To be published in Part-I Section I of the Gazette of India Extraordinary

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

NOTIFICATION

New Delhi 17th February, 2012

Final Findings

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

NO. 14/17/2010-DGAD :- Having regard to the Customs Tariff Act 1975 as amended in 1995 and thereafter (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter referred to as the Rules) thereof:

A. Background of the case:

The background of the case is as follows:

1. Whereas, 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 namely M/s Nirma Ltd, M/s Saurashtra Chemicals Ltd, M/s Gujarat Heavy Chemicals Ltd and M/s DCW Ltd 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).

2. Whereas, the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 20th August, 2010 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject countries, in accordance with the sub-Rule 6(1) of the Rules, to determine the existence, degree and effect of alleged dumping and to recommend the anti-dumping duty.

3. Subsequent to the initiation of the subject investigation, M/s Mauli Exports and M/s Saint Gobain Glass India Ltd had filed separate writ petitions before

Hon'ble High Court of Delhi and Hon'ble High Court of Madras, respectively, primarily challenging the standing of the petitioner to file the present petition and the eligibility of the petitioner companies to be treated as "domestic industry".

4. Pursuant to the orders of the Hon'ble High Court of Madras and Delhi, an oral hearing of the known interested parties was held on 13.05.2011, to address the issues including jurisdictional issues raised by the petitioners before the Courts, subsequent to which written submissions and rejoinders were submitted by the interested parties.

5. The Designated Authority notified the Preliminary Findings, also giving a speaking order on the issue of jurisdiction, vide notification No. 14/17/2010-DGAD dated, 02.09.2011 and recommended imposition of provisional anti-dumping duties, concerning imports of Soda Ash, originating in or exported from the subject countries. The Authority vide Corrigendum Notification No. 14/17/2010-DGAD dated 25th October, 2011 amended the name of Magadi Soda Company Ltd. to be read as Tata Chemicals Magadi Ltd, wherever it occurs in the preliminary findings notification.

6. Another oral hearing of the known interested parties was held by the Authority in terms of Rule 6(6) of the Rules, on 3rd October, 2011, subsequent to which written submissions and rejoinders were submitted by the interested parties.

7. M/s Saint Gobain Glass India Ltd filed another Writ Petition before the Hon'ble High Court of Madras challenging the preliminary findings.

8. The Anti-dumping Rules were amended by the Central Government vide Notification No.86/2011-Customs (N.T.) dated 1st December, 2011 by substituting the words "referring to the rest of the producers only", with the words "referring to the rest of the producers".

9. The Hon'ble High Court of Madras vide their orders dated 23rd December, 2011 disposed of the writ petition No. 23515 of 2011 filed by M/s Saint Gobain Glass India Ltd. The operative part of the judgment, inter alia, is as follows:

> *"78. In the light of the above, even though I agree with the contentions of the petitioner on the interpretation placed on Rule 2(b), that the provision does not reserve any discretion with the Designated Authority to bring in an excluded category into the definition of 'domestic industry', yet, going by the said definition that M/s DCW Limited is a domestic industry, it fully satisfies the requirement under Rule 5(3)(a) proviso. In the circumstances, while setting aside that portion of the order of the Designated Authority relating to this interpretation on Rule 2(b), I uphold the order of the Designated Authority in so*

far as it relates to the satisfaction on Rule 5(3)(a) proviso on 4% production of M/s DCW Limited as constituting 100%. Consequently, I reject the Writ Petition on this aspect.

79. As far as the decision of the Calcutta High Court is concerned, I agree with the learned single Judge of the Calcutta High Court on the interpretation placed on Rule 2(b), but on different grounds. However, on facts as well as on the interpretation placed on Rule 5(3) (a) proviso, I have no hesitation in upholding the order of the Designated Authority, who may proceed further in this regard.

80. Accordingly, the Writ Petition is disposed of. No costs. Consequently, M.P. Nos. 1 to 3 are closed."

10. The Designated Authority (WA. 195/12) as well as the Alkali Manufacturers Association (WA. 189/12), GHCL (WA. 194/12) and NIRMA (WA. 193/12) filed Writ Appeals challenging the above orders of the Learned Single Judge before the Hon'ble Division Bench of the Madras High Court. The Hon'ble Division Bench vide their order dated 1st February, 2012 passed inter alia the following orders:

"2. For the reasons stated while admitting the Writ Appeals, We are of the view that to strike a balance in the existing situation and taking note of the fact that the last date for the passing of final finding by the Designated Authority comes to an end on 18th February, 2012 and also taking note of the fact that by hearing the other Domestic Industry by the Designated Authority while arriving at a final finding, which has to be notified, the Writ Petitioner are in no way prejudiced since it is only after the Central Government passes the final levy of the duty under Rule 18, the liability and obligation of the Writ Petitioners come into operation.

3. It is only to safeguard the interest of both the parties, we stay the operation of the order of the Ld. Judge in so far as it relates to the direction to the Designated Authority to proceed to continue its proceedings only with respect to M/s DCW Limited in furtherance of the preliminary finding, thereby making it clear that it is open to the Designated Authority to conduct an enquiry by obtaining particulars and hearing all Domestic Industries and sent the report to the Central Government either by Notification or otherwise. However, the Central Government shall not pass any final order regarding the levy of duty under Rule 18 until further Order from this Court. It is made clear that the final finding, which may be submitted by the Designated Authority to the Central Government, shall be subject to the final judgement, which may be passed in the Writ Appeals."

The Hon'ble Division Bench posted the Writ Appeals for final disposal on 22.02.2012

B. PROCEDURE

11. Procedure described below has been followed with regard to this investigation:

i. 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 Anti-dumping Rules.

ii. 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, originating in or exported from the subject countries.

iii. 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 Anti-dumping Rules.

iv. The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India (whose details were made available by the Applicant) and advised them to make their views in writing within forty days from the date of the letter.

v. The Authority provided a copy of the non-confidential version of the application to the known exporters and the embassy of the subject countries in India in accordance with Rule 6(3) of the Anti-dumping Rules. A copy of the Application was also provided to other interested parties, wherever requested.

vi. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the Anti-dumping Rules:

a. Shandong Haihua Group
b. Hebai Tangshan Sanyau Alkali Industry Company
c. Qinghai Alkali Plant (Zhejiang Glass)
d. Tianjin Soda Ash Plant
e. Jinshan Chemical Co.
f. Spin International
g. ANSAC, USA
h. Siman Ltd
i. Magadi Soda Company

j. Belvedere SRL Romania
k. Asha Trade Import Export
l. GHCL Romania
m. Allied Network Company Ltd
n. Asha Trade Import Export
o. FMC Industrial Chemicals
p. General Chemicals Industries Products
q. OCI Chemical Corporation
r. Solvay Soda Ash
s. FMC Corporation
t. Solvay Sodi AD
u. Sisecam Soda Lukavac
v. Brunner Mond
w. Syrina Trade Company
x. ICI Pakistan Limited

vii. In response to the initiation notification, the following exporters/producers/ associations from the subject countries responded:
   a. Syrina Trade Company
   b. Olympia Chemicals Limited, Pakistan
   c. ICI Pakistan Limited, Pakistan
   d. Magadi Soda Company, Kenya
   e. Solvay, Romania
   f. Embassy of Ukraine in New Delhi
   g. ANSAC, USA

viii. 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 Anti-dumping Rules:

   a. Gujarat Guardian Ltd
   b. Advance Surfactants India Ltd.
   c. Float Glass India Ltd
   d. A.R. Stanchem Pvt. Ltd,
   e. Alembic Glass Industries Ltd
   f. Hind Silicates Pvt. Ltd.,
   g. Deepak Nitrite Ltd
   h. Taurus Chemicals (P) Ltd.
   i. Hindusthan National Glass & Ind. Ltd
   j. Kishoresons Detergents Pvt. Ltd.,

k. HindusthanUniliver Ltd.
l. J.J. Patel Industries,
m. Procter & Gamble Hygiene & Health Care
n. ShriramBharath Chemicals & Detergents (P) Ltd.
o. Albright Morarji&Pandit Ltd.
p. Modern Glass Industries,
q. Advatech Industries Pvt. Ltd.
r. AdarshKanchUdyog (P) Ltd.
s. Saint Gobain Glass Ltd.
t. Advance Lamp Component & Table Wares Pvt. Ltd
u. U.P. Glass Manufacturer Syndicate,
v. Pragati Glass Pvt. Ltd.,
w. Asahi India Glass Limited
x. Gora Mal Hari Ram Ltd.
y. Fena (P) Ltd.
z. Rohit Surfactants(P) Ltd.,
aa. Shree Unicon Organics P. Ltd.,
bb. Astral Glass Pvt. Ltd.
cc. Pollachi Chamber Of Commerce & Industry,
dd. Bdj Glass Industries Pvt. Ltd.,
ee. VasundharaRasayan Ltd.,
ff. Power Soap Ltd.,
gg. ShriHari Industries,
hh. Shanti Nath Detergents(P) Ltd,
ii. Hindusthan National Glass & Industries Ltd.,
jj. Advance Home & Personal Care Ltd.,
kk. Jagatjit Industries Limited,
ll. S. Kumar Detergent P. Ltd
mm. Advance Surfactants India Ltd.,

ix. In response to the initiation notification, the following importers /users have responded:

a. S. Kumar Detergent P. Ltd
b. Chempex International,
c. Mahawar Iron Stores Pvt. Ltd.
d. Sinochem Impex
e. India Float Glass Manufacturers Association
f. Saint Gobain India Pvt Ltd.
g. Hindustan Unilever Limited

x. 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.

xi. Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.

xii. 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.

xiii. Pursuant to the orders of Hon'ble High Court of Madras vide their orders dated 29.4.2011, an oral hearing of interested parties was held on 13.05.2011, to address issues of the interested parties including jurisdictional issue, subsequent to which written submissions and rejoinders were submitted by the interested parties.

xiv. Thereafter, the Authority issued a speaking order, in compliance with the orders dated 29th April, 2011 of Hon'ble High Court of Madras, vide preliminary findings notification No. 14/17/2010-DGAD dated, 02.09.2011 and recommended imposition of provisional anti-dumping duty on the imports of subject goods, originating in or exported from the subject countries.

xv. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided another opportunity to all the known interested parties to present their views orally in the oral hearing held on 3rd October, 2011. The parties, which presented their views in the oral hearing, were requested to file written submissions and rejoinders of the views expressed by them orally.

xvi. The submissions made by the interested parties during the course of the investigation, considered relevant by the Authority, have been addressed in this final finding.

xvii. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry.

xviii. In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties vide disclosure statement dated 10th February, 2012 and comments received thereon, considered relevant by the Authority, have been addressed in this final finding.

xix. *** in this Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

xx. The exchange rate adopted for the POI is 1 US $ =Rs 48.30

C. Litigation before various courts

I. Litigation before the High Court of Delhi

12. After the initiation of the subject investigation, Writ Petition (C) No. 95 of 2011 was filed by M/s Mauli Exports before the Hon'ble High Court of Delhi, challenging the standing of the applicant and the eligibility of the constituent companies to be treated as "domestic industry". The Hon'ble Court vide their orders dated 10th January, 2011 disposed of the petition. The operative part of the said orders of the Hon'ble Court, inter alia, is 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 a sin 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."

II. <u>Litigation before the High Court of Madras</u>

13. A similar writ petition was filed by M/s Saint Gobain Glass India Ltd before the Hon'ble High Court of Madras vide Writ Petition No. 4602 of 2011, challenging the standing of the applicant and the eligibility of the constituent companies to be treated as "domestic industry". The Hon'ble Court vide their orders dated 29.4.2011 disposed of the petition. The operative part of the said orders of the Hon'ble Court, inter alia, is 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"

14. In compliance with the orders of the Hon'ble High Courts of Delhi and Madras, the Authority held an oral hearing and thereafter issued a speaking order addressing the relevant issues in the preliminary findings on 2nd September, 2011. After the issue of the Preliminary Findings by the Authority, M/s Saint Gobain Glass India Ltd filed another Writ Petition vide No.23515 of 2011 before the Hon'ble High Court of Madras, challenging the preliminary findings. The Hon'ble Court disposed of the said writ petition on 23rd December, 2011, with the operative part of the orders, inter alia, as follows:

"78. In the light of the above, even though I agree with the contentions of the petitioner on the interpretation placed on Rule 2(b), that the provision does not reserve any discretion with the Designated Authority to bring in an excluded category into the definition of 'domestic industry', yet, going by the said definition that M/s DCW Limited is a domestic industry, it fully satisfies the requirement under Rule 5(3)(a) proviso. In the circumstances, while setting aside that portion of the order of the Designated Authority relating to this interpretation on Rule 2(b), I uphold the order of the Designated Authority in so far as it relates to the satisfaction on Rule 5(3)(a) proviso on 4% production of M/s DCW Limited as constituting 100%. Consequently, I reject the Writ Petition on this aspect.

79. As far as the decision of the Calcutta High Court is concerned, I agree with the learned single Judge of the Calcutta High Court on the interpretation placed on Rule 2(b), but on different grounds. However, on facts as well as on the interpretation placed on Rule 5(3) (a) proviso, I have no hesitation in upholding the order of the Designated Authority, who may proceed further in this regard.

80. Accordingly, the Writ Petition is disposed of. No costs. Consequently, M.P. Nos. 1 to 3 are closed."

15. The Designated Authority (WA. 195/12) as well as the Alkali Manufacturers Association(WA. 189/12), GHCL (WA. 194/12) and NIRMA (WA. 193/12) filed Writ Appeals challenging the above orders of the Learned Single Judge before the Hon'ble Division Bench of the Madras High Court. The Hon'ble Division Bench vide their order dated 1st February, 2012 passed inter alia the following orders:

"2. For the reasons stated while admitting the Writ Appeals, We are of the view that to strike a balance in the existing situation and taking note of the fact that the last date for the passing of final finding by the Designated Authority comes to an end on 18th February, 2012 and also taking note of the fact that by hearing the other Domestic Industry by the Designated Authority while arriving at a final finding, which has to be notified, the Writ Petitioner are in no way prejudiced since it is only after the Central Government passes the final levy of the duty under Rule 18, the liability and obligation of the Writ Petitioners come into operation.

3. It is only to safeguard the interest of both the parties, we stay the operation of the order of the Ld. Judge in so far as it relates to the direction to the Designated Authority to proceed to continue its proceedings only with respect to M/s DCW Limited in furtherance of the preliminary finding, thereby making it clear that it is open to the Designated Authority to conduct an enquiry by obtaining particulars and hearing all Domestic Industries and sent the report to the Central Government either by Notification or otherwise. However, the Central Government shall not pass any final order regarding the levy of duty under Rule 18 until further Order from this Court. It is made clear that the final finding, which may be submitted by the Designated Authority to the Central Government, shall be subject to the final judgement, which may be passed in the Writ Appeals."

D. Product Under Consideration and Like Article

Submissions made by the domestic industry

16. The following are the submissions made by the domestic industry with regard to the product under consideration (PUC) and like article during the course of the investigation:

i. The product under consideration in the present application is Disodium Carbonate commonly known as Soda Ash.

ii. 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 an earlier concluded investigation against China. The Authority has considered the two grades as a single product.

iii. 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.

iv. Light and Dense Soda Ash clearly constitute one product. The Authority has done comparison at this stage on the basis of weighted average for the investigation period. The two are technically and commercially substitutable and the consumers use the two interchangeably.

v. There is no consistent pattern of price difference in Light & Dense Soda Ash. Such being the case, there is no legal and factual basis in demanding separate comparison for Light and Dense Soda Ash.

Submissions made by the producers/exporters/importers/and other interested parties

17. The following submissions are made by the producers/exporters/importers/and other interested parties with regard to product under consideration and like article during the course of the investigation:

i. Light and Dense Soda Ash are different products in terms of physical characteristics as far as density is concerned.

ii. Light and Dense Soda Ash are manufactured using entirely separate and independent processes.

iii. The two grades of Soda Ash are used by two distinct user industries and not used interchangeably. While Light Soda Ash is used in detergent industry, Dense Soda Ash is used in Glass industry. Detergent industry does not use dense soda ash except for the visual cues and they are not commercially substitutable with each other.

iv. Cost of production of Light Soda Ash is much lower than that of Dense Soda Ash. The domestic industry differentiates the two grades of Soda Ash having different cost of production, different selling price for different customer base and for determination of profit.

v. The import prices of the two grades are different. Similarly the domestic industry charges different prices for the two grades while exporting them to other countries.

vi. Lights Soda Ash and Dense Soda Ash being different products, dumping margin, non-injurious price and injury margin should be determined separately.

Examination by the Authority

18. The relevant submissions made by the interested parties are addressed by the Authority as under:

i. The product under consideration in the present investigation is Disodium Carbonate, also known as Soda Ash, having chemical formula Na2CO3. 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 investigation 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. With regard to like article, Rule 2(d) of the Anti-dumping 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*."

iv. The domestic industry 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.

v. 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.

vi. During the course of the investigation, the interested parties have submitted that Light and Dense Soda Ash are different products due to different bulk density and not used interchangeably by the customers. They also submitted that the cost and price of the two grades are different. The Authority notes that the difference of cost and price between light and dense soda ash is negligible (about Rs 0.23 in price). Further, from the information available in the public domain it is evident that light soda ash can have usage in manufacture of sodium salts, glass, sodium silicates, bi-chromate, bi-carbonates, etc apart from the most common usage in the detergent sector. Similarly, while dense soda ash is used mainly for manufacturing glass, it can also find usage in manufacture of detergents, silicates, ultramarine, bi-chromate, etc. The Authority notes that both the grades of soda ash, having many common usages, are technically and commercially substitutable and therefore form part of the product under consideration. Moreover, in an earlier Final Finding in respect of imports of Soda Ash from China PR the Authority had already held light soda ash and dense soda ash as technically and commercially substitutable.

vii. The Authority further notes that the difference in light & dense soda ash is in bulk density only. The product characteristics, production process, manufacturing technology, raw materials, manpower, functions & uses, customs classification and pricing of the light & dense soda ash are however the same, although for manufacturing dense soda ash, installation of additional equipment is required. The Authority notes that although some end applications may specifically require light or dense soda ash only, the bulk density or inability of some of the consumers to interchangeably use light and dense soda ash cannot render the two as dislike articles. These are merely two different forms of the same product.

viii. As regards natural and synthetic soda ash, the Authority notes that 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 Authority further notes, difference in production process

cannot render the two grades of soda ash as dislike articles, particularly when the resultant products are interchangeably used.

ix. As regards the submission for separate comparison of the two grades is concerned, the Authority notes that a separate comparison of the two grades is required to be undertaken only if the cost or price of the product varies significantly over the investigation period. However, The Authority observes that there is no consistent pattern of price difference in Light & Dense Soda Ash and therefore there is no need to determine dumping margin, non-injurious price, and injury margin etc separately. Nevertheless, the Authority has made the relevant calculations on weighted average basis.

E. Standing and Scope of Domestic Industry

Views expressed by the domestic industry during the course of investigation

19. The views of domestic industry with regard to the standing and scope of domestic industry are as follows:

i. Petition has been filed by the association of the producers of the subject goods. Moreover, the petition has express support from all Indian Producers, barring Tata Chemicals. Thus, the petition should be deemed to have been filed on behalf of the domestic industry.

ii. 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.

iii. 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 is negligible. 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. However, none of the petitioner companies' focus has shifted from production to trading/imports.

iv. Production by the petitioner companies constitutes a major proportion in Indian production. Domestic producers expressly supporting the application account for more than 50 percent of production of the like product produced by the domestic industry. 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 has 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.

v. 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 significant volume of imports from their related supplier in Kenya.

vi. The Rules referred by ANSAC are no longer in force. The Rules have since been amended and relied upon. Designated Authority has discretion to consider whether a company is an eligible domestic producer in such a situation. The amended rules have not taken away such discretion from the Designated Authority. Decision of the Designated Authority in the matter of Viscose Staple Fibre is referred to and relied upon which has been accepted by the Ministry of Finance.

vii. The fact that the Anti-dumping Rules provide for discretion to the Designated Authority gets established by the very objective for which the 2010 amendment has been brought in. The objective of the amendment, as stated by the Parliament, is to align the rules framed by the Government, to the WTO Agreement.

viii. The existence of discretion also gets established by the fact that if Govt. of India intended to take away the discretion from the Designated Authority, the same would have been achieved by substituting the word ‘may’ with ‘shall’, particularly when that was the legal position prior to 1999.

ix. The requirement of a major proportion is required to be applied on producers left after excluding the ineligible producers. Thus, in that case, DCW constitutes domestic producer as a whole. It certainly cannot be the case that the authority considers GHCL, Nirma, TCL and Saukem as ineligible domestic industry and then holds that the domestic industry comprises of domestic producers as a whole and includes these companies as well.

x. The use of the word 'may' in Rule 2(b) suggests, the two types of producers in question, i.e. related producers and producers importing the dumped product are not automatically excluded from being part of the domestic industry.

xi. The Authority is now under obligation to "construe" or "interpret" such company as eligible or ineligible part of the domestic industry with cogent reasons. There is no automatic exclusion or inclusion for such domestic producers. Nor the Authority can exclude or include a company without reasons/justification.

xii. The purpose of providing the discretion to Designated Authority to include or exclude certain domestic producers is to enable the Investigating Authority to come to an objective and undistorted determination with regard to the effects of dumped import on the domestic industry by excluding those domestic producers from the relevant domestic industry which have participated in injurious dumping.

Submissions made by the producers/exporters/importers/and other interested parties

20. The submissions made by the producers/exporters/importers/and other interested parties with regard to the standing and scope of domestic industry during the course of the investigation are as follows:

i. The application filed before the Authority by the applicants is not maintainable in view of Rule 5(1) read with Rule 2. 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 terms of Rule 2(b). Authority erred in considering ineligible domestic producers as domestic industry. The investigation could not have been initiated as the application does not meet the requirement of standing under the Rules.

ii. 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 significantly falls short of threshold of 25% as provided under Rule 5(3).

iii. Claim of imports for captive consumption by Nirma is false. Requirement for captive consumption during POI was only 58715 MT as against a

production of 450294 MT. Hence there was no practical need for import of Soda Ash for captive consumption by Nirma during the POI. Nevertheless, the justification for imports for captive use by Nirma is irrelevant. Even captive use is a part of total domestic requirement which could be served by domestic industry and therefore must be considered while analyzing eligibility of domestic industry.

iv. Authority decided to consider GHCL, Nirma, Saukem and DCW Limited as the domestic industry without taking into consideration that information relating to imports was not made available by the domestic producers during the time of filing of the petition, it is an afterthought subsequent to Chennai High Court decision.

v. DA should determine, whether and to what extent the domestic producers themselves are involved in the production or sales of the PUC of their related entities, if yes, then what are the cost incurred by the domestic producer in relation to their involvement in the production/sales of the same and the impact of these on total costing. The DA should accordingly adjust the NIP.

vi. DA must also examine whether the domestic producers with related foreign entities are deliberately limiting their production and sales in India and misrepresenting a hypothetical injury which is a self inflicted one.

vii. DA relied on information given by the related parties of the domestic producers despite of them being non-cooperative.

viii. According to Rule 2(b) discretion may be used in two situations (i) where some domestic producers may not wish to support an antidumping application merely because they themselves are importing or are related to the exporters (ii) where the quantity of imports made by them is insignificant. In the instant case, none of the domestic producers have opposed the petition. For the second case, three of the domestic producers are related therefore the question of Nirma's import becomes redundant.

ix. DA has deviated from its own finding by considering them as part of domestic industry as in Pentaerythriotol from China PR and Sweden. Barring DCW, other three producers must be excluded from the scope of Domestic Industry.

x. "Domestic Industry" is incorrectly constituted in the Preliminary Findings. M/s Century Plyboards (I) Ltd. & Anr. Vs. Additional Secretary & Designated Authority & Ors is binding. According to which the Designated

Authority has no discretion to include such domestic producers who are either related to the exporters/importers of the alleged dumped article or are themselves importers of subject product from subject countries within the scope of domestic industry.

xi. Issue of Rule 2(b) has not been addressed in the preliminary findings properly. The contents of Para 17 to 24 of the preliminary findings has created a total confusion about the definition of domestic industry. The DA's power cannot go beyond the specific mandate of law.

xii. 15 % and 7% of exports cannot be considered as insignificant. The amended Rule 2 (b) gives no discretion to the Authority for the inclusion of the domestic producers who are either related to the exporters or are importers of the alleged dumped article. The discretion is only with regard to the 'rest of the producers' and not for the excluded category.

xiii. DCW can form DI provided it accounts for a major proportion of the total domestic production. Claim of DI, that DCW will constitute 100% of domestic production is mischievous and contrary to the plain reading of Rule 2 (b). The production of ineligible domestic producers is not required to be excluded while computing the total production in India while reaching a determination on "major proportion". 4% of the total production could not have been DI in terms of Rule 2 (b). In any case, the present investigations are not based on any finding or premise that 4% constitutes "major production".

xiv. Rule 5(2) mandates supporting the application by evidence of injury of the eligible applicant. Since the application was filed by producers who were ineligible, the evidence which was filed for injury was not for a major proportion of the eligible DI and hence the application cannot be entertained.

xv. 8% and 9% of imports from related companies from Romania and USA respectively cannot be considered as insignificant. Moreover, it is not known if indirect exports have been considered by the Authority or not, whether the related parties cooperated or not, if not then the domestic producers shall be treated as non-cooperative and be excluded from the scope of Domestic Industry.

xvi. As regards DI's reference to the decisions by other parallel authorities, it is submitted that the practices followed by the other jurisdiction do not even have persuasive value especially when the language in the Indian law is distinctly different from WTO Agreement and other laws.

Examination by the Authority

21. The Authority notes that the submissions of the interested parties concerning standing of the applicant to file the present petition were elaborately and adequately addressed in the preliminary findings. The interested parties have contested the standing of the constituent domestic producers namely M/s GHCL, Nirma, Saukem and DCW, as the domestic industry throughout the course of the investigation.

22. The interested parties have also contested the jurisdiction of the Designated Authority, in terms of having discretion under Rule 2(b) of the Anti-dumping Rules, to consider the constituent domestic producers, who have imported the subject goods from the subject countries during the POI or are related to the producers/exporters of the subject goods in the subject countries or the importers of the subject goods in India, as domestic industry.

23. Furthermore, the interested parties also contested the eligibility of M/s DCW Ltd as domestic industry, in the event of exclusion of other constituent domestic producers from the purview of domestic industry, as it holds about 4% share of total domestic production and the same cannot be construed as constituting 100%.

24. In view of the above, the Authority has examined the legal provisions and arguments made by various interested parties whether the petitioner has sufficient standing to file the present petition and maintain the same under the Rules. The Authority has examined whether the petitioner companies constitute domestic industry within the meaning of the Rules. The Authority has also examined whether it has the jurisdiction under the relevant Rules to entertain such domestic producers as constituting "domestic industry", who have imported the subject goods from the subject countries during the POI or are related to the producers/exporters of the subject goods in the subject countries or the importers of the subject goods in India.

25. 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."

26. 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 opposition 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 constitutes 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.

27. 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 imports of subject goods made by itself from the subject countries during the POI or its relationship with an importer of the subject goods in India or exporter of the subject goods in the subject countries.

28. 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.*

29. It is noted that there was no discretion vested in the Designated Authority under the above stated unamended Rule. The Rule after the amendment made vide Customs Notification No. 44/1999 dated 15th July, 1999, which vested discretionary power in the Designated Authority, 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.*

30. The Rule 2(b) was further amended vide Customs Notification No. 18/2010 dated 27th February, 2010, amending the definition of the domestic industry 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.

31. The Authority notes that the above stated amendment dated 27th February, 2010 aligns the Anti-dumping Rules of the country with the WTO Law and also continues to give discretionary power to the Designated Authority to decide on the merits of the case to include or exclude a domestic producer as domestic industry.

32. The amendment brought in Rule 2(b), vide Notification No.86/2011 - Customs (N.T.) dated 1st December, 2011, further clarifies the position by deleting the word '*only*' and provides 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.*

33. The Authority notes that after the issuance of the Preliminary Findings on 2nd September, 2011, M/s Saint Gobain Glass India Ltd filed a Writ Petition vide No.23515 of 2011 before the Hon'ble High Court of Madras. While disposing of the writ petition on 23rd December, 2011, the Hon'ble Court ordered inter alia as follows:

> *"78. In the light of the above, even though I agree with the contentions of the petitioner on the interpretation placed on Rule 2(b), that the provision does not reserve any discretion with the Designated Authority to bring in an excluded category into the definition of 'domestic industry', yet, going by the said definition that M/s DCW Limited is a domestic industry, it fully satisfies the requirement under Rule 5(3)(a) proviso. In the circumstances, while setting aside that portion of the order of the Designated Authority relating to this interpretation on Rule 2(b), I uphold the order of the Designated Authority in so far as it relates to the satisfaction on Rule 5(3)(a) proviso on 4% production of M/s DCW Limited as constituting 100%. Consequently, I reject the Writ Petition on this aspect.*

79. As far as the decision of the Calcutta High Court is concerned, I agree with the learned single Judge of the Calcutta High Court on the interpretation placed on Rule 2(b), but on different grounds. However, on facts as well as on the interpretation placed on Rule 5(3) (a) proviso, I have no hesitation in upholding the order of the Designated Authority, who may proceed further in this regard.

80. Accordingly, the Writ Petition is disposed of. No costs. Consequently, M.P. Nos. 1 to 3 are closed."

34. The Designated Authority (WA. 195/12)as well as the Alkali Manufacturers Association(WA. 189/12), GHCL (WA. 194/12) and NIRMA (WA. 193/12) filed Writ Appeals challenging the above orders of the Learned Single Judge before the Hon'ble Division Bench of the Madras High Court. The Hon'ble Division Bench vide their order dated 1st February, 2012 passed interalia the following orders:

"2. For the reasons stated while admitting the Writ Appeals, We are of the view that to strike a balance in the existing situation and taking note of the fact that the last date for the passing of final finding by the Designated Authority comes to an end on 18th February, 2012 and also taking note of the fact that by hearing the other Domestic Industry by the Designated Authority while arriving at a final finding, which has to be notified, the Writ Petitioner are in no way prejudiced since it is only after the Central Government passes the final levy of the duty under Rule 18, the liability and obligation of the Writ Petitioners come into operation.

3. It is only to safeguard the interest of both the parties, we stay the operation of the order of the Ld. Judge in so far as it relates to the direction to the Designated Authority to proceed to continue its proceedings only with respect to M/s DCW Limited in furtherance of the preliminary finding, thereby making it clear that it is open to the Designated Authority to conduct an enquiry by obtaining particulars and hearing all Domestic Industries and sent the report to the Central Government either by Notification or otherwise. However, the Central Government shall not pass any final order regarding the levy of duty under Rule 18 until further Order from this Court. It is made clear that the final finding, which may be submitted by the Designated Authority to the Central Government, shall be subject to the final judgement, which may be passed in the Writ Appeals."

35. In respect of another anti-dumping investigation concerning imports of Melamine, the jurisdictional aspect under Rule 2(b) of the Anti-dumping Rules was also challenged by M/s Century Plyboards (I) Ltd before Kolkata High Court vide W. P. No.3184 (W) of 2011, wherein the Hon'ble Court, in their orders dated 19th August, 2011, held inter alia as follows:

"22. …….Mr. Bose argued that the Designated Authority had the discretion not to exclude an importer in view of use of the expression "may" in Rule 2(b). However, it is clear from Rule 2(b), as amended by D.R. Notification NO.18/2010 Customs (N.T.) dated 27th February, 2010, that importers have been excluded. The use of the expression 'except' is significant. 'Domestic industry' has been defined to mean the domestic producers as a whole engaged in the manufacture of like articles and any activity connected therewith, whose collective output of the said article constitutes a major portion of the domestic production of that article, except when such producers are related to the exporters or importers of the alleged dumped articles or are themselves importers thereof. Where producers are related to exporters or importers or are themselves importers, the term domestic industry might be construed as referring to the rest of the producers only.

23. As argued by Mr. Bose, 'shall' had been substituted by 'may'. Thus, the principle - 'may' could be construed as 'shall' - would not apply in that the rule maker had very consciously substituted the expression 'may' in place of 'shall'. However, further amendment by the Notification dated 27th February, 2010 leaves no manner of doubt that importers cannot be included in the definition of domestic industry. The Designated Authority may have discretion whether or not to construe 'domestic industry' as referring to the rest of the domestic producers apart from the importer.

The initiation of investigation at the instance of Gujarat State Fertilizers, which is admittedly and on the face of the records, an importer, is legally not sustainable.

The writ application is, thus, allowed. The impugned notification is set aside.

36. The above stated orders of Hon'ble High Court of Calcutta was challenged by the Designated Authority as well as domestic industry before the Division Bench along with prayer for interim relief for staying the impugned orders. The Hon'ble Division Bench, in their orders dated 21st November, 2011, granted stay and held inter alia as follows:

"We think that this matter needs consideration as seriously intricate/ questions of law on admitted facts are involved. While considering the prayer for interim relief' we are of the view that some interim measure is required to be taken because apart from strong prima facie case' the balance of convenience and inconvenience sometimes over-weigh the factum of prima facie case' Here' we find that balance of convenience and inconvenience over-weigh the prima facie case, for if no interim relief is granted then not only the appellant but also the supporting respondents will suffer irretrievable injury because the action taken earlier, pursuant to the complaint made by the appellant, is a time bound programme'. Once the time limit fixed by the statute expires, then no action can be taken. On the other hand, if the preliminary exercise is 'undertaken viz. enquiry, investigation and other thing but no final order is passed, then Dr' Chakraborty's clients will not stand to suffer. Accordingly, we pass the following interim order.

The impugned judgment and order shall remain stayed, till the disposal of this appeal as the notification has been quashed. We direct the designated authority to proceed in accordance with rules with regard to the enquiry and investigation as prescribed in the rules; however, no report may be submitted. If the report is against Dr' Chakraborty's clients, no action need be taken without the leave of this Court. The views we have expressed while passing the aforesaid order, gets support of a Supreme Court decision rendered in title case of Association of Synthetic Fibre Industry -vs- J.K. Industries Ltd' and Ors., reported in (2005) 11 SCC page 482.

With the aforesaid observations, the application (Can 10121 of 201 1) stands disposed of."

37. The question of excluding or including a domestic producer from the ambit and scope of the domestic industry is of practical importance. The moot question is whether or not they are really part of the domestic industry in the sense of Rule 2(b) of the Anti-dumping 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 Anti-dumping Rules; as the output of domestic producers, which are excluded from the definition of the domestic industry because of their relationship with the exporters or importers; or because of their own dumped imports, will not be taken into consideration while calculating total domestic production and while determining whether the applicant, along with supporting domestic producers, represents a major proportion of such production.

38. The Authority notes that Rule 2(b) has been amended thrice. The Rule 2(b) of the Anti-dumping Rules as on 1.1.1995 provided no discretion to the Designated Authority in such situations where one or more domestic producers have 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. Thereafter, the Rule 2(b) was amended vide Customs Notification No. 18/2010 dated 27th February, 2010, to reinforce the discretionary power of the Designated Authority to decide on the merits of the case to include or exclude a domestic producer as domestic industry and to align the Anti-dumping Rules of the country with the WTO Law. Rule 2 (b) has further been amended on 1st December, 2011 clarifying the position that the Designated Authority is clearly vested with the discretionary power to decide whether or not domestic producers, who are either related to an exporter/importer or are themselves importer of the subject goods from the subject country, can constitute domestic industry.

39. It has been submitted by interested parties that Rule 2(b) out rightly excludes producers who have relationship with exporters or importers of alleged dumped article. It has also been submitted that the discretion available to the Authority 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 discretion to the Designated Authority to decide whether a domestic producer, 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. The 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 to be considered as 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 domestic producer within the scope of "domestic industry". Such discretion as was granted vide amendment in 1999 has not been taken away by the amendment in 2010. This gets clearly established by the continued usage of word "may" under the amended definition of Rule 2(b), in 2010.

40. The Authority notes that the word 'may' itself makes it amply clear that the Designated Authority holds discretionary powers which are justified in nature as long as they are exercised on reasonable grounds and is established on reasonable nexus with the objective of the Rules. The word "may" literally translates itself into a possibility, where there is a possibility of either happening or non-happening of the event. By the virtue of

the word ‘may’, the Designated Authority has got complete powers where it can exercise its discretion when considering the said industries as domestic industry. Moreover, complete exclusion of industries which are indulged in even a minimal amount of import or export would ultimately amount to deviation from the ordinary rules of business conduct. Certain standards of discretion exercised only on reasonable grounds would best serve the interests of domestic industry as a whole.

41. The Authority further notes that it is neither the intent of the WTO Agreement nor of the Rules that a straight jacketed formula should be adopted while defining ‘domestic industry’ where an iota of import of subject goods from the subject country by a domestic producer be treated as sacrilege and thereby ineligible for the status of ‘domestic industry’. The conduct of trade and business at times necessitates importation of goods by the domestic industries for either research purposes or to supplement their own production to meet emergent demand in the market or for any other justified reasons. Such an act by a domestic producer, which is not in the regular course of trade, should not be treated as criteria to disqualify it to be construed as ‘domestic industry’ under the Rules. Therefore the discretionary power vested in the Designated Authority under the Rules intends to enable the Designated Authority to meet such kind of situation to impart justice to the domestic producers and to create a level playing field for them vis-a-vis the dumping by the overseas exporters. The Authority notes that significant emphasis has been placed by the interested parties on the usage of the word “only” in Rule 2(b), which is a non-issue. The Authority, however, notes that the issue is relevant only if the Designated Authority considers one or more applicant domestic producers as ineligible. Nevertheless, the position has now been clarified further vide amendment dated 1st December, 2011, whereby the word ‘only’ has been deleted.

42. 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.

43. Thus, the Authority is of the view that Rule 2(b) provides discretion to the Authority in the situations such as mentioned above. In other words, the Anti-dumping 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.

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

i. 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.

ii. 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.

iii. If a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it must be excluded.

iv. If inclusion of a domestic producer would distort the injury findings, it must be excluded.

v. If a domestic producer does not cooperate with the Authority, the Authority tends to consider such domestic producer as ineligible.

45. The Authority further 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:-

i. The percentage of domestic production of the product in question that is accounted for by the related producers.

ii. 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.

iii. Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry.

iv. The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities.

v. The ratio of import shipments to domestic production for the related producers.

46. The Authority considers that the purpose of vesting the discretion with the Authority, to include or exclude certain domestic producers in the scope of 'domestic industry', is to enable the Authority to come to an objective and undistorted determination with regard to the effects of dumped imports on the domestic industry in India by excluding those domestic producers from the ambit of 'domestic industry', which have participated in the 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.

47. 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 dumped imports reduced the use of domestic producers' own capacity, or resulted in the abandonment of domestic producers' projects, designed to increase their own production.

48. 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.

49. The Authority considers that the domestic producers who import an insignificant quantum of the dumped goods or whose related exporter, exports the dumped goods or whose related importer, imports the dumped goods, 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.

50. 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. 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.

51. 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.

    i. The application was filed by Alkali Manufacturers' Association of India (AMAI). AMAI is an association of producers of caustic soda (including chlorine) and soda ash.

    ii. 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 (renamed as Tata Chemicals Magadi Ltd) is a 100% subsidiary of Tata Chemicals and the company is participating in the present investigations by filing exporters' questionnaire response.

iii. Post initiation and after holding of 1st 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.

iv. None of the petitioner companies are related to any of the importers of the product under consideration in India;

v. 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 producer constituting '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'.

vi. SCL and Nirma are undisputedly related companies.

vii. 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.

viii. 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%

52. 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.

53. 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
	Transhipments	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%

54. 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.

55. 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 (renamed as Tata Chemicals Magadi Ltd) 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%

56. From the above, the Authority notes that-

i. Magadi Soda, Kenya (renamed as Tata Chemicals Magadi Ltd) 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.

57. It is, thus, seen that –

i. 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.

ii. 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.

iii. 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 GHCL as eligible to be treated as “domestic industry” for the purpose of the present investigations.

iv. 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. In view of the above position, the Authority holds Nirma and Saukem as eligible to be treated as "domestic industry" for the purpose of the present investigations.

58. 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 Anti-dumping Rules. Accordingly, the Authority considers GHCL, Nirma, Saukem and DCW Limited, the constituent applicants as "domestic industry", satisfying the requirements of Rule 2(b) read with Rule 5(3) of the Anti-dumping Rules.

F. Confidentiality

Submissions made by the domestic industry during the course of investigation with regard to confidentiality

59. The views of the domestic industry with regard to confidentiality are as follows:

i. No legal basis for the argument that cumulative data of three or four companies cannot be confidential. Disclosure of any information on weighted average basis of one company would enable the other company to know the financial performance of the other company.

ii. Above all, disclosure of actual profit margin, return on investment or cash flow would certainly lead to significant disadvantage to the domestic industry, as their consumers would have precise information with regard to profitability of their suppliers.

iii. The rules nowhere provide that the authority shall disclose the calculations of dumping margin or injury margin to the parties to the proceedings before issuance of disclosure statement.

Submissions made by the producers/exporters/importers/and other interested parties

60. The submissions made by the opposing interested parties with regard to confidentiality are as follows:

i. Confidentiality on 3 parties' cumulative data is not tenable. There is no feasible mathematical method or algorithm through which would a person be

able to derive the data of single entity out of the consolidated data of three independent entities.

ii. Confidentiality claimed by the Domestic industry is excessive, especially affecting the standing of the Domestic Industry and the Hon'ble Designated Authority is liable to disregard the claims of confidentiality of the Domestic Industry.

iii. Non disclosure of the dumping margin calculation on confidential basis which has undermined our right to make effective and meaningful comments on the PF, thereby causing gross violation of natural justice.

Examination by the Authority

61. The Authority has examined the confidentiality claims of the interested parties. The Authority made available the non confidential version of the evidences submitted by various interested parties in the form of public file.

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

> *(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
> *(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*
> *(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.*

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

64. With regard to the contention of the interested parties that consolidated information of domestic industry should not be allowed to be kept confidential, the Authority notes that if any consolidated data, if disclosed, may enable the interested parties to derive the confidential constituent data, the same cannot be revealed in the best interest of the interested parties.

65. As regards non-disclosure of the dumping margin calculation at the stage of preliminary finding, the Authority notes that such information is disclosed to the respective interested parties only at the stage of disclosure.

G. Methodology for determination of Dumping Margin

Market Economy Claims, Normal Value, Export Price and Dumping Margin

Submissions made by the domestic industry during the course of investigation

66. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows:

    i. China and Ukraine should be treated as non-market economy countries for following reasons:

        a. *Market economy status cannot* be given in a situation where one of the major shareholders is a State owned/controlled entity.

        b. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.

        c. 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.

        d. Market economy status cannot be given unless the responding exporters establish that their books are audited in line with international accounting standards.

        e. Market economy status cannot be granted even if one of the

parameters is not satisfied.

f. 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.

g. 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.

h. 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.

ii. Normal value in case of USA, Europe can be established on the basis of prices published in leading journal, Chlor Alkali. Normal value in case of Pakistan can be determined on the basis of domestic prices of soda ash in Pakistan. 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. Normal value for China is required to be determined in accordance with Annexure-I to the Rules.

iii. 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.

iv. The determination of normal value for Pakistan is consistent with the law and present practices. The claims of the exporter, ICI, are untenable even considering their own Annual Report. Petitioner had claimed normal value in the petition based on the Annual Report figures of the ICI, the exporter has not established how the claim of the domestic industry are incorrect.

v. The claims in the petition are based on information available to the domestic industry, whereas the finding is based on information available to the Designated Authority. It is without any legal basis that the dumping margin and injury margin determined by the Designated Authority cannot exceed the claims in the petition. The determination by the authority cannot be compared with the determination made in the petition.

Submissions made by the producers/exporters/importers/and other interested parties

67. The submissions made by the producers/exporters/importers/and other interested parties with regard to normal value, export price and dumping margin are as follows:

i. For determination of normal value, 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.

ii. Normal value is country specific as per the Apex court. But three different normal values have been determined for Pakistan.

iii. By disallowing certain adjustments claimed by ICI, Pak, the Authority has failed to make a fair comparison between the normal value and export price. Had they been allowed, the DM would have been negative.

iv. Normal value is higher for EU than what is claimed in the petition. Normal value determined by Domestic industry is USD 218.54/MT, based on high and low band, and USD 207.92, based on average low price. Normal value determined by the Authority is USD 298.75/MT. Difference is by 37-44%.

v. Normal value and Export price have both been disclosed by the Authority, therefore dumping margin calculated comes to 64.39%, whereas DI claimed a margin of 26% and therefore, it may be assumed that the dumping margin arrived for other countries, where normal value is not disclosed would also be prone to such grave errors. Therefore, normal value and Export Price for other producers may also be disclosed.

vi. Authority should take cognizance of information available on costing in the HOU process and accordingly formulate the normal value for China

vii. The normal value of US $ 256 for ICI Pakistan is also not supported by any data. Domestic Industry's reference to Annual Reports of ICI Pakistan is misleading and inappropriate.

viii. Comparison between dumping margin and injury margin is misplaced.

ix. Response filed by Solvay Sodi should be accepted since costing and injury information has been provided. However, should the Authority consider that it

cannot determine a dumping margin based on the normal value for the soda ash manufactured by Solvay Sodi AD, even though it is the plant that will export soda ash to India, then at the very least the Authority should calculate the injury margin based on the sales prices and costs reported for the sales made by SCI to India during the Period of Investigation.

x. 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.

xi. The Authority has failed to carry out an official survey of Soda Ash export from Ukraine and failed to take in to account the cost policy of Ukrainian manufacturer and instead relied on the data of the Indian producers.

Examination by the Authority

68. The submissions made by the interested parties with regard to normal value, export price and dumping margin are addressed by the Authority as follows:

i. With regard to the submission for selection of appropriate third country for determination of normal value, the Authority notes that none of the interested parties have made available the relevant information.

ii. With regard to the claim of Ukraine for market economy treatment on the ground that other WTO members have already granted MET status to them, the Authority notes that no documents, substantiating that such WTO members have accorded MET status to Ukraine following the evaluation criteria laid down under Para 8(3) of Annexure-I and by publication of such evaluation in a public document, have been furnished.

iii. As regards the submission that three different normal values should not have been determined for Pakistan, the Authority notes that as per the laid down Rules, the normal value in a market economy is producer specific and not country specific. Pakistan being a market economy, the Authority has determined separate normal value for the respondent producers.

iv. The Authority notes that in respect of ICI Pakistan the export price has been determined by making necessary adjustments as per the

practice in the DGAD. The Authority further notes that the benefit of inland freight as claimed by the respondent producer/exporter cannot be entertained to ensure a fair comparison between export price and NIP.

v. As regards the submission that the normal value and dumping margin determined by the Authority is higher than what is claimed in the petition, the Authority notes that the normal value has been determined by the Authority as per the facts of the case and laid down Rules and the same need not necessarily match with what the applicant has claimed.

vi. As regards the submission that for China the normal value should be determined by the Authority by taking in to account the costing in the HOU process, the Authority notes that none of the producers/exporters of China have responded in the subject investigation. Being a non-cooperative and non-market economy, the normal value for China PR has been determined by the Authority in terms of para 7 of the Rules.

vii. As regards the submission that comparison between the dumping margin and injury margin is misplaced, the Authority notes that the lesser duty rule being adopted by the Authority to determine the anti-dumping measures necessitates comparison between the two.

viii. As regards the submission of the Government of Ukraine that the Authority has failed to carry out an official survey of Soda Ash export from Ukraine and failed to take in to account the cost policy of Ukrainian manufacturer and instead relied on the data of the Indian producers, the Authority notes that none of the producers/exporters of Ukraine have responded in the subject investigation. Therefore the Authority has constructed the normal value for Ukraine as per the relevant Rules on the basis of best available information.

ix. The Authority notes that Solvay Sodi AD, Bulgaria has filed exporter's questionnaire response vide which it is stated that Solvay Chemicals International (SCI) commercializes 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 exporters 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 accepted the response filed by Solvay Sodi AD, Bulgaria. Post PF Solvay Sodi has submitted that the response filed by them should be accepted since costing and injury information has been provided. They further submitted that should the Authority consider that it cannot determine a dumping margin based on the normal value for the soda ash manufactured by Solvay Sodi AD, even though it is the plant that will export soda ash to India, then the Authority may calculate the injury margin based on the sales prices and costs reported for the sales made by SCI to India during the Period of Investigation. The Authority notes that such partial information cannot be accepted without submission of complete exporter's questionnaire response for the entire group of producers involved in the production and sale of the subject goods in the subject region encompassing the entire export chain.

69. The exporter's questionnaire responses submitted by the following cooperative exporters/producers have been accepted by the Authority and considered for the purpose of determination of normal value, export price and dumping margin. In respect of other producers/exporters from the respective subject countries the Authority has determined normal value on the basis of best information available on record.

a) Olympia Chemicals Limited, Pakistan

b) ICI Pakistan Limited, Pakistan

c) Magadi Soda Company, Kenya (renamed as Tata Chemicals Magadi Ltd)

70. The Authority has determined normal value, export price and dumping margin as follows:

NORMAL VALUE

CHINA PR

71. The Authority notes that none of the producers/exporters from China PR have submitted exporters and market economy questionnaire responses and are therefore non-cooperative. In the absence of any response and rebuttal of non-market economy presumption, the Authority considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal

value. Para 7 of Annexure I of the Anti-dumping 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."*

72. Accordingly, the Authority has determined normal value in respect of China PR as US $ *** per MT.

UKRAINE

73. The Authority notes that none of the producers/exporters from Ukraine have submitted questionnaire responses and are therefore non-cooperative. The Authority further notes that none of the producers/exporters from Ukraine have made any other submission as well. However, the submissions made by Government of Ukraine, considered relevant by the Authority, have been addressed in this finding.

74. 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 (S, G & A) expenses and profit, in terms of Para 7 of Annexure I to the Rules. However, Government of Ukraine has made the following submissions and contended that Ukraine be treated as a market economy country and claimed that normal value should be determined in accordance with market economy principles:

i. Since 2005 the market economy status of the Ukrainian economy was recognized by EC, USA and Brazil.

ii. During 2007-10 Ukraine has not been treated as non-market economy by any WTO member.

75. In support of their MET claim, the Government of Ukraine has submitted a copy of Council Regulation dated 21st December, 2005 amending Regulation (EC) No. 384/96 on protection against dumped imports from counties not members of the European Community which provides for deletion of Ukraine from the first sentence of Article 2(7) (b). They have further submitted a copy of a document by the Department of Commerce, International Trade Administration on final results of enquiry in to Ukraine's status as a non-market economy country stating that the Department determines that (1) revocation of Ukraine's non-market economy status under section 771(18)(B) of the Act is warranted and (2) the effective date of this decision is February 1, 2006. Accordingly, Ukrainian producers and exporters will be subject to the anti-dumping rules applicable to market economy countries with respect to the analysis of transactions occurring on or after February 1, 2006.

76. The relevant provisions laid down under Annexure I to the Anti-dumping Rules are as follows:

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

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether:

(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and

demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

(d) the exchange rate conversions are carried out at the market rate.

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph".

(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti dumping investigations, by a country which is a member of the World Trade Organization."

77. The Authority notes that no detailed documents have been furnished by the Government of Ukraine to establish that any WTO member has granted market economy status to Ukraine after following the evaluation criteria laid down under Para 8(3) and by publication of such evaluation in a public document as required under Para 8(4) of the Annexure-I to the Anti-dumping Rules. Furthermore, none of the producers/exporters from Ukraine have cooperated and submitted the market economy questionnaire response in rebuttal of non market-economy presumption. In view of the above, the Authority has constructed the normal value for Ukraine as per the relevant Rules on the basis of best available information as US $ *** per MT.

EU

Solvay Sodi AD, Bulgaria

78. 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 accepted the response filed by Solvay Sodi AD, Bulgaria. Post PF Solvay Sodi has submitted that the response filed by them should be accepted since costing and injury information has been provided. They further submitted that should the Authority consider that it cannot determine a dumping margin based on the normal value for the soda ash manufactured by Solvay Sodi AD even though it is the plant that will export soda ash to India, then at the very least the Authority may calculate the injury margin based on the sales prices and costs reported for the sales made by SCI to India during the Period of Investigation. The Authority notes that such partial information cannot be accepted without submission of complete exporter's questionnaire response for the entire group of producers involved in the production of the subject goods in the subject region encompassing the entire export chain.

79. 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 the 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 per MT.

Normal value in case of USA

80. The Authority notes that none of the producers/exporters from USA have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for the determination of normal value in respect of USA. Accordingly the Authority has determined the normal value in respect of USA at ex-factory level, on the basis of prices periodically published in Chlor Alkali, an international journal which periodically publishes the prices of Soda Ash prevailing in USA, as US$ 202.78 per MT.

Normal value in case of Iran

81. The Authority notes that none of the producers/exporters from Iran have submitted exporter's questionnaire response. Therefore, the Authority has relied upon the best available information in terms of Rule 6(8) of the Rules for the determination of normal value in respect of Iran and determined the normal value as US$ *** per MT.

Pakistan

82. 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

83. 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 has admitted the said domestic sales 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 determined at PKR ***/MT i.e. US$ ***/MT.

Olympia Chemicals Limited, Pakistan fin

84. 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 has admitted the said domestic sales as the basis of normal value in terms of the relevant provisions under the Rules. Adjustment has been claimed on account of inland freight, commission and credit cost. The Authority has admitted the adjustments as claimed and determined the normal value at ex-factory level in respect of M/s Olympia Chemical Limited, Pakistan as US$***per MT(PKR *** per MT).

Non Cooperative exporters

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

Kenya

Tata Chemicals Magadi Limited

86. The Authority notes that only one producer/exporter from Kenya i.e. Magadi Soda Company Limited (renamed as Tata Chemicals Magadi Ltd), 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 computed the cost of production/sales of the subject goods at ex-factory level 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 and has considered only those sales which are above the per-unit cost. Accordingly, the domestic selling price net of VAT is determined as US$ ***per 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 was determined as US$ ***per MT.

87. After the issue of preliminary findings, the Authority has requested the exporter to clarify the reasons for allocating large amount of expenses to the by-product. The exporter vide its email dated 23.12.2011 stated that the operations of their new plant had not stabilized and therefore they had charged certain non-recurring costs as startup expenses and the same was shown as expenses for others. In order to examine the submission of the exporter, the Authority has sought further details/data from the exporter. The exporter was also requested to indicate its convenience for the verification of the data of the exporter by the representatives of the Authority. The exporter has furnished partial data/details vide email dated 17.1.2012 and it has not invited the Authority for the on the spot verification of data. Since the exporter has neither furnished important details/documents requested by the Authority nor responded to the request of the Authority for on-site verification, the Authority could not verify the exporter's contention of allocating certain non-recurring costs to 'startup costs'. In view of the above, the Authority finds no reason to re-determine the normal value for the final findings. Accordingly, the normal value at Ex-factory level of US$ ***per MT, determined for the preliminary findings, is retained for the final findings as well.

Non Cooperative Exporters

88. The Authority notes that no other exporter/producer from Kenya has responded to the Authority in the present investigation. For the non-cooperative

exporters/producers from Kenya the Authority has determined the normal value at the same level as that of cooperative exporter .i.e. as US$ ***per MT.

EXPORT PRICE

China, Ukraine, USA and Iran

89. The Authority notes that none of the exporters/producers of subject goods from China PR, USA, Iran and Ukraine has responded to the Authority in the form and manner prescribed. In the absence of response from the producers/exporters from 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 as US$ 133.28 per MT, for all exporters of Iran as US$ 144.49 per MT, for all exporters of USA as US $ 107.21 per MT and for all exporters of Ukraine as US $ 127.37 per MT.

Pakistan

ICI Pakistan Ltd.

90. Weighted average export price (CIF) to India is determined as US$ ***per 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 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 determined as US$ ***per MT.

Olympia Chemicals Ltd.

91. Weighted average export price (CIF) to India is determined as US$ ***per 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 admitted the adjustments claimed by the exporter. Accordingly the export price at ex-factory level is determined as US$ ***per MT.

Non Cooperative exporters

92. 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 exporters i.e. US$ ***per MT, for non-cooperative exporters.

EU

93. 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 prescribe 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. 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 accepted the response filed by Solvay Sodi AD, Bulgaria. Post PF Solvay Sodi has submitted that the response filed by them should be accepted since costing and injury information has been provided. They further submitted that should the Authority consider that it cannot determine a dumping margin based on the normal value for the soda ash manufactured by Solvay Sodi AD even though it is the plant that will export soda ash to India, then at the very least the Authority may calculate the injury margin based on the sales prices and costs reported for the sales made by SCI to India during the Period of Investigation. The Authority notes that such partial information cannot be accepted without submission of complete exporter's questionnaire response for the entire group of producers involved in the production of the subject goods in the subject region encompassing the entire export chain. 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 per 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 per MT.

Kenya

Magadi Soda Company Limited (renamed as Tata Chemicals Magadi Ltd)

94. Weighted average export price (CIF) to India during POI is determined as US$ ***per MT as per information provided by the exporter in Appendix 2 of the exporter's questionnaire response. Price adjustments have been claimed on account of discount, commission, packing, royalty, handling, credit cost, overseas insurance, and overseas freight. The Authority, while examining the said adjustments, notes that US$ ***per MT has been claimed towards ocean freight and handling charges from the export price as per Appendix-3A of EQR as against US$ ***per MT claimed on the same account in Appendix-8A of EQR. The Authority 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 determined as US$ ***per MT.

Non Cooperative exporters

95. 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$ ***per 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 as US$ ***per MT.

DUMPING MARGIN

96. Comparing the aforesaid normal values and export prices as determined, the dumping margin determined are 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 producer/exporter	***	***	***	***	10-20
Kenya	Magadi Soda Company, Kenya (renamed as Tata Chemicals Magadi Ltd)	***	***	***	***	10-20
	Non Co-opertive producerd/exporters	***	***	***	***	20-30

A. Miscellaneous Submissions

Miscellaneous Submissions made by domestic industry

97. The following miscellaneous submissions have been made by domestic industry during the course of the investigation:

i. The rules do not provide that the Preliminary Findings cannot be issued after 12 months.

ii. It is not established that imposition of Anti-Dumping Duty shall lead to significant increase in the cost of production of soda ash. Further, the meaning of public interest cannot be restricted to the interests of Soda Ash consumers.

iii. The benchmark form of duty would not be able to prevent continued dumping of the product causing injury to the domestic industry.

iv. No truth in the allegation that any of the domestic producers have formed a cartel.

Submissions made by the producers/exporters/importers/and other interested parties

98. The following miscellaneous submissions have been made by the producers/exporters/importers/and other interested parties during the course of the investigation:

i. Preliminary Finding has been issued after 12 months of investigation.

ii. Levy of ADD is against the public interest since majority of the inputs required for manufacturing of detergents are already attracting duty having cost push effect on the prices of detergents.

iii. Duties should be on reference price basis and not on fixed Price.

iv. The domestic producers along with Tata have formed a cartel to control the market.

Examination by Authority

99. The miscellaneous submissions made by the interested parties are examined as follows:

i. With regard to the submission that preliminary finding has been issued by the Authority after 12 months of investigation, the Authority notes that the Rules do not prevent the issuance of preliminary findings beyond 12 months.

ii. The objective of anti-dumping measures is to provide level playing field to the domestic industry and to enable them to compete more effectively in the market vis-à-vis the unfair trade practices of dumping adopted by the overseas exporters. This measure itself is in conformity with the public interest of the country.

iii. With regard to the submission on form of duty, the Authority notes that the form and quantum of duty is dependent on the magnitude of dumping that is established by the facts of the case. The Rules empower the Authority to recommend the amount of the anti-dumping duty equal to the margin dumping or less, which if levied, would remove the injury to the domestic industry.

iv. With regard to the submission by the opposite interested parties that the domestic producers along with Tata have formed a cartel to control the market, the Authority notes that no such fact has emanated from the investigation. Nevertheless, the allegation is neither supported by any documentary evidence, nor relevant for the anti-dumping investigation.

B. Injury Determination

Domestic Industry

100. The submissions made by domestic industry with regard to injury and casual link are as follows:

i. The period 2005-06 should also be included in the injury period for the purpose of injury assessment since production operations of the domestic industry suffered significantly during 2006-07 due to floods and during 2008-09 due to global recession.

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.

iv. Transportation cost forms a very substantial portion of the cost of production in case of subject goods. The comparison between landed price of imports and domestic ex-factory price should be calculated after considering the transportation costs.

v. The Non injurious price that has been determined by the Authority in the PF is grossly low. The NIP for the domestic industry should be determined after including freight cost in 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. 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. Moreover, foreign producers are able to export soda ash at various ports in the country whereas the domestic industry is located primarily in Saurashtra region.

vi. 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. Imports are cheaper when compared with the selling price of the domestic industry thereby undercutting the prices of the domestic industry in the market.

viii. 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. The loss of production should be considered as effect of “other factors” and sales must be adjusted accordingly.

ix. The focus of domestic industry is not exports as it constitutes about 3-4% of sales. The exports are a matter of compulsion because of the ill-effects of dumping. 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.

x. 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.

xi. All Volume parameters of the domestic industry declined in spite of existence of significant demand.

xii. 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, despite the capacity increased by 2.5 lacs MT and domestic sales declined by about 14,000 MT.

xiii. Capacity utilization of the domestic industry has moved in tandem with the production. There is no reason that the capacity utilization should have deteriorated for reasons other than presence of dumped imports in the market.

xiv. 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.

xv. While the 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.

xvi. Profit per unit and profit before tax earned by the domestic industry declined steeply over the period. The profitability as a percentage of selling price also declined steeply over the injury period.

xvii. Inventories with the domestic industry was piling up, which forced the domestic industry to resort to exports at low prices to manage the inventories. Economic parameters listed under the law are non-exhaustive. 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.

xviii. 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

xix. Wage increase is also on account of addition of manpower. The wage cost per unit of capacity does not show a significant increase between 2008-09 and 2009-10, the period of investigation.

xx. The domestic industry added capacities, which resulted in increase in fixed assets and consequently depreciation expenses. The deprecation cost per unit of capacity does not show a significant increase between 2008-09 and 2009-10, the period of investigation.

xxi. The increase in interest cost is commensurate with the increase in the investments made in capacity additions.

xxii. Raw materials utilization and utilities utilization should not be considered at the best achieved levels in the past for the reason that the cause of increase in the consumption is not inefficient utilization of such inputs.

xxiii. Captive input should be considered at their market values as consideration of captive input at their costs would result in discrimination between backward integrated and non integrated plants.

xxiv. Imports from subject countries have increased substantially in absolute terms, in relation to production and consumption in India. Imports are undercutting the prices of domestic industry to a significant extent. The price undercutting is in spite of low prices already kept by the domestic industry.

xxv. Price undercutting resulted in decline in selling prices of the domestic industry far beyond what is justified by the cost reductions. Further, now whereas the cost of production is increasing and the selling price is also increasing, the increase in the selling price is less than the increase in the cost

of production. Thus, the imports are depressing as also suppressing the domestic prices.

xxvi. Safeguard duty is not required to be taken into account while determining injury margin. Nor the same is applicable.

xxvii. The authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree. Such an examination establishes that the imports are undercutting the domestic prices and the imports were resulting in price depression and suppression in the market. There is no legal prescription that the authority should compare the non injurious price with net sales realization in order to determine the price effect. There are several decisions by the Designated Authority, where despite of NSR being higher than NIP, the Authority recommended anti dumping duty.

xxviii. All the producers suffered injury. In any case, the Designated Authority is required to consider "domestic industry as a whole" and not individual constituents of domestic industry.

Submissions made by the producers/exporters/importers/and other interested parties

101. The submissions made by the producers/exporters/importers/and other interested parties with regard to injury and casual link are as follows:

i. No case of material injury to the Domestic Industry has been made out by the Domestic Industry.

ii. The data for the period 2005-06 should not be taken into consideration by Designated Authority as the Rules unequivocally provides that factors other than dumping which is causing injury needs to be excluded.

iii. Production, sales, capacity utilization and profits are understated.

iv. Costing data filed by the petitioner companies show a positive improvement across a number of examined parameters.

v. Average stock has decreased almost 50% from the last year showing positive trend.

vi. Domestic Industry has in fact, prospered over the period of 2005 to date. Domestic Industry has increased their sales volume during the alleged POI to 11.3 lakh tonnes from 9.1 lakh tonnes the year before.

vii. 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.

viii. Indian demand has fluctuated with the global economic slowdown and these factors cannot be attributed to any alleged dumping.

ix. Post Period of Investigation, import prices have increased by about 22%.

x. Although the domestic sales value has shown a marginal decline in Period of Investigation, the volume of sales have steadily improved.

xi. Domestic Industry has not suffered any injury. The interest and depreciation of Domestic Industry has significantly increased over the Period of Investigation.

xii. The volume of sales of the Domestic Industry did not decline in comparison to the demand for soda ash in India.

xiii. Facts demonstrate that demand has not developed in line with the production capacity built by the domestic producers.

xiv. 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.

xv. Increase in Imports from non subject countries have increased ten times that of the subject countries imports.

xvi. Domestic Industry has shifted focus on the export market instead of catering to the domestic demand.

xvii. There has been major breakdown and closure of plants affecting the Domestic Industry's performance.

xviii. As per the AD Rules, NIP should be determined at ex-factory

level and no post manufacturing expenses such as freight should be included.

xix. Sales and capacity utilization of each producer except SCL has improved over the previous years. Only GHCL expanded their capacity but it is wrongly noted in the Preliminary Finding to be in 2007-08, whereas in the Annual report shows completion of capacity expansion in 2006-07. As per FCCB offer document issued by GHCL, the company admits to having 98% capacity utilization prior to the expansion from 600000 MT to 850000 MT. the capacity utilization usually drops at the initial stage and then recovers, which is the same in the instant case.

xx. There appears to be a disproportionate increase in depreciation over the injury period while capacities have not really expanded over the injury period except for one instance. This indicates that expenses might have been heaped on from other segments of the domestic industry's multi product companies. Therefore it ought to be verified if depreciation expenses have been isolated for Soda Ash.

xxi. Indian and overseas costs should be segregated. Interest and depreciation expenses of other segments should be prepared from the Soda Ash segment.

xxii. Annual report of Nirma Ltd for year 2008-09 shows that any decline in profits is clearly due to other factors, and cannot be attributed to the alleged dumping of the subject goods from the subject countries.

xxiii. DCW's annual report shows persistent claims since 2003-04 regarding commissioning of new machinery for Soda Ash, whereby substantial interest capitalization has occurred till as late 2009-10. DCW is still to commission the same. Substantial wastage of resources over the commissioning of the Carbon Towers and calcium Chloride plants has occurred. The rising interest expenses and decline in profitability is clearly attributable to poor management decisions and should be taken into account while determining injury.

xxiv. The safeguard duty should be taken into account while calculating the landed value from China and the same imports of soda ash from China.

xxv. NSR is higher than the NIP therefore there is no injury to the domestic industry.

xxvi. There is no causal link between injury and alleged dumping as the export was occurring at prices 20% lower than the Indian domestic selling price. Any

losses in making exports cannot be linked to petitioners.

xxvii. High inland transportation cost for supplying the domestic soda ash to the industrial users. Thus making imports into certain parts inevitably expensive.

xxviii. SCL is consistently performing poorly. GHCL's decline in performance is not due to below par returns of their textiles segment. GHCL has always made high profits from the inorganic chemicals segment, which is predominantly Soda Ash. The Domestic Industry is facing no material injury, there is increase in production, increase in sales, marginal loss and no loss.

xxix. There is no adverse effect on domestic industry due to marginal increase in inventory as compared to base year.

xxx. Even though there was price undercutting, it did not prevent the Domestic Industry from earning a higher realization. Therefore there is no price suppression.

xxxi. Capital employed of domestic industry (Net Fixed Assets and Working Capital) has shown significant increase.

xxxii. Petitioner has not provided the nature of the captive inputs being wrongly considered by the Authority. Designated Authority as per Annexure III of the Rules is bound to give effect to such factors as per the items and their transfer price recorded in the books of the Company. Therefore, the prices considered to that extent are individually considered for each constituent of the industry and not based on the market prices.

xxxiii. Gross capacity, net capacity, production, capacity utilization, domestic sales, sales value, employment, wages, productivity per day have shown an increase over the period of injury.

xxxiv. Domestic Industry has increased their sales volume during the alleged POI to 11.3 lakh tones from 9.1 lakh tones the year before.

xxxv. Post Period of Investigation, import prices have increased by about 22%. Although the domestic sales value has shown a marginal decline in Period of Investigation, the volume of sales have steadily improved.

xxxvi. Decline shown in the Market share by the applicants is imaginary and not borne out from the facts of the case as (a) the imports made by applicants have been counted twice, firstly in their sales and then as part of the imports

(b) imports made by other Indian producer have also been counted twice firstly in their sales and then as part of imports (c) SCL sales to Nirma have been counted twice firstly as part of SCL sales and then as part of Nirma Sales (d) incorrect inclusion of captive consumption to compete the total demand.

xxxvii. The Designated Authority has failed to take in to consideration competitive advantages and deficiencies of soda manufacturers-importers including Ukrainian manufacturers of the product.

xxxviii. Import of Ukrainian soda ash in to India during the POI as compared to the total imports is 0% to 4% and vis-à-vis total domestic consumption it is 0.97%.

Examination by the Authority

102. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties are addressed by the Authority as below:

i. With regard to the submission of the domestic industry that the period 2005-06 should also be included in the injury period for the purpose of injury assessment, the Authority notes that the base year for injury analysis is 2006-07 as per the initiation notification. This is in conformity with the practice followed by the Authority that the injury period covers the POI and three preceding years.

ii. With regard to the submission of the Domestic Industry 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, the Authority notes 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 implies 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 as it will not be in line with the consistent practice followed in this regard and also not in line with Annexure III to the Anti-dumping Rules governing determination of NIP. Accordingly, the inland transport cost incurred by the domestic industry has not been included in their NIP.

iii. With regard to the submission made by the opposite interested parties that domestic industry is concentrating on export market and not supplying as much product as is being demanded domestically and that there is no causal link between injury and alleged dumping as any losses in making exports cannot be linked to petitioners, the Authority notes that the losses incurred by the domestic industry on account of exports has as such been excluded and the injury has been determined on account of dumped imports in respect of only the domestic sales.

iv. As regards the submission made by the opposing interested parties that the safeguard duty should be taken into account while calculating the landed value from China, the Authority notes that there is no provision under the Rules to take the safeguard duty into account while determining injury margin.

v. With regard to the submission made by the opposing interested parties that NSR is higher than the NIP therefore there is no injury to the domestic industry, the Authority notes that there is no legal provision that the Authority should compare the non injurious price with net sales realization in order to determine the price effect. Furthermore, the Authority notes that NSR is not the only parameter to decide the imposition of anti-dumping duties. The other price effects of imports, such as price suppression and price depression, have been adequately examined by the Authority which shows injury to the Domestic Industry.

vi. With regard to the submission made by the opposing interested parties that post period of investigation, import prices have increased by about 22% and although the domestic sales value has shown a marginal decline in Period of Investigation, the volume of sales have steadily improved, the Authority notes that post POI data is not relevant to the present investigation.

vii. As regards the submission that decline shown in the market share by the applicants is imaginary and not borne out from the facts of the case as (a) the imports made by applicants have been counted twice, firstly in their sales and then as part of the imports (b) imports made by other Indian producer have also been counted twice firstly in their sales and then as part of imports (c) SCL sales to Nirma have been counted twice firstly as part of SCL sales and then as part of Nirma Sales (d) incorrect inclusion of captive consumption to compete the total demand, the Authority notes that the contentions are incorrect and baseless. The Authority notes that there is no duplication in the calculation of the sales and import figures.

viii. As regards the submission that increase in Imports from non-subject countries have increased ten times then that of the subject countries, the Authority notes that imports from the non-subject countries are below de minimums level.

ix. As regards the submission that the sales and capacity utilization of each producer except SCL has improved over the previous years, the Authority notes that the analysis of the injury parameters of the domestic industry as a whole is relevant to be examined and not in piecemeal.

x. As regards the submission that GHCL expanded their capacity, but it is wrongly noted in the Preliminary Finding to be in 2007-08, whereas in the Annual report shows completion of capacity expansion in 2006-07, the Authority notes that the capacity was added at the fag end of the period 2006-07 and was effective during the period 2007-08.

xi. The interested parties submitted that the annual report of Nirma Ltd for year 2008-09 shows that any decline in profits is clearly due to other factors, and cannot be attributed to the alleged dumping of the subject goods from the subject countries. They further submitted that DCW's annual report shows persistent claims since 2003-04 regarding commissioning of new machinery for Soda Ash, whereby substantial interest capitalization has occurred till as late 2009-10, DCW is still to commission the same. Substantial wastage of resources over the commissioning of the Carbon Towers and calcium Chloride plants has occurred. The rising interest expenses and decline in profitability is clearly attributable to poor management decisions and should be taken into account while determining injury. In respect of the above stated submissions, the Authority notes that injury due to other factors has already been excluded while analyzing the data concerning injury to the domestic industry.

103. As regards the submission concerning cumulative assessment of injury, the Authority notes that Annexure II Para (iii) of the Anti-dumping Rules provides that in case imports of the product under consideration from more than one country are being simultaneously subjected to anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

i. 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

ii. 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.

104. In this regard the Authority observes that:

i. the margins of dumping from each of the subject countries are more than the limits prescribed above;

ii. the volume of imports from each of the subject countries is more than the limits prescribed;

iii. 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:

a. 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.

b. 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.

c. 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.

d. Volume of imports from each of the subject countries is significant.

e. Consumers make purchase decision on the basis of prices offered by various suppliers.

105. 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. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above.

106. 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.

107. 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."*

108. 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

109. 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:

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Imports from Subject Countries	MT	255198	319,340	351475	531119
2	Imports from other countries	MT	5,059	28,127	7,080	24,837

3	Sales of domestic industry	MT	1145918	1216759	1184755	1203057
4	Other Indian producers	MT	731010	600239	615044	675481
5	Assessed Demand	MT	2137185	2164465	2158255	2434493

110. 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%.

C. Volume Effects of Dumped Imports

Import Volume and Market Share

111. 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:

Particulars	2006-07	2007-08	2008-09	2009-10
Imports in absolute terms				
a. China	44892	37690	149726	203199
b. EU	124186	142161	63037	108026
c. KENYA	85797	115520	117572	106585
d. Iran	-	13755	14098	20800
e. Pakistan	-	-	231	36115
f. USA	123	629	830	32679
g. Ukraine	200	9585	5982	23715
Subject countries	255198	319340	351475	531119
Other countries	5059	28127	7080	24837
Total Imports	260257	347467	358555	555956
Trend in imports from subject countries	100	125	137	208
% Share in imports				
a. China	17	11	42	37
b. EU	48	41	18	19
c. KENYA	33	33	33	19
d. Iran	-	4	4	4

e. Pakistan	-	-	-	6
f. USA	-	-	-	6
g. Ukraine	0	3	2	4
Subject countries	98	92	98	96
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	2,137,185	2,164,465	2,158,255	2,434,493
Trend in India	100	101	101	114
Share in demand				
a. Domestic Industry	53.62	56.21	54.88	49.41
b. Other Indian producers	34.2	27.73	28.5	27.75
c. Indian Industry	87.82	83.94	83.38	77.16
d. Subject countries	11.94	14.75	16.29	21.82
e. Other countries	0.24	1.3	0.33	1.02

112. The Authority notes that:

i. 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.

ii. 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.

iii. 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.

iv. 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%.

v. 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.

D. <u>Price effect of imports</u>

113. 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.

<u>Price undercutting</u>

114. 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 after excluding freight if any from sea port to inland port, 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.

115. 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.

SN	Country/exporter	Landed Price	Net selling price	Price undercutting		
		Rs./MT	Rs./MT	Rs./MT	% range	%
1	China PR	***	***	***	10-20	***
2	EU	***	***	***	5-15	***

3	KENYA	***	***	***	10-20	***
4	Iran	***	***	***	10-20	***
5	Pakistan	***	***	***	0-10	***
6	USA	***	***	***	15-25	***
7	Ukraine	***	***	***	5-15	***
8	Subject countries	10,823	12349	1526	10-20	12.36

116. The Authority notes 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-underselling

117. From the table given below, the Authority notes that there is positive price underselling effect:

SN	Country/exporter	Landed Price	Non Injurious Price	Price underselling		
		Rs./MT	Rs./MT	Rs./MT	% range	%
1	China PR	***	***	***	10-20	***
2	EU	***	***	***	0-10	***
3	KENYA	***	***	***	10-20	***
4	Iran	***	***	***	10-20	***
5	Pakistan	***	***	***	0-10	***
6	USA	***	***	***	10-20	***
7	Ukraine	***	***	***	0-10	***
8	Subject countries	10,823	***	***	10-20	***

Price suppression/depression

118. 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.

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Cost of sales	Rs./MT	***	***	***	***
	Index		100	128	175	161
2	Selling price	Rs./MT	***	***	***	***
	Index		100	115	151	134

119. 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 as 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, the Authority notes, that no price depression is noticed during the injury period.

E. Economic parameters of the domestic industry

120. Annexure II to the Anti-dumping 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 Anti-dumping 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.

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

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

Particulars	2006-07	2007-08	2008-09	2009-10
Capacity	1,711,000	1,961,000	1,961,000	1,961,000
Capacity Adjusted	1,533,470	1,928,223	1,954,973	1,866,000
Production Actual	1,180,451	1,282,596	1,286,473	1,349,725
Capacity Utilisation-Actual	68.99%	65.41%	65.60%	68.83%
Capacity Utilisation-Adjusted	76.98%	66.52%	65.81%	72.33%
Production Adjusted	1,319,020	1,315,373	1,292,501	1,403,269

122. 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 and 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 4.65% in POI as compared to the base year. The Authority notes further that however, demand for the product increased by 297308 MT, the production of the domestic industry increased only by 169274 MT.

ii. <u>Sales of Domestic Industry</u>

Particulars	Unit	2006-07	2007-08	2008-09	2009-10
Domestic Sales	MT	1145918	1216759	1184655	1203057

123. The Authority notes 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 were higher than the base year, the same was lower than the sales made in 2007-08. The Authority further 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, has also examined the sales of the domestic industry after excluding captive consumption. The captive consumption of the domestic industry and sales excluding captive consumption are 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	154,356	149,226	146,517	110,557
Sales lost due to other factors	138569	32,777	6,027	53,544

124. The Authority notes 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 which has not been disputed by the domestic industry. 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 volume 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	1,284,488	1,249,536	1,190,683	1,256,600

iii. <u>Profitability</u>

125. 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.

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Sales	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	161
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	90
8	Cash Profit	Rs. Lacs	***	***	***	***
	Index		100	97	101	85
9	Capital employed	Rs. Lacs	***	***	***	***
	Index		100	121	128	116
10	Return on investment	Rs. Lacs	***	***	***	***
	Index		100	80	85	78

126. The Authority notes that:

i. Per unit profits of the domestic industry in respect of production and sale in the domestic market has declined significantly over the injury period.

ii. 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 the immediate preceding year and the selling price of the

domestic industry also declined.

iii. 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.

iv. Profit before tax on domestic sales declined significantly over the injury period.

v. 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.

vi. Cash profit earned by the domestic industry during POI has declined significantly.

127. The Authority notes that 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. The Authority notes that the examination of the verified information based on the Cost Audit Report of the constituents of the domestic industry shows as follows:

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Wages	Rs. Lacs	***	***	***	***
	Index		100	144	157	159
	Wages	Rs/MT	***	***	***	***
	Index		100	133	144	139
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

a. Wages: The Authority notes that 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.

b. 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, has gone up steeply in 2007-08 as compared to the base year. The Authority notes that 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.

c. Interest: The Authority notes 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. The Authority further notes that the interest cost as a percentage of capital employed has not shown significant increase between 2008-09 and 2009-10.

d. 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:-

128. The data relating to Inventory of the subject goods are shown in the following table:

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Opening stock	MT	***	***	***	***
2	Closing Stock	MT	***	***	***	***
3	Average Stock	MT	***	***	***	***
4	Trend		100	126	243	227

5	Stock per day sales	Days	***	***	***	***
6	Trend		100	118	231	215
7	Inventory value	Rs.Lacs	***	***	***	***
8	Trend		100	160	420	361
9	Exports by Domestic Industry	MT	***	***	***	***
10	Trend		100	77	139	303

129. 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

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

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Number of employees	No.	***	***	***	***
2	Trend		100	102	107	108
3	Wages	Rs. Lacs	***	***	***	***
4	Trend		100	144	157	159

131. The Authority notes that the number of employees as well as wages has increased in POI as compared to the base year.

vi. Productivity

132. Data relating to productivity show as follows:

SN	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	***	***	***	***

	Production per employee	Index	100	106	102	106

133. 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

134. 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 are above de mimimis and significant.

viii. Growth

135. 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 Authority further notes that the growth in cash profit, profit and return on investment has been negative in the POI.

SN	Particulars	Unit	2007-08	2008-09	2009-10
1	Growth in Production	%	8.65	0.30	4.92
2	Growth in sales	%	6.18	(2.64)	1.55
3	Growth in Capacity utilization	%	(5.20)	0.30	4.92
4	Growth in selling price	%	15.38	30.88	(11.46)
5	Growth in cost of sales	%	27.78	37.34	(8.44)
6	Growth in profit & loss	%	(14.36)	7.79	(25.19)
7	Growth in cash profit	%	(2.89)	4.44	(16.12)
8	Growth in ROI	%	(20.34)	7.23	(9.16)

i. Ability to raise funds

136. The Authority notes that the profitability of the domestic industry has declined during POI. However, the Authority notes that 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.

Comments on the Disclosure Statement by the Interested Parties

137. The following are the comments received post-disclosure from various interested parties:

Comments of Government of Ukraine

i. The Authority should provide sufficient time for the parties to comment on the disclosure statement.

ii. As a part of the investigation Indian party provided negative conclusions about the recognition of Ukraine as a market economy country, without taking in to account the materials furnished by Ukraine and without providing opportunity to provide further explanations.

iii. There are no evidences to support material injury to the domestic industry due to positive and growing trends in production, sales, capacity utilization, production per day and production per employee, exports, profit and wages.

M.S. Pothal & Associates on behalf of M/s Olympia Chemicals Ltd, Pakistan and importers namely M/s Sinochem Impex Ltd. M/s Chempex International M/s Mahawar Iron Stores

iv. As per customs valuation rules, customs has determined assessable value for duty collection purpose after adding freight and insurance cost from port of entry to Inland Container Depot (ICD)/Container Freight Station (CFS) and the landed value in the case of imports from Olympia should be determined as per the practice being followed by the Customs while calculating injury margin.

v. No injury to domestic industry since NSR is more than NIP. Further, the selling price of domestic industry, although showed some decline in POI, it was still above the NIP, thus, showing no injury. Moreover, in a situation, wherein domestic industry has realized selling price above non injurious price then decline in market share cannot be an indicator of injury. In other words, although profits of

domestic industry have declined but it is still above the reasonable profits as determined by the Authority, thus showing no injury on account of profits, cash flow and return on investments.

vi. Saurashtra Chemicals Ltd. (SCL) data should be excluded while conducting injury examination as injury to SCL was on account of other factors.

Tata Chemicals Ltd on behalf of Tata Chemicals Magadi Ltd, Kenya

vii. The company does not resort to dumping; nevertheless the company offers price undertaking to the Authority as per the AD Rules.

viii. Determination of dumping margin by the Authority at the level of *** is not acceptable.

ix. Computation of the cost of production/sales of the subject goods at ex-factory level by the authority by taking the entire expenses of the company after adjusting the sale proceeds of the by product and by rejecting the claim only because same seems to be on higher side as compared to the other expenses allocated on the subject goods, has no legal basis.

x. The company had extended its willingness to offer verification of information, including on the spot verification, while filing its questionnaire response. Once company has offered itself to verification, the question of convenience for verification or specific invitation by the company does not arise.

xi. As regards partial data/details furnished, the same is also not factually correct. The company has provided all such information that has been demanded by the authority.

xii. As regards determination of export price, the approach adopted by the Authority appears to be relying upon what is more adverse and penalizing treatment against the company. In a situation where there was apparent difference in expenses reported at different places and particularly with the expenses reported in Appendix 2 and 3A are comparable and significantly different from the expenses reported in Appendix 8A, it follows that the authority is

required to point out such difference through deficiency/ supplementary information.

Hind Silicates Pvt Ltd

xiii. Imposition of duty will enable the domestic industry to form a cartel and dictate price of soda ash, which will affect the interest of the small units.

CAPEXIL

xiv. Domestic producers have not increased their production of soda ash in commensurate with the demand in the domestic market, thereby artificially creating a scarcity in the market by eliminating foreign competition and increasing price.

xv. Disparity of two years between the period of investigation and imposition of duty is not justified.

xvi. Imposition of duty will make user industry uncompetitive in the domestic market.

Lakshmikumaran & Sridharan on behalf of Detergent Manufacturers Association of India(DMAI)

xvii. The submissions made by the Detergent Manufacturers Association of India (DMAI) should be considered by the Authority.

xviii. The present investigation was initiated on 20th August 2010. One year time period lapsed on 19th August 2011. Extension should have been taken before the expiry of mandated one year period and the Authority should have justified such extension.

xix. GHCL, Saukem and Nirma should be excluded from the standing of 'domestic industry' and only DCW should be considered eligible for the test of 'domestic industry' under Rule 2(b). While determining whether or not DCW can be termed to be the sole constituent of the domestic industry, DGAD shall exercise his discretion granted under Rule 2(b) and decide whether DCW can be reasonably said to represent the domestic industry in view of insignificant quantity of production accounted by it.

xx. There exists significant price difference between light soda ash and dense soda ash and as a result, both the grades should have been compared separately.

xxi. The basis of computation of normal value by the authority is same as that considered by domestic industry in its application. Even then, there is a significant difference between the two computations. Authority should re-examine the same before issuing the final findings.

xxii. Net Sales Realization is higher than NIP, implying absence of injury to the domestic industry.

xxiii. DGAD should not consider freight as a factor in calculation of NIP.

xxiv. Post POI, import prices have increased by about 22% and that same should be considered as relevant for determining injury to the domestic industry.

xxv. The performance of the domestic industry is cyclic in nature and hence the same cannot be termed as performance has 'declined significantly over the injury period'. The decline in profits in any case was not significant but only marginal. Domestic industry is still earning healthy cash profits and return on investments is still high. Profits have not turned into losses.

xxvi. The data of Saurashtra Chemicals during POI has been taken by Authority as a part of cumulative data. However, where performance of one is significantly distorting the entire cumulative performance of domestic industry, then it is incumbent on DGAD to examine the parameters of each of the domestic producers separately.

xxvii. The domestic industry is seeking trade remedy measures in a bid to increase its supernormal profits at the cost of small and medium sized enterprises.

xxviii. DGAD has not analysed the effect of safeguard duty imposition on Soda Ash during POI. The fact that safeguards duty on China was in force for the entire POI means that there was no injury caused from Chinese imports to domestic industry.

xxix. Majority of detergent manufacturer in India are small and medium sized enterprises and DGAD should not allow a few large Indian

multinational companies to import materials from their related companies and force all small and medium enterprises to be left at the mercy of those large Indian MNCs. Authority should consider the interest of end-users before issuing final findings.

Economic Law Practices (ELP) on behalf of the All India Glass Manufacturers Federation, M/s, Hindustan Unilever Limited (HUL) and Solvay.

xxx. The Disclosure Statement issued by the Authority has not acknowledged the participation of AIGMF. The submissions made by them should be taken in the final findings by the authority.

xxxi. The economist's perspective of the total scenario of initiation and the process of imposition of ADD submitted by AIGMF has not been considered by the Authority.

xxxii. Authority's conclusion on the issue of product under consideration is incorrect. Both dense soda ash and light soda ash are technically different and also different on account of production process, pricing, functions and uses and should be treated so by the Authority. Similarly, Natural and Synthetic Soda Ash are also different.

xxxiii. In terms of Rule 2(b) of Anti-dumping Rules the Designated Authority is mandated to exercise discretion in a just, reasonable manner and non-arbitrary manner. In the factual matrix of the case at hand, the manner in which the present finding has been arrived on this issue is discriminatory and inconsistent both in terms of the facts and law.

xxxiv. As regards the issue relating to domestic industry, except DCW non can constitute domestic industry under the Rules. Further, DCW constituting merely 4% of domestic production also can not represent a major proportion of domestic production for constituting domestic industry under the Rules.

xxxv. Authority has concealed normal value for specific countries without giving reasons. Such figures ought to be disclosed as they do not pertain to any particular exporters/producer. Moreover, the

methodology adopted by the Authority for arriving at the figures has not been explained properly.

xxxvi. On the issue of cartelization, it is pertinent to note that the Director General, Competition Commission of India has already initiated an investigation against cartelisation of soda ash. Designated Authority should take cognizance of this fact and accordingly recommend the duties or refrain from recommending any duties.

xxxvii. Period of Investigation for the present investigation was a time of global meltdown and economic recession. As a result, the demand for Soda Ash drastically declined which resulted in a worldwide decrease of the prices for this commodity. As a result, the fact that the global prices of Soda Ash declined in the period of investigation renders impossible a reliable injury analysis.

xxxviii. The Authority has rightly rejected the Petitioners' request to include inland transport cost in the landed value of the subject goods.

xxxix. The spirit of the Anti-Dumping Rules promulgates an equitable implementation of duties in order to ensure there is parity and no elements of the market are given an undue advantage. In the event that safeguard duties are not considered while calculating landed value, then injury margin shall be non-inclusive of such safeguard duties, which implies that in the face of a fixed duty being levied (as is proposed by the Provisional recommendation), the imports shall have an excessive remedial measure applicable – anti-dumping as well as safeguard.

xl. If the domestic industry is already realizing sales above the fair selling price that would apparently be non-injurious, then no injury can purport to exist. In the event that the Net sales realisation of the domestic industry is above the Non-injurious price, no duty should be levied since there is no case of injury.

xli. It ought to be noted that there is a difference of over twenty two months between the last month of the period of investigation and the final date for issuance of Final Findings. Therefore, if the Authority chooses to recommend any duties, they shall be based on figures that are nearly two years old at the time of imposition of duties. In view of this the Authority should consider post POI

information, which shows marked improvement in the performance of the domestic industry, for the injury analysis.

xlii. The Hon'ble Designated Authority is requested to change the fixed duties to reference price duties. If any duties must be levied at all, it is humbly prayed that these duties be levied in reference price form and not in fixed duty form.

xliii. The definition of product under consideration is not accurate and the difference between light and dense soda ash as well as natural and synthetic soda ash should be acknowledged by the Hon'ble Designated Authority and all calculations should be done accordingly.

xliv. The Domestic Industry has not suffered any injury in the period of investigation and the period subsequent to the period of investigation. Any injury to the Domestic Industry can be attributed to other factors such as, geographical location of the domestic industry, exports of the Domestic Industry poor performance of GHCL's textile division and poor performance of Saurashtra Chemicals Ltd. on account of its own operational and technical incapacities.

xlv. China's normal value ought to be recalculated since a large proportion of Chinese producers employ the HOU process, which has a contrasting cost structure to the Solvay process

xlvi. Questionnaire-response was filed for Solvay Sodi AD and for Solvay Chemicals International ("SCI"). While the Authority has accepted the response of Tata Chemicals Magadi Ltd despite furnishing of partial information by them, the information furnished by Solvay has not been accepted by the Authority to determine the individual dumping margin.

xlvii. The rejection of the information supplied by Solvay on the grounds that the "export chain is not complete" is contrary to the principles of WTO law.

Trilegal on behalf of ICI Pakistan

xlviii. A period of 2 ½ working days is grossly insufficient in providing any meaningful comments on the Disclosure Statement. Therefore, an extension of 7 days for the submission of comments on Disclosure Statement i.e. by February 22, 2012 may be given by the Authority.

APJ-SLG on behalf of India Glass Manufacturers' Associations and Saint Gobain Glass India Ltd.

xlix. The proceedings in relation to the present investigations are presently sub-judice. The stay order dated 01.02.2012 of Hon'ble Division Bench of Madras High Court is a restrictive stay order and does not fully stay the order dated 23.12.2011. In view thereof, the observations of the Designated Authority in disclosure statement while reaching conclusions on scope of Rule 2(b) by placing reliance on jurisprudence from other countries and practices of other authorities is in total disregard to the decision of the Ld. Single Judge which is binding on the Designated Authority as this portion of the order of single judge has not been stayed by the Division Bench by its order dated 01.02.2012.

l. The initiation is bad in law and contrary to the requirements of Rule 2(b) and Rule 5. The amendment dated 01.12.2011 has no bearing on the interpretation of Rule 2(b). In any case, the amendment made in Rule 2(b) on 01.12.2011 is not notified with retrospective effect.

li. The test of quantum of imports is not material or applicable when producers are related to exporters. Assuming but not admitting that the Designated Authority has discretion even for excepted producers, even then, the quantum of imports has no nexus in a situation when relationship with exporter itself is a ground to exclude them from the scope of domestic industry.

lii. The conclusions reached by the Designated Authority in relation to product under consideration, like article and Rule 2(b) are clearly contrary to law and without examination of the submissions made from time to time.

liii. Excessive confidentiality has been allowed by the Authority to the applicants by treating all material submitted by them as confidential, merely on the basis of the applicants asking that it be treated confidential in the name of confidentiality.

liv. The conclusion reached by the Authority that disclosure of aggregated/consolidated information of all the applicants would enable the interested party to derive the confidential constituent data is without any basis.

lv. A public file without an index and proper pagination cannot be considered as adequate compliance of the specific rules and principles of natural justice.

lvi. A lot of new facts have crept in the disclosure statement. Reference in disclosure statement to information from public source without disclosing its source, reference to emails without placing any non-confidential versions etc. has resulted in breach of natural justice.

lvii. The full methodology for normal value and export price are not disclosed in the disclosure statement. Further, the methodology adopted and basis of determination of dumping margin for non-cooperating exporters is not disclosed.

lviii. The Domestic Industry is able to realize a price which is more than the Non Injurious price determined by the Authority and therefore causal link is absent and the domestic industry does not suffer injury.

lix. Discriminatory methodology has been adopted by the Authority for calculating the Normal value for Non-cooperative exporters. The exporter from Kenya i.e Tata chemicals Magadi Limited who is related to domestic producer should have been treated as non-cooperative on account of submission of partial information and since they did not invite the Authority for the on the spot verification.

TPM Solicitors & Consultants on behalf of the domestic industry

i. The Authority is vested with the discretion to include or exclude, on merits, such producers who are either related to the exporters/importers of the alleged dumped article or are themselves

importers of subject product from subject countries within the scope of domestic industry under Rule 2(b).

ii. The Non injurious price determined is too low. Raw materials utilization and utilities utilization should not be considered at the best achieved levels in the past.

iii. The principles of fair comparison have not been applied in determining injury margin. The export price is required to be compared with the non injurious price at ex-factory level. Difference in freight between imported product and domestic product affects price comparability. Therefore, the authority should add freight paid/payable by the domestic industry to the non injurious price before comparing with landed price of imports.

iv. Comparison of non injurious price of the domestic industry without including associated freight with landed price of imports after adding associated freights will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry. Even if customs duties have not been paid, the authority adds the basic customs duty before comparing with non injurious price. Such being the case, the inland freight being incurred in domestic product is also required to be added.

v. With regard to Pakistan, the export price has not been reduced for certain benefits such as inland freight assistance on exports of soda ash, full and final 1% withholding tax at the time of bill discounting/proceeds realization as compared to 37% income tax levied on taxable income from local sales, concessionary interest rate ranging from 7.5% to 8.5% per annum to exporters on working capital lines as against 14% to 15% per annum to local sellers and zero rated sales tax on export sales. These benefits constitute countervailable subsidies and the same cannot be used to adopt a higher export price.

vi. Another application for imposition of duty in respect of imports from Turkey and Russia has been filed which shows that the injury margin in the current period is significantly high because of significant increase in the cost of production.

vii. The cost of production of the product under consideration has significantly increased after the investigation period, the benchmark form of duty shall make the measures redundant and therefore fixed form of duty should be levied. Further, rupee has depreciated significantly and therefore, the definitive duties should be expressed in US$.

Examination by the Authority

138. The post disclosure comments/submissions made by the interested parties, including the domestic industry, are mostly reiterations of their earlier submissions, which have already been addressed appropriately and adequately by the Authority in the respective areas of this final finding. However, the submissions which are made afresh are addressed by the Authority hereunder:

a. As regards the submission that sufficient time should be provided to the interested parties to comment on the disclosure statement, the Authority notes that reasonable period of time was provided for the purpose, keeping in view the time period prescribed under the Rules for issuance of the final findings and the orders dated 1st February, 2012 of the Hon'ble Division Bench of the Madras High Court.

b. As regards the submission made by M/s Tata Chemicals Magadi Ltd, that the company does not resort to dumping, the dumping margin/injury margin determined by the Authority for the company are self explanatory.

c. As regards the price undertaking offered by M/s Tata Chemicals Magadi Ltd, the Authority notes that in view of practical difficulties in monitoring price undertakings, the Authority does not consider it appropriate to accept their offer of price undertaking.

d. As regards the submission made by M/s Tata Chemicals Magadi Ltd, that the determination of dumping margin by the Authority at the level of ***% is not acceptable to them, the Authority notes that the methodology adopted for determining dumping margin is well explained in this finding. Moreover, the relevant information pertaining to the company was disclosed to them at the stage of disclosure statement.

As regards the submission made by M/s Tata Chemicals Magadi Ltd that that once company has offered itself to verification at the stage

of filing questionnaire response, the question of convenience for verification or specific invitation by the company does not arise, the Authority notes that the company was specifically requested to indicate their concurrence and convenience for the on the spot verification during January, 2012, but the company did not respond. Moreover, under the WTO Agreement specific consent of the respondent exporting member is required for verification purpose.

e. As regards the submission made by M/s Tata Chemicals Magadi Ltd that the company provided all the information that has been demanded by the authority, the Authority notes that the company vide their email dated 17th January, 2012 had assured that the balance required information will be provided by the next day, however, the company did not provide the same.

f. As regards the submission made by M/s Tata Chemicals Magadi Ltd on the approach adopted by the Authority in the determination of export price and computation of the cost of production/sales of the subject goods at ex-factory level, the Authority notes that the methodology adopted for determining the Normal value and Export price in the case of Tata Chemicals Magadi Ltd has been clearly spelt out in para 65 and 72 of the Preliminary Findings dated 2nd September, 2011. The exporter has not clarified the difference in the figures reported in Appendix-3A and 8A even in its comments on disclosure statement. Further, the exporter has not submitted all the information sought by the Authority for deciding the issue of 'start up expenses'. Under the above circumstances, the Authority has retained the Normal value and Export price, determined in the preliminary findings, for this final findings as well.

g. As regards the submission that disparity of two years between the period of investigation and imposition of duty is not justified and therefore, if the Authority chooses to recommend any duties, the Authority should consider post POI information, which shows marked improvement in the performance of the domestic industry, for the injury analysis, the Authority notes that post-POI information/ data is not relevant for the present investigation.

h. As regards the submission that the economist's perspective of the total scenario of initiation and the process of imposition of ADD submitted by AIGMF has not been considered by the Authority, the Authority notes that the claimed post-POI improved performance of the domestic industry is not relevant for determining the existence of dumping and material injury to the domestic industry during the POI. While there may be a decrease in the global demand for soda ash during POI, the demand for soda ash in India has increased during the POI. The fact is that the domestic industry was not in a position to improve its profitability during the POI in spite of increase in demand.

i. While the opposite interested parties have requested the Authority to change the form of duty from fixed price to reference price, the domestic industry has submitted that the cost of production of the product under consideration has significantly increased after the investigation period and therefore the benchmark form of duty shall make the antidumping measures redundant. The domestic industry has further requested for imposition of fixed form of duty expressed in US$, since Indian Rupee has depreciated significantly. The Authority notes that there is merit in the submission made by the domestic industry.

j. As regards submission made by certain interested parties concerning grant of individual dumping margin to Tata Chemicals Magadi Ltd, the Authority notes that the company had submitted exporter's questionnaire response to the Authority in the form and manner prescribed. However, after the issue of preliminary findings, they had requested the Authority to consider their cost of production for making OCT test and accordingly determine the normal value. The Authority sought clarification on allocation of large amounts of expenses towards 'start up expenses'. However, the data/clarification provided by them was not found to be complete. Under the circumstances, the Authority has proceeded with the investigation based on the information available and

retained the ‘Normal value’ and ‘Export price as determined in the Preliminary Findings, for this final finding as well.

k. As regards the submission that the stay order dated 01.02.2012 granted by the Hon’ble Division Bench of Madras High Court is a restrictive one, the Authority notes that the said order is self explanatory and needs no interpretation.

l. As regards the submission that the amendment to the AD Rules dated 01.12.2011 is not retrospective and has no bearing on the interpretation of Rule 2(b), the Authority notes that the present final findings are being issued by the Authority in terms of the order dated 01.02.2012 passed by the Hon’ble Division Bench of Madras High Court. Moreover, the amendment dated 1st December, 2011, made to the Anti-dumping Rules, whereby the word ‘only’ has been deleted, further clarifies the discretionary power already vested in the Designated Authority.

m. As regards the submission that a lot of new facts have crept in the disclosure statement, the Authority notes that the investigation brings in new facts as it progresses, nevertheless, the non-confidential version of the information relied upon by the Authority has been made available in the public file.

n. As regards the submission that full methodology for normal value and export price are not disclosed in the disclosure statement, the Authority notes that disclosure of information, to the extent necessary under the Rules, has been made to the interested parties.

o. As regards the submission made by the domestic industry that the Non injurious price determined is too low and the raw materials’ utilization and utilities’ utilization should not be considered at the best achieved levels in the past, the Authority notes that it has considered the best utilisation of raw materials, utilities and capacity utilisation in terms of Para 4(i), (ii) and (iii) of Annexure III to the AD Rules. Further, the Authority has determined the ‘Capital Employed’ by considering the ‘net fixed assets’ in terms of Para 4 (viii) of Annexure III to the AD Rules. The Authority has considered the captive inputs at their cost as recorded in the books of accounts

of the domestic industry for the POI. In addition the net fixed assets of captive inputs have also been considered for providing return. The Authority has determined the weighted average NIP for the domestic industry as a whole in terms of para 4(x) of Annexure III to the AD Rules by considering the respective share of domestic production of the domestic producers.

p. The domestic industry has submitted that the principles of fair comparison have not been applied in determining injury margin and the Authority should add freight paid/payable by the domestic industry to the non injurious price before comparing with landed price of imports. The domestic industry has further submitted that comparison of non injurious price of the domestic industry without including associated freight with landed price of imports after adding associated freights will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry. In this regard, the Authority notes that the determination of injury margin by the Authority is consistent with the law and practice. The Authority has, as a matter of practice, not considered freight cost of the domestic industry for determining injury margin.

q. With regard to the submission made by the domestic industry in respect of countervailable benefits received by the exporters of Pakistan, while determining export price, the Authority notes that countervailable benefits received by an exporter are a subject matter of subsidy investigations and beyond the scope of the present investigation.

r. As regards the submission made by the domestic industry that another application for imposition of duty in respect of imports from Turkey and Russia has been filed with the Authority shows that the injury margin in the current period is significantly high because of significant increase in the cost of production of the subject goods, the Authority notes that only the factors prevailing during the investigation period are relevant.

s. M/s Olympia, Pakistan has submitted that as per customs valuation rules, customs has determined assessable value for duty collection purpose, after adding freight and insurance cost from port of entry

to Inland Container Depot (ICD)/Container Freight Station (CFS) and the landed value in the case of imports from Olympia should be determined as per the practice being followed by the Customs while calculating injury margin. The Authority notes that similar argument has also been made by the domestic industry for the determination of NIP. The Authority further notes that as per the information available Attari Railway Station and Attari Road are the two Customs ports of entry on the Indo-Pak border. The Authority notes 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. The Authority therefore holds that the inland transport cost incurred by any interested party in India should not be included in the NIP/landed value/injury margin calculations.

F. Conclusion on material injury

139. In view of the above, the Authority notes 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 and the imports of the subject goods from subject countries are significantly undercutting the prices of domestic industry. The Authority further notes that the imports are causing significant price suppression and 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 material injury.

G. Other Known Factors & Causal Link

140. 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 by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry, as follows:-

(a) Volume and prices of imports from third countries

141. The Authority notes that 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 of demand and changes in the pattern of consumption.

142. The Authority notes that 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. The Authority notes the submission that the injury to the domestic industry is due to excessive capacity. The Authority however notes that the domestic industry is unable to utilize its capacity to the extent of available demand due to dumped imports.

(c) Developments in technology:

143. The Authority notes that 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

144. The Authority notes that the subject goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic production and sales. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

(e) Export performance of the domestic industry:

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

SN	Particulars	Unit	2006-07	2007-08	2008-09	2009-10
1	Exports sales	Rs. Lacs	***	***	***	***
2	Export Profit and loss	Rs. Lacs	***	***	***	***

3	Loss on account of	Rs. Lacs	***	***	***	***
4	Exports		(100)	(89)	(130)	(145)

146. The Authority notes that the loss to the domestic industry on account of exports increased steeply during POI. The domestic industry submitted that had there been no dumped imports, it could have sold the entire quantity of exports in the domestic market and could have avoided the loss and even made some profit. The Authority notes that this non attribution factor concerning exports is not relevant since, in any case the Authority has excluded the losses on account of exports while determining injury to the domestic industry on account of dumped imports.

(f) Productivity of the Domestic Industry

147. The Authority notes that the 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.

148. 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.

149. Thus the Authority therefore concludes that the domestic industry suffered material injury due to dumped imports.

H. Magnitude of Injury and Injury Margin

Injury Margin

150. 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:-

No.	Country Landed	Landed Price	Non injurious price	Injury Margin	Injury Margin	
		US $/MT	US $/MT	US $/MT	%	Range %
1	China PR	***	***	***	***	10-20
2	EU	***	***	***	***	0-10
3	Iran	***	***	***	***	10-20
4	Kenya					
a	Magadi Soda Co Ltd(renamed as Tata Chemicals Magadi Ltd)	***	***	***	***	5-15
b	Non-cooperative Exporters, Kenya	***	***	***	***	10-20
5	USA	***	***	***	***	10-20
6	Ukraine	***	***	***	***	5-15
7	Pakistan	***	***	***	***	
a	ICI Pakistan Ltd	***	***	***	***	0-10
b	Olympia Chemicals Ltd, Pakistan	***	***	***	***	0-10
c	Non-cooperative Exporters, Pakistan	***	***	***	***	0-10

I. Conclusions

151. 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.

J. Indian industry's interest & other issues:

152. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

K. Recommendation

153. The Authority notes that the investigation was initiated and it was notified to all known interested parties. Adequate opportunity was also 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 investigation into dumping, injury and the causal link thereof in terms of the Anti-dumping Rules and having 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 definitive Anti-dumping duty is required to offset dumping and injury.

154. Having regard to the lesser duty Rule followed by the Authority, the Authority recommends imposition of definitive 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, anti-dumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed by the Central Government, on all imports of subject goods, originating in or exported from the subject countries.

Duty Table

1	2	3	4	5	6	7	8	9	10
Sl. No.	Sub Heading of Tariff item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Duty Amount	Unit	Currency
1	2836.20	Disodium Carbonate (Soda Ash)	China PR	China PR	Any	Any	36.26	MT	US $
2	2836.20	Disodium Carbonate (Soda Ash)	China PR	Any	Any	Any	36.26	MT	US $
3	2836.20	Disodium Carbonate (Soda Ash)	Any	China PR	Any	Any	36.26	MT	US $
4	2836.20	Disodium Carbonate (Soda Ash)	Ukraine	Ukraine	Any	Any	15.64	MT	US $
5	2836.20	Disodium Carbonate (Soda Ash)	Ukraine	Any	Any	Any	15.64	MT	US $
6	2836.20	Disodium Carbonate (Soda Ash)	Any	Ukraine	Any	Any	15.64	MT	US $
7	2836.20	Disodium Carbonate (Soda Ash)	European Union	European Union	Any	Any	9.17	MT	US $
8	2836.20	Disodium Carbonate (Soda Ash)	European Union	Any	Any	Any	9.17	MT	US $
9	2836.20	Disodium Carbonate (Soda Ash)	Any	European Union	Any	Any	9.17	MT	US $

10	2836.20	Disodium Carbonate (Soda Ash)	Iran	Iran	Any	Any	28.86	MT	US $
11	2836.20	Disodium Carbonate (Soda Ash)	Iran	Any	Any	Any	28.86	MT	US $
12	2836.20	Disodium Carbonate (Soda Ash)	Any	Iran	Any	Any	28.86	MT	US $
13	2836.20	Disodium Carbonate (Soda Ash)	USA	USA	Any	any	38.79	MT	US $
14	2836.20	Disodium Carbonate (Soda Ash)	USA	Any	Any	Any	38.79	MT	US $
15	2836.20	Disodium Carbonate (Soda Ash)	Any	USA	Any	Any	38.79	MT	US $
16	2836.20	Disodium Carbonate (Soda Ash)	Pakistan	Pakistan	Olympia Chemical Ltd	Olympia Chemical Ltd	2.38	MT	US $
17	2836.20	Disodium Carbonate (Soda Ash)	Pakistan	Pakistan	ICI Pakistan Ltd	ICI Pakistan Ltd	5.60	MT	US $
18	2836.20	Disodium Carbonate (Soda Ash)	Pakistan	Pakistan	Any Other Combination	Any Other Combination	10.34	MT	US $
19	2836.20	Disodium Carbonate (Soda Ash)	Pakistan	Any	Any	Any	10.34	MT	US $
20	2836.20	Disodium Carbonate (Soda Ash)	Any	Pakistan	Any	Any	10.34	MT	US $
21	2836.20	Disodium Carbonate	Kenya	Kenya	Tata Chemicals	Tata Chemica	20.35	MT	US $

		(Soda Ash)			Magadi Ltd	ls Magadi Ltd			
22	2836.20	Disodium Carbonate (Soda Ash)	Kenya	Kenya	Any Other Combination	Any Other Combination	28.86	MT	US $
23	2836.20	Disodium Carbonate (Soda Ash)	Kenya	Any	Any	Any	28.86	MT	US $
24	2836.20	Disodium Carbonate (Soda Ash)	Any	Kenya	Any	Any	28.86	MT	US $

155. Subject to the above, the Authority confirms the recommendations made in the Preliminary Findings issued vide Notification No. 14/17/2010-DGAD dated 2nd September, 2011 and the Corrigendum Notification No. 14/17/2010-DGAD dated 25th October, 2011.

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

157. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(**Vijaylaxmi Joshi**)
Designated Authority