistan has submitted exporter's questionnaire response. Therefore, the authority has adopted the lowest representative net export price to India of the cooperative exporter i.e. US\$ ***/MT, for non-cooperative exporters.

EU

71. The Authority notes that Solvay Sodi AD, Bulgaria has filed Exporter's questionnaire response vide which it is stated that Solvay Sodi sells the subject goods to Solvay Chemicals International (SCI). Solvay Chemicals International (SCI) commercialises Soda Ash produced by Solvay Sodi AD in India. It is further stated that SCI is the legal entity that processes the orders, issues invoices and receives payments from the customer. Thus it is noted that exports by Solvay Sodi have been made through Solvay International Company (SIC). However, no response in the form and manner prescribed has been filed by SIC. Since exports to India have been made through SIC and the company (SIC) has not cooperated with the Designated Authority, the export chain is incomplete and the Authority is unable to determine individual

export price in respect of Solvay Sodi. The Authority has therefore, determined export price for all exporters of EU as a whole on the basis of DGCI&S data which is the best available information on record. Accordingly, the CIF value of exports from EU during the POI is determined as US \$ 220.44/MT. After adjusting the export price on account of overseas freight, overseas insurance, handling, and bank charges on the basis of claims made by the petitioner, the net ex-factory export price for all exporters of EU has been determined as US\$ 181.60/MT.

Kenya

Magadi Soda Company Limited

72. Weighted average export price (CIF) to India during POI has been provisionally determined at US\$ ***/MT as per information provided by the exporter in Appendix 2 of the exporter's questionnaire response. Price adjustments have been claimed on discount, commission, packing, royalty, handling, credit cost, overseas insurance, and overseas freight. The Authority, while examining the said adjustments, notes that US\$ ***/MT has been claimed towards ocean freight and handling charges from the export price as per Appendix-3A of EQR as against US\$ ***/MT claimed on the same account in Appendix-8A of EQR. The Authority, for the purpose of preliminary findings, has adopted the latter towards adjustment on account of outward freight and handling charges. The other adjustments as claimed in Appendix3A have been admitted. Accordingly, the export price at ex-factory level is provisionally determined at US\$ ***/MT, subject to verification.

Non Cooperative exporters

73. The authority notes that no other exporter from Kenya has submitted exporter's questionnaire response. Therefore, the authority has adopted the lowest representative export price (CIF) of the cooperative exporter i.e. US\$ ***/MT from Appendix-2A and considered the same level of adjustments as in case of cooperative exporter, to arrive at the net export price for the non-cooperative exporters. Accordingly, the export price at ex-factory level for non-cooperative exporters from Kenya is determined at US\$ ***/MT.

Dumping Margin – comparison methodology

- 74 It is noted that soda ash is sold in two forms – light soda ash and dense soda ash. Information on record does not show significant difference in associated costs and prices of light and dense soda ash and different grades are employed for the same general purpose and perform the same function. In view of the same, the Authority has not determined separate dumping margin for light and dense soda ash for the purpose of preliminary findings.

DUMPING MARGIN

75. Comparing the aforesaid normal values and export prices as determined, the dumping margin has been provisionally determined as follows:

Country	Exporter/Producer	Normal Value	Net Export Price	Dumping margin	
		(US\$/MT)	(US\$/MT)	US\$/MT	% Range
China PR	All	***	***	***	35-45
Ukraine	All	***	***	***	40-50
EU	All	***	***	***	60-70
Iran	All	***	***	***	25-35
USA	All	***	***	***	85-95
Pakistan	Olympia Chemicals Limited, Pakistan	***	***	***	5-15
	ICI Pakistan Limited, Pakistan	***	***	***	10-20
	Non-Co-operative producers/exporters	***	***	***	10-20
Kenya	Magadi Soda Company, Kenya	***	***	***	10-20
	Non-Co-operative producers/exporters	***	***	***	20-30

Injury Determination

Submissions by the Domestic Industry

76. The domestic Industry had made the following submissions with regard to the injury and casual link:
- i) While the petitioner is aware that the Designated Authority has prescribed a period of POI (2009-10) and preceding three years for the purpose of injury assessment, petitioner submits that it is vital in the facts and circumstances of the present case to include the period 2005-06 for the purpose of injury assessment for the very peculiar facts and circumstances of the present case. The production operations suffered significantly during 2006-07 due to floods and other reasons. The low volume of production in this period is thus not because of lack of demand or inability of the domestic industry to produce, but because of a force majeure, leading to low quantum of production in this period. Further, in 2008–09, the demand for the product suffered very significantly due to global recession. Thus, if the performance of the domestic industry is evaluated considering the four year periods for which the Designated Authority typically considers the performance of the domestic industry, the same shall not be objective and shall not reflect the actual impact of dumping on the volume parameters, in particular production, domestic sales and capacity utilisation.

- ii) Imports have increased in absolute terms from base year to POI. The increase is significant and material.
- iii) The demand of the product in the Indian market has shown a positive growth. In spite of increase in demand, the Domestic Industry is unable to sell the subject goods. While Demand has shown a growth of 14% when compared from the base year, sales have not shown any growth from the base year
- iv) Transportation cost forms a very substantial portion of the cost of production in case of subject goods. To compound the problems further, while the Indian Producers of soda ash are located in the State of Gujarat (due to availability of raw material), the sales have to be made throughout India. Further, the subject goods are a comparatively low price product. Thus, the incidence of transportation cost per MT of the product works out very substantial when compared with the selling price of the product. In view of the above, petitioner submits that the comparison between landed price of imports and domestic ex- factory price should be calculated after considering the transportation costs.
- v) The domestic industry has claimed inclusion of inland transportation in determination of NIP on the ground that Soda Ash industry is localized in the Western Coast of India and the customers are located all over the country. The argument is that the landed price of imports includes sea freight, inland haulage in India (from sea port to dry ports in the country) and basic customs duty. The non injurious price is considered at ex-factory level. Secondly, it is pointed out that foreign producers are able to export soda ash at various ports in the country whereas the domestic industry is located primarily in Saurashtra region. It is claimed that freight cost forms part of the cost of production as the domestic industry incurs freight cost for shifting the goods, from factory to depots/warehouses which are extended factory gates.
- vi) Further, the domestic industry has stated that for the purpose of fair comparison between landed price of imports and NIP, the authority should include freight and commission incurred by the domestic industry or exclude inland haulage in India (from sea port to dry ports in the country), ocean freight and commission paid by the foreign producers to the agents.
- vii) Petitioner has provided comparison of domestic producers' prices with the imports from subject countries, both after adding freight & transportation and without adding freight & transportation in the petition. This is based on the manner in which the consumers do price comparison. It would be seen that: -
- viii) Imports are cheaper when compared with the selling price of the domestic industry. Resultantly, the imports are undercutting the prices of the domestic industry in the market;
- ix) Even when the domestic industry could have reduced the prices to some extent, the decline in the prices has been significantly higher than the cost reductions.

- x) The loss of production should be considered as effect of “other factors” and sales must be adjusted accordingly.
- xi) The domestic industry is selling the product in the domestic market, export market and is also captively consuming. Further, domestic industry is not “export oriented” and the focus of domestic industry is not at all on exports (exports have been 3-4% of production). Exports are a matter of compulsion and not a choice for the domestic industry. The domestic industry is not created for undertaking exports nor do any of the constituents have export orientation. However, in order to present the impact of dumping on the domestic industry, the domestic industry has separately provided information with regard to domestic sales, export sales and captive consumption. The additional exports made by the domestic industry must be considered as ill-effects of dumping. Thus, additional exports made by domestic industry should be held as a parameter showing injury.
- xii) Performance of the domestic industry has deteriorated in terms of production, capacity utilization, sales, inventories, profits, and return on investments, cash profits, employment, wages and market share.
- xiii) All Volume parameters of the domestic industry declined in spite of existence of significant demand.
- xiv) In order to assess the effect of imports on the domestic market, petitioner started with an analysis of import prices over the injury period. The prices peaked in November, 2008 and declined thereafter. Further, the decline in prices after November, 2008 is too significant and far beyond the decline in the cost of production.
- xv) Production of the domestic industry has shown an increase between 2006-07 and 2009-10. However, production of the domestic industry is still lower than 2005-06, despite significant increase in demand. While demand for Soda Ash increased by 3 lacs MT between 2005-06 and 2009-10, production of the domestic industry declined by 11,000 MT, whereas the capacities with the domestic industry increased by 2.5 lacs MT.
- xvi) Capacity utilization of the domestic industry has moved in tandem with the production. Thus, even when capacity utilization improved between 2006-07 and 2009-10, the capacity utilization is still lower than 2005-06. There is no reason that the capacity utilization should have deteriorated for reasons other than presence of dumped imports in the market.
- xvii) In order to assess the impact of dumped imports on the domestic industry, the Designated Authority may consider production net of exports as an alternate to consideration of increase in exports or additional exports as a parameter of injury. It would be seen that production net of exports significantly declined after 2005-06, thus clearly establishing that dumping of the product has adversely impacted production.
- xviii) Domestic sales of the domestic industry declined between 2006-07 and 2009-10. Further, while decline in sales in 2008-09 is partly on account of

recession, the current decline in sales in the period of investigation is on account of increase in dumped imports.

- xix) The exports sales of the domestic industry got tripled over the period. The additional 1.20 lacs MT exports undertaken by the domestic industry were due to increase in dumped imports.
- xx) While the demand for the subject goods increased by about 3 lacs MT, the domestic sales declined by about 14,000 MT.
- xxi) Profit per unit and profit before tax earned by the domestic industry declined steeply over the period. The decline in profits is despite significant fresh investments made by the domestic industry. The domestic industry invested almost Rs.*** crores additional funds which should have led to increase in profits by more than Rs.*** crores. However, the profits declined by more than Rs.*** crores. Thus, the profitability of the domestic industry declined by more than Rs.*** crores. Further, the domestic industry's profitability declined by about Rs.*** crores in respect of its exports. Thus, total decline in profits of the domestic industry is by about Rs.*** crores, which works out to about Rs.*** per MT.
- xxii) The domestic industry was earning a profit of about 25% on its selling price, which declined to a level below 12% in the period of investigation. Thus, profitability as a percentage of selling price declined steeply over the injury period.
- xxiii) Inventories with the domestic industry was piling up, which forced the domestic industry to resort to exports at low prices to manage the inventories. Had the domestic industry not resorted to exports, inventories would have been almost equal to 2 Lac MT, which is equal to more than 50 days sales.
- xxiv) Price depression caused by the imports resulted in decline in profits. Consequently, return on capital employed and cash profits also declined. Thus, deterioration in profits, return on capital employed and cash flow is directly due to dumped imports
- xxv) Petitioner submits that the economic parameters listed under the law are non-exhaustive. It is quite possible that there may be some economic parameters which although not listed under the law, nevertheless establish injury to the domestic industry. Significant exports undertaken by the domestic industry to liquidate the inventory and resultant financial losses suffered by the domestic industry is clearly an indicator of injury caused to the domestic industry by the dumped imports
- xxvi) Petitioner submits that "deterioration in export performance" and "significant exports undertaken to liquidate inventories at a significant financial losses", in a situation of dumping, are two different parameters. While deterioration in export performance is one of the parameters listed under the law as one of the possible causes of injury, the same does not imply that extraordinary exports undertaken by the domestic industry to liquidate inventories piled up as a result of dumping and resultant financial

losses suffered by the domestic industry cannot be considered as one of the economic parameters of injury suffered by the domestic industry due to dumped imports. In other words, petitioner submits that the authority should consider that the following two parameters are additional parameters of injury to the domestic industry in the present case.

xxvii) Wages: It was alleged that wages paid by the domestic industry have shown abnormal increase. The domestic industry added employment throughout the period, a significant part of which occurred in 2007-08; the year wherein the domestic industry added capacities. Wage increase is on account of addition of manpower as well. The wage cost per unit of capacity does not show a significant increase between 2008-09 and 2009-10, the period of investigation.

xxviii) Depreciation: It was alleged that depreciation expenses charged by the domestic industry shows abnormal increase. The domestic industry added capacities, which resulted in increase in fixed assets (and consequently depreciation expenses). The depreciation cost per unit of capacity does not show a significant increase between 2008-09 and 2009-10, the period of investigation.

xxix) Interest: It is stated that the domestic industry has invested a significant amount (about Rs.*** crores) in expanding the capacities over the injury period. Thus, the increase in interest cost is commensurate with the increase in the investments made in capacity additions. Interest cost as a percentage of capital employed has not shown significant increase between 2008-09 and 2009-10.

Submissions made by opposing interested parties

77. The opposing interested parties had made the following submissions with regard to the injury and casual link

- a) No case of material injury to the Domestic Industry has been made out by the Domestic Industry.
- b) The data for the period 2005-06 should not be taken into consideration by Designated Authority as the Rules unequivocally provide that factors other than dumping which is causing injury needs to be excluded.
- c) Production, sales, capacity utilization and profits are understated.
- d) Costing data filed by the petitioner companies show a positive improvement across a number of examined parameters.
- e) Domestic Industry has shifted focus on the export market instead of catering to domestic demand.

- f) Average stock has decreased almost 50% from the last year showing positive trend.
- g) Domestic Industry has in fact, prospered over the period of 2005 to date
- h) Domestic Industry has increased their sales volume during the alleged POI to 11.3 lakh tonnes from 9.1 lakh tonnes the year before.
- i) Any causal nexus is not due to imports per se, but rather Chinese imports in particular, whose share in the market increased from 1.71% to an 8.31% in 2009-10.
- j) Indian demand has fluctuated with the global economic slowdown and these factors cannot be attributed to any alleged dumping.
- k) Post Period of Investigation, import prices have increased by about 22%.
- l) Although the domestic sales value has shown a marginal decline in Period of Investigation, the volume of sales have steadily improved
- m) Domestic Industry has not suffered any injury. The interest and depreciation of Domestic Industry has significantly increased over the Period of Investigation.
- n) The volume of sales of the Domestic Industry did not decline in comparison to the demand for soda ash in India.
- o) Facts demonstrate that demand has not developed in line with the production capacity built by the domestic producers.
- p) According to the study published by CMAI, the market share of the domestic industry decreased in 2008-09, due to economic crisis but increased again substantially in 2010 and is reported to be increasing trend. This confirms that the Domestic Industry does not suffer any injury during the POI.
- q) Increase in Imports from non subject countries have increased ten times that of the subject countries imports.
- r) Total exports increased by 220% in Period of Investigation. Domestic Industry is itself dumping the subject goods in other countries with a conscious strategy to grab higher market share outside India.

- s) Domestic Industry is hit by Global Recession.
- t) There has been major breakdown and closure of plants affecting the Domestic Industry's performance.
- u) The claim of domestic industry that freight incurred for transporting the imported goods from the sea port to ICD/CFS is included while calculating landed value is contrary to the legal position. Further, the AD Rules expressly provide that NIP should be determined at ex-factory level and no post manufacturing expenses such as freight outward should be included while calculating NIP. Further, DGAD has kept the customs port as the benchmark for calculating the landed value of imported goods and the factory gate as the benchmark for calculating the NIP of domestically produced goods.

Examination by the Authority

78. Annexure II Para (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -
- a. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and
 - b. cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
79. In this regard the Authority observes that:
- a) The margins of dumping from each of the subject countries are more than the limits prescribed above;
 - b) The volume of imports from each of the subject countries is more than the limits prescribed;
 - c) Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:
 - i. The subject goods manufactured by the producers from the subject countries *inter-se* and in comparison to the product manufactured by the domestic industry. In other words, the subject goods supplied from various subject countries and by the domestic industry are *inter-se* like articles.

- ii. There are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product.
 - iii. The exporters from the subject countries and domestic industry have sold the same product in the same periods to the same set of customers. The sales channels are comparable.
 - iv. Volume of imports from each of the subject countries is significant.
 - v. Consumers make purchase decision on the basis of prices offered by various suppliers.
80. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from China PR, EU, Kenya, Iran, Pakistan, USA and Ukraine on the domestic industry in the light of conditions of competition between imported product and like domestic product.
81. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like 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.
82. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the AD Rules states as follows.
- “The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments.”*

83. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export prices from the subject countries were directly competing with the prices offered by the domestic industry in the Indian market.
84. As regards the submission of the Domestic Industry to consider 2005-06 as base year instead of 2006-07 for injury analysis, the Authority notes that the base year for injury analysis is 2006-07 as per the initiation notification. This is in conformity with the consistent practice followed by the Authority that the injury period covers the POI and three preceding years.
85. The Domestic Industry has submitted that for the purpose of fair comparison the inland transport cost should be included in the Non Injurious Price (NIP) or it should be excluded from the landed value of exports for the purpose of working out injury margin. In this connection it is submitted that as per customs valuation rules, the transportation cost for transporting the goods from port of entry to Inland Container Depot (ICD)/Container Freight Station (CFS) is not considered for the purpose of determining the assessable value which is the basis for computation of landed value. This means that the landed value does not include the element of inland transport cost. The Authority is of the view that the inland transport cost incurred by the DI should not be included in NIP as the landed value of exports does not include any inland transport cost incurred either by the importer or the exporter. The Authority further notes that inclusion of inland transport cost of the Domestic Industry in NIP will not be in line with the consistent practice followed in this regard and also not in line with Annexure III to the AD rules governing determination of NIP. Accordingly, the inland transport cost incurred by DI has not been included in their NIP.
86. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on, the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

Demand and market share

87. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of domestic industry and other Indian producer have been added to the total imports into India and the same has been summarized below:

S. No	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Imports from Subject Countries	MT	2,55,198	3,19,340	3,51,475	5,31,119
2	Imports from Other Countries	MT	5,059	28,127	7,080	24,837
3	Sales of Domestic Industry	MT	11,45,918	12,16,759	11,84,655	12,03,057
4	Other Indian Producers	MT	7,31,010	6,00,239	6,15,044	6,75,481
5	Assessed Demand	MT	21,37,185	21,64,465	21,58,255	24,34,493

The Authority notes that the demand has shown a positive trend and increased significantly during POI as compared to the base year. The growth in demand during the POI over base year was 14%.

Volume Effects of Dumped Imports:

Import Volumes and Market Share

88. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCIS. The volume of imports of the subject goods from the subject countries have been analysed as under:

	2006-07	2007-08	2008-09	2009-10
Imports in absolute terms (MT)				
a. China	44,892	37,690	149,726	203,199
b. EU	124,186	142,161	63,037	108,026
c. Kenya	85,797	115,520	117,572	106,585
d. Iran	-	13,755	14,098	20,800
e. Pakistan	-	-	231	36,115
f. USA	123	629	830	32,679
g. Ukraine	200	9,585	5,982	23,715
h. Subject Countries	255,198	319,340	351,475	531,119
i. Other countries	5,059	28,127	7,080	24,837
j. Total imports	260,257	347,467	358,555	555,956
Trend in imports from subject countries	100.00	125.13	137.73	208.12
Share in imports				

i. China	17%	11%	42%	37%
ii. EU	48%	41%	18%	19%
iii. Kenya	33%	33%	33%	19%
iv. Iran	-	4%	4%	4%
v. Pakistan	-	-	-	6%
vi. USA	-	-	-	6%
vii. Ukraine	-	3%	2%	4%
viii. Subject Countries	98%	92%	98%	96%
ix. Other countries	2%	8%	2%	4%
Imports from subject countries in relation to production of domestic industry	21%	24%	26%	38%
Imports from subject countries in relation to demand in India	12%	14%	16%	22%
Demand in India (MT)	21,37,185	21,64,465	21,58,255	24,34,493
Trend in demand	100	101	101	114
Share in Demand (%)				
a. Domestic industry	53.62	56.22	54.89	49.42
b. Other Indian producers	34.20	27.73	28.50	27.75
c. Indian Industry	87.82	83.95	83.39	77.16
d. Subject Countries	11.94	14.75	16.29	21.82
e. Other Countries	0.24	1.30	0.33	1.02

89. The Authority notes that

- a) Imports have increased in absolute terms from 255,198 MT in base year to 531,119 MT in POI. The increase is significant and material.
- b) While the demand for soda ash increased by about 14% in POI as compared to base year, the volume of dumped imports from subject countries increased by about 108% during the corresponding period.
- c) Imports have from subject countries increased significantly in relation to production of the domestic industry in India. While the imports from subject countries constituted 21% of production in the base year, the same constituted 39% of production in POI. The domestic industry has argued that their production suffered in 2006-07 due to severe flood in Gujarat, thus resulting in loss of production and consequent increase in imports in this period. Despite this, the imports from subject countries during POI have

increased significantly in relation to production of the domestic industry.

- d) Imports of subject goods from the subject countries have increased in relation to the demand of the subject goods in India. Similarly, the market share of the subject countries in demand of the product in India increased from below 12% to above 21%.
- e) As a result of increase in the imports, the market share of the domestic industry has declined from 53.62% in the base year to 49.42% during POI. Consequently, production and capacity utilizations of the domestic industry have also declined.

It is thus evident that the imports from subject countries show an adverse volume effect.

Price effect of imports

- 90. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price suppression and price depression, if any.

Price undercutting

- 91. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. Authority has determined net sales realization considering selling price, excluding taxes & duties, rebates, discounts & commissions. Entire sales volumes of the domestic industry have been included in the calculations. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison was done between net sales realization and landed price of imports. The Authority has determined weighted average price undercutting by the dumped imports. The Authority notes that the landed prices of the subject goods are significantly below the selling price of the domestic industry which suggests significant price undercutting being caused by the dumped imports from subject countries as apparent from the following table

S. No.	Country/Exporter	Landed price	Net Selling price	Price undercutting	
		Rs./MT	Rs./MT	Rs./MT	% Range
1	China P RP	***	***	***	10-20
2	EU	***	***	***	5-15

3	IRAN	***	***	***	10-20
4	KENYA	***	***	***	10-20
5	U S A	***	***	***	15-25
6	UKRAINE	***	***	***	5-15
7	PAKISTAN	***	***	***	0-10
8	Subject Countries	10,708	12,349	1,641	13.29

It may be seen from the above table that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting.

Price suppression/depression

92. In order to determine whether the dumped imports are suppressing or depressing the domestic prices, the Authority determined whether the effect of such imports is to suppress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Cost of Sales	Rs./MT	***	***	***	***
	Index		100	128	175	160
2	Selling price	Rs./MT	***	***	***	***
	Index		100	115	151	134

93. From the above, the Authority notes that there was significant increase in both cost of sales as well as selling price during POI, compared to the base year. However the increase in selling price is lower compared to the increase in the cost of sales. This indicates price suppression whereby the domestic industry has not been able to realize the selling price commensurate with increase in the cost of sales. However, no price depression is noticed during the injury period.

Economic parameters of the domestic industry

94. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such

products, the AD Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

95. The various injury parameters relating to the domestic industry are discussed herein below.

i. Production, capacity and capacity utilization of the Domestic Industry

	2006-07	2007-08	2008-09	2009-10
Capacity	1,711,000	1,961,000	1,961,000	1,961,000
Capacity-Adjusted	15,40,000	19,34,323	19,61,000	18,66,000
Production - Actual	11,80,451	12,82,596	12,86,473	13,49,725
Capacity Utilization - Actual	68.99%	65.41%	65.60%	68.83%
Production - Adjusted	13,12,490	13,09,273	12,86,473	14,03,269
Capacity Utilization - Adjusted	76.65%	66.31%	65.60%	72.33%

The Authority notes that Domestic Industry has increased its capacity in 2007-08 as compared to the base year and thereafter maintained the same capacity. The Authority further notes that the production of the domestic industry suffered in 2006-07, 2007-08 and 2009-10 due to other factors as well. Further, the market for the product was briefly affected by the recession during 2008-09 and the demand stagnated during this period. Since this loss of production to the domestic industry is on account of other factors. Since the Authority is required to segregate injury suffered by the domestic industry due to other factors, the Authority has also examined the production as well as the capacity utilisation after adjusting the same for the loss of production due to other factors. Loss of production has been determined considering the number of days production was lost by the domestic industry and capacity utilization for the period when the domestic industry was operating during that year. The Authority notes that the actual capacity utilization of the domestic industry had marginally declined in POI as compared to the base year. However, the adjusted capacity utilisation had declined by 4.32% in POI as compared to the base year. It is, however, seen that while demand for the product increased by 297308 MT, the production of the domestic industry increased only by 169274 MT.

ii. Sales of Domestic Industry

	Unit	2006-07	2007-08	2008-09	2009-10
Domestic Sales	MT	11,45,918	12,16,759	11,84,655	12,03,057

The data on sales indicates that the domestic industry sold 11.46 Lac MT during 2006-07 which increased to 12.17 Lac MT in 2007-08 and declined thereafter in 2008-09 and 2009-10. Though Sales in POI was higher than the base year, the same was lower than the sales made in 2007-08. The Authority notes that in spite of significant and positive growth in demand for the subject goods in India, the domestic industry was not able to increase its sales with the same level of increase in demand in India. The Authority has considered the sales of the domestic industry after including captive consumption. Some interested parties argued that the sales of the domestic industry declined due to decline in captive consumption. The Authority, therefore, examined the sales of the domestic industry after excluding captive consumption as well. It was noted that the captive consumption of the domestic industry and sales excluding captive consumption were as shown in the table below.

MT				
	2006-07	2007-08	2008-09	2009-10
Sales excluding captive consumption	9,91,563	10,67,534	10,38,138	10,92,500
Captive consumption	1,54,356	1,49,226	1,46,517	1,10,557
Lost sales due to other factors	132,039	26,677	-	53,544

It is noted that the captive consumption of the domestic industry has declined. However, the overall demand for the subject goods has not declined and it is a fact that the domestic industry could not increase its sales in relation to the increase in demand. Interested parties argued that production loss (and hence loss of sales) to Saurashtra during the POI was due to other factors. The domestic industry has not disputed. The domestic industry has however argued that loss of production and consequent loss of sales to the domestic industry should be seen throughout the injury period and not selectively in POI. The domestic industry has pointed out that the domestic industry lost production and consequently sales during 2006-07 and 2007-08 also due to other factors and these should also be adjusted. The domestic industry quantified the quantity of production and consequently sales volumes lost during the injury period because of other factors. The Authority notes from the data given in the table below that if sales lost due to other factors are adjusted; the domestic sales volumes of the domestic industry show a decline in POI as compared to base period.

Particulars	Unit	2006-07	2007-08	2008-09	2009-10
Domestic sales including lost sales	MT	12,77,958	12,43,436	11,84,655	12,56,600

iii. Profitability

The Cost of sales, Net sales realization and Profit/loss of the domestic industry in respect of the domestic sales of the subject goods for the period from 2006-07 to 2009-10 are given in the following table.

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Sales (Domestic)	Rs lacs	***	***	***	***
	Index		100	124	158	147
2	Cost of Sales (Domestic)	Rs lacs	***	***	***	***
	Index		100	138	184	177
3	Profit/Loss (Domestic)	Rs lacs	***	***	***	***
	Index		100	92	97	76
4	Cost of sales (Domestic)	Rs/Mt	***	***	***	***
	Index		100	128	175	160
5	Sales Value (Domestic)	Rs/Mt	***	***	***	***
	Index		100	115	151	134
6	Profit/Loss (Domestic)	Rs/Mt	***	***	***	***
	Index		100	86	92	69
7	PBIT	Rs lacs	***	***	***	***
	Index		100	96	109	91
8	Cash Profit	Rs lacs	***	***	***	***
	Index		100	97	101	85
9	Capital Employed	Rs lacs	***	***	***	***
	Index		100	121	128	116
10	Return on Investment	%	***	***	***	***
	Index		100	80	85	78

The Authority notes that:

- a) Per unit profits of the domestic industry in respect of production and sale in the domestic market declined significantly over the injury period.
- b) It is seen that domestic sales realization of the domestic industry has not increased in line with the increase in costs. Further, the cost of production declined in POI as compared to immediate preceding year and the selling price of the domestic industry also declined. However, the decline in selling price by Rs.*** per MT was far more than the decline in cost of sales by Rs.*** per MT. The profitability of the domestic industry has declined over the injury investigation period, which has resulted in decline in profits earned by the domestic industry on the domestic sales in the POI. As a result of decline in profits, return on capital employed for domestic sales of the domestic industry declined during the POI as compared to the base year as well as the preceding year. It is also noted that the return on capital employed had declined steeply in POI.
- c) Profit before tax on domestic sales declined significantly over the injury period.
- d) Return on capital employed:- The Authority notes that return on capital employed had declined during the entire injury period and the same was at the lowest during POI as compared to the base year. The domestic industry argued that production of Soda Ash is a capital intensive industry and therefore reasonable return is vital for the long term survival of the industry.
- e) Cash Profit:- The authority determined cash profit position of the domestic industry in order to assess the impact of dumping. It is found that the cash profit earned by the domestic industry during POI had declined significantly
- f) The interested parties argued that the deterioration in profits of the domestic industry was on account of significant increase in cost on account of wages, depreciation and interest cost. Examination of the verified information based on the Cost Audit Report of the constituents of the domestic industry showed as follows:

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Wages	Rs lacs	***	***	***	***
	Index		100	147	163	163
	Wages	Rs/MT	***	***	***	***
	Index		100	129	142	142
	Wages	Rs/MT	***	***	***	***
	Index		100	136	149	142

2	Depreciation	Rs lacs	***	***	***	***
	Index		100	123	126	132
	Depreciation	Rs/MT	***	***	***	***
	Index		100	113	116	115
3	Interest	Rs lacs	***	***	***	***
	Index		100	235	517	557

- i. Wages: It was alleged by some interested parties that wages paid by the domestic industry have shown abnormal increase. The domestic industry added employment throughout the injury period, a significant part of which occurred in 2007-08; the year wherein the domestic industry increased its capacity. Further, the increased wages is also on account of normal increase in wages allowed to employees every year. The Authority further notes that wages per unit of the subject goods does not show a significant increase between 2007-08 and 2009-10.
 - ii. Depreciation: The Authority notes that the Domestic Industry has added capacity of 2.5 lacs MT per annum in 2007-08 and therefore the depreciation in absolute terms had gone up steeply in 2007-08 as compared to base year. The increase in depreciation in other years is not significant and it is due to routine additions of fixed assets. The Authority further notes that depreciation per MT of production of the subject goods does not show any significant increase during 2007-08 to 2009-10.
 - iii. Interest: it is noted that the domestic industry has availed loans for significant investment in expansion of its capacity and for working capital. The increase in interest cost is in line with the increase in borrowings for the subject goods. Further, it is noted that interest cost as a percentage of capital employed has not shown significant increase between 2008-09 and 2009-10.
 - iv. The significant decline in profitability in terms of Profit before tax and interest in 2009-10 as compared to 2008-09 was mainly on account of decline in selling price and consequent decline in sales value.
- iv. Inventories:-

The data relating to Inventory of the subject goods are shown in the following Table;

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Opening Stock	MT	***	***	***	***
2	Closing stock	MT	***	***	***	***
3	Average Stock	MT	***	***	***	***

4	Trend	Index	100	126	243	227
5	Stock per day of Sales	Days	***	***	***	***
6	Trend	Index	100	118	231	215
7	Inventory value	Rs. lacs	***	***	***	***
8	Trend	Index	100	160	420	361
9	Exports by domestic industry	MT	***	***	***	***
10	Trend	Index	100	77	139	303

The Authority notes that Inventories with the domestic industry have shown very significant increase, particularly after April, 2009. The Authority further notes that the domestic industry has exported large volume of loss making exports during the last quarter of the POI in order to liquidate the huge inventory built during the period. Despite this, the average inventory during POI was much higher than the average inventory during the base year.

v. Employment and wages

96. The position with regard to employment and wages is as follows:

	2006-07	2007-08	2008-09	2009-10
No. of Employees	***	***	***	***
Trend	100	101	106	107
Wages (Rs. Lacs)	***	***	***	***
Trend	100	147	163	163

From the above, it is noted that the number of employees as well as wages has increased in POI as compared to the base year.

vi. Productivity

Data relating to productivity show as follows

S. No.	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Production per day	MT	3,234	3,514	3,525	3,698
2	Production per employee	MT	227	243	232	241

The Authority notes that productivity in terms of production per day and production per employee has increased in 2009-10 as compared to base year.

vii. Magnitude of Dumping

Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margin determined against the subject countries other than Kenya for the POI is significant.

viii. Growth

The Authority notes that while there has been substantial growth in the import volumes of the subject goods from the subject countries, the growth of the domestic industry in terms of sales and production has not been significant. The growth in cash profit, profit and return on investment has been negative in POI.

Particulars	Unit	2007-08	2008-09	2009-10
Growth in Production	%	8.65	0.30	4.92
Growth in Sales	%	6.18	(2.64)	1.55
Growth in Capacity Utilisation	%	(5.20)	0.30	4.92
Growth in Selling Price	%	15.38	30.88	(11.46)
Growth in Cost of Sales	%	27.72	37.30	(8.56)
Growth in Profit & Loss	%	(14.43)	7.78	(24.74)
Growth in Cash Profit	%	(2.94)	4.42	(15.72)
Growth in ROI	%	(19.85)	8.23	(9.97)

ix. Ability to raise funds

The profitability of the domestic industry has declined during POI. However, barring Saurashtra Chemicals Ltd, all other constituents of domestic industry are multi-unit/multi-product companies and therefore, their ability to raise funds seems to have not been affected.

Conclusion on material injury

97. In view of the above, the Authority provisionally concludes that the dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India. The imports of the subject goods from subject countries are significantly undercutting the prices of domestic industry. Further, the imports are causing significant price suppression. The performance of the domestic industry has deteriorated in terms of capacity utilisation, profit, cash flow, return on investment and inventories, which is significant and material. Thus the

Authority concludes that the domestic industry has suffered a material injury.

Causal Link

98. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:-

(a) Volume and prices of imports from third countries

During POI, imports of the subject goods from countries other than the subject countries have been insignificant in volume. It has been argued by some interested parties that third countries imports are at lower prices. The Authority however notes that third countries imports are individually below 3% and collectively below 7%. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

(b) Contraction in demand and change in pattern of consumption

Demand for the subject goods has shown a growth of about 14% during POI as compared to base period. There is also no indication of any change in the consumption pattern. Some interested parties have argued that the injury to the domestic industry is due to excessive capacity. It is however noted that the domestic industry is unable to utilize its capacity to the extent of available demand due to dumped imports.

(c) Developments in technology

None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(d) Trade restrictive practices of and competition between the foreign and domestic producers

The subject goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic

production and sales. No other evidence of conditions of competition or trade restrictive practices has been brought to the attention of the Authority by any interested party.

(e) Export performance of the domestic industry

The table below summarises the performance of the domestic industry in respect of exports made by them.

Particulars	Unit	2006-07	2007-08	2008-09	2009-10
Exports sales	Rs. Lacs	57518	44142	79776	174424
Export Profit and loss	Rs. Lacs	350	(79)	333	(3377)
Loss on account of Exports	Rs. Lacs	(1,117)	(992)	(1,448)	(6,089)
Trend		(100)	(89)	(130)	(545)

It is noted that the loss to the domestic industry in respect of exports increased steeply during POI. The domestic industry had stated that had there been no dumped imports, it could have sold the entire quantity of exports in the domestic market and could have not only avoided the loss but also made some profit. The Authority in any case has excluded the losses on account of exports and determined the injury in respect of domestic sales on account of dumped imports.

(f) Productivity of the Domestic Industry

Productivity of the domestic industry in terms of production per day and production per employee has improved in POI as compared to base year. Possible decline in productivity cannot, therefore, be a factor causing injury to the domestic industry.

99. The Authority notes that while listed known other factors do not show injury to the domestic industry, the following parameters show that injury to the domestic industry has been caused by dumped imports.
- a) The volume of dumped imports from the subject countries increased sharply resulting in increase in the share of dumped imports in demand of the product in India and decline in the share of the domestic industry.
 - b) The imports were significantly undercutting the prices of the domestic industry. Consequently, the domestic industry has been forced to reduce its prices far below the decline in the cost of production. The imports were resulting in price suppression being faced by the domestic industry.

- c) Performance of the domestic industry with regard to profits, cash flow and return on investments deteriorated as a result of price suppression.
- d) Share of domestic industry in consumption of soda ash in India declined even when the domestic industry had significant inventories and unutilized capacities.
- e) As a consequence of the increase in inventories due to significant increase in dumped imports, the domestic industry was forced to export the subject goods at significant financial losses.

100. Thus the Authority concludes for the purpose of the present preliminary findings that the domestic industry suffered material injury due to dumped imports.

Magnitude of Injury and injury margin

Injury Margin

101. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject countries for determination of injury margin during POI. The injury margin thus determined is as under:-

S. No.	Country	Landed Price	Non-injurious price	Injury margin	Injury margin
		US\$/MT	US\$/MT	US\$/MT	%
1	CHINA PR	***	***	***	10-20
2	EU	***	***	***	0-10
3	IRAN	***	***	***	10-20
4	KENYA	***	***	***	
a	Magadi Soda Company Ltd.	***	***	***	5-15
b	Non-cooperative exporters	***	***	***	10-20
5	U S A	***	***	***	10-20
6	UKRAINE	***	***	***	5-15
7	PAKISTAN	***	***	***	
a	ICI Pakistan Ltd	***	***	***	0-10
b	Olympia Chemicals Ltd.	***	***	***	0-10
c	Non-cooperative exporters	***	***	***	0-10

Conclusions

102. After examining the issues raised and the submissions made by the interested parties and facts made available before the Authority, the Authority concludes that:
- i. The subject goods have entered the Indian market from the subject countries below associated normal values, thus resulting in dumping of the subject goods;
 - ii. The dumping margins of the subject goods imported from the each of the subject countries are above de-minimis;
 - iii. The domestic industry has suffered material injury in respect of the subject goods; and
 - iv. The material Injury to the domestic industry has been caused due to dumped imports of the subject goods from the subject countries.

Indian industry's interest & other issues:

103. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way; and therefore, would not affect the availability of the product to the consumers.
104. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of these product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

K. Recommendation

105. The Authority notes that the investigation was initiated and it was notified to all interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted a preliminary investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having provisionally established positive dumping margins as well as material injury to the

domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional Anti-dumping duty is required to offset dumping and injury, pending completion of the investigation.

Duty table

106. Having regard to the lesser duty Rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

1	2	3	4	5	6	7	8
S. No.	Tariff Head	Description of goods	Country/Territory of Origin	Country/Territory of export	Producer	Exporter	Duty amount (USD/MT)
1	2836.20	Disodium Carbonate (Soda ash)	China PR	China PR	Any	Any	38.38
2	2836.20	Disodium Carbonate (Soda ash)	China PR	Any*	Any	Any	38.38
3	2836.20	Disodium Carbonate (Soda ash)	Any*	China PR	Any	Any	38.38
4	2836.20	Disodium Carbonate (Soda ash)	Ukraine	Ukraine	Any	Any	17.96
5	2836.20	Disodium Carbonate (Soda ash)	Ukraine	Any*	Any	Any	17.96
6	2836.20	Disodium Carbonate (Soda ash)	Any*	Ukraine	Any	Any	17.96
7	2836.20	Disodium Carbonate (Soda ash)	European Union	European Union	Any	Any	11.55
8	2836.20	Disodium Carbonate (Soda ash)	European Union	Any*	Any	Any	11.55
9	2836.20	Disodium Carbonate (Soda ash)	Any*	European Union	Any	Any	11.55
10	2836.20	Disodium Carbonate (Soda ash)	Iran	Iran	Any	Any	31.05

11	2836.20	Disodium Carbonate (Soda ash)	Iran	Any*	Any	Any	31.05
12	2836.20	Disodium Carbonate (Soda ash)	Any*	Iran	Any	Any	31.05
13	2836.20	Disodium Carbonate (Soda ash)	USA	USA	Any	Any	40.89
14	2836.20	Disodium Carbonate (Soda ash)	USA	Any*	Any	Any	40.89
15	2836.20	Disodium Carbonate (Soda ash)	Any*	USA	Any	Any	40.89
16	2836.20	Disodium Carbonate (Soda ash)	Pakistan	Pakistan	Olympia chemical limited.	Olympia chemical limited	5.07
17	2836.20	Disodium Carbonate (Soda ash)	Pakistan	Pakistan	ICI Pakistan Limited	ICI Pakistan Limited	8.26
18	2836.20	Disodium Carbonate (Soda ash)	Pakistan	Pakistan	any other combination		12.96
19	2836.20	Disodium Carbonate (Soda ash)	Pakistan	Any*	Any	Any	12.96
20	2836.20	Disodium Carbonate (Soda ash)	Any	Pakistan	Any	Any	12.96
21	2836.20	Disodium Carbonate (Soda ash)	Kenya	Kenya	Magadi Soda limited	Magadi Soda limited	19.98
22	2836.20	Disodium Carbonate (Soda ash)	Kenya	Kenya	any other combination		30.78
23	2836.20	Disodium Carbonate (Soda ash)	Kenya	Any*	Any	Any	30.78
24	2836.20	Disodium Carbonate (Soda ash)	Any*	Kenya	Any	Any	30.78

* refers to any country other than those subject to AD Duty on the subject goods

L. Further Procedure

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

- a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b) Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of publishing of these Preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c) The Authority would hold a hearing to hear the views of various interested parties orally;
- d) The Authority would conduct further verification to the extent deemed necessary;
- e) The Authority would disclose essential facts as per the AD Rules before announcing final findings.

(Vijaylaxmi Joshi)
Designated Authority