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F. No.14/03/2015-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti- Dumping & Allied Duties
Jeevan Tara Building, New Delhi-110001

Dated 11th April, 2017

NOTIFICATION

Final Findings

Subject: Anti-dumping investigation concerning imports of Hydrogen Peroxide originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand.

No. 14/3/2015-DGAD – Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also 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 also referred to as the Rules) thereof;

A. Background of the Case

1. Whereas M/s National Peroxide Limited and M/s Hindustan Organic Chemicals Ltd (hereinafter also referred to as the "petitioners" or "applicants") have jointly filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and 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 also referred to as the Rules) for initiation of anti-dumping investigation and imposition of anti dumping duty concerning imports of Hydrogen Peroxide (hereinafter also referred to as the subject goods), originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand (hereinafter also referred to as the subject countries).

2. Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 14/3/2015-DGAD dated 14th January, 2016, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said

countries, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein under has been followed by the Authority with regard to the subject investigation:

   i. The Designated Authority, under the above Rules, received a petition from the Applicant as the domestic industry, alleging dumping of Hydrogen Peroxide originating in or exported from Bangladesh, Taiwan, Korea, Indonesia, Pakistan and Thailand.

   ii. The Authority notified the Embassies/Representatives of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.

   iii. The Authority issued a Notification dated 14th January, 2016, published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.

   iv. The Authority sent copy of the initiation notification to the embassies of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.

   v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the Rules supra.

   vi. The Authority sent Exporter's Questionnaire to the following known producers/ exporters in Bangladesh, Pakistan, Thailand, South Korea and Indonesia and Taiwan (whose details were made available by the applicant) to elicit relevant information and gave them opportunity to make their views known in writing in accordance with Rule 6(4) of the Rules:

      a. Tasmin Chemical Complex, Bangladesh
      b. ASM Chemical Industries, Bangladesh
      c. Samuda Chemical Complex Limited, Bangladesh
      d. Sitara Peroxide Ltd, Pakistan
      e. Descon Chemical Ltd, Pakistan
      f. Thai Peroxide Company Ltd, Thailand
      g. Solvay Peroxithai Ltd, Thailand
      h. Taekwang Petrochemical, South Korea

i. Hansol Chemical Co Ltd, South Korea
j. SKC Evanik peroxide Korea P Ltd
k. PT Peroxida, Indonesia
l. PT Evanik Degussa Peroxide, Indonesia
m. SamatorIntiPeroksida, Indonesia
n. Sinar Mas, Indonesia

vii. The Embassies of the subject countries in India were also requested to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from their respective countries.

viii. The following exporters responded to the exporter's questionnaire:

a. Tasnim Chemical Complex Ltd, Bangladesh
b. Samuda Chemical Complex Limited, Bangladesh
c. ASM Chemical Industries Ltd, Bangladesh
d. Sitara Peroxide Ltd, Pakistan
e. Descon Oxychem Ltd, Pakistan
f. Thai Peroxide Company Ltd, Thailand

ix. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations (whose names and addresses were made available to the authority) of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):

a. Kushal Chemical
b. Sinochem Impex
c. EXIM Incorporation
d. Yamuna Fertilizers
e. KPL International Limited
f. S. Ganesh Nagendra & Co
g. Ponpure Chem (P) Limited
h. Classic Dyes and Chemicals
i. Trivenkem Agencies
j. Textile Dye Chem Pvt. Ltd
k. Shakumbhari Enterprises (I) Pvt. Ltd
l. Usha Chemicals
m. R.R Inovatives Pvt. Ltd
n. Rajiv Chemical Corporation
o. Son Kamal Enterprise
p. Khanna Papers mills Ltd
q. Shreyans Papers

r. Vikas Global One Ltd
s. Ballarpur Industries Ltd
t. J K Paper ltd
u. Sareen Group
v. DhanrajOrganic Limited
w. Excel Corp care
x. Mackwell Organic Pvt Ltd
y. Emami Papers
z. Alkyl Amines

x. Out of the above importers/users, Alkyl Amines filed importer questionnaire response.

xi. The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties as per Rule6 (7).

xii. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

xiii. The period of investigation (POI) for the present investigation is from 1st April, 2014 to 30th June 2015 (15 months). The injury investigation period will however covers the period April' 2011-March' 2012, April' 2012-March' 2013, April' 2013-March' 2014 and the POI.

xiv. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation. The data given by exporters was examined in detail.

xv. Non-injurious price has been determined based on the cost to make and sell the subject goods in India with reasonable profit, based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

xvi. Information published by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) has been adopted for determination of volume and value of imports of product concerned in India. The petitioner has procured transaction-wise information on imports of the product under consideration from DGCI&S. There is sufficient evidence of export price of the subject goods in the subject countries. During the course of investigation, the Authority also procured and analysed

transaction-wise import data from Directorate General of Commercial Intelligence & Statistics (DGCI&S)

xvii. The Authority held an oral hearing on 28thSeptember, 2016 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6), which was attended by the representatives of domestic industry, exporters from subject countries and importers. The interested parties who presented their views orally at the time of oral hearing were advised to file written submissions of the views expressed orally. The interested parties were also provided opportunity to offer rejoinder submissions to the views expressed by opposing interested parties.

xviii. Due to change in the incumbency of the Designated Authority another oral hearing was conducted by the new Designated Authority on 7th November, 2016 in pursuance of the direction given in the judgment delivered by the Hon'ble Supreme Court on 07-01-2011 in the matter of Automotive Tyre Manufacturers' Association (ATMA) Vs The Designated Authority in Civil Appeal 949 of 2006. The parties, who presented their views in the 2nd oral hearing were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

xix. Exporters, producers and other interested parties who have neither responded to the Authority, nor supplied information relevant to this investigation have been treated as non-cooperating interested parties.

xx. In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 16th February, 2017 to the concerned interested parties. Comments were requested by 3rd March, 2017. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.

xxi. At the request of some of the interested parties, the Authority granted another hearing on 14th March 2017 subsequent to issuance of the Disclosure Statement. Submissions made after the said hearing have also been addressed in this findings.

xxii. *** in this final finding represents information furnished by an interested party/any other party on a confidential basis and so considered by the Authority under the Rules.

xxiii. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US$ = 62.13 Rs

4. Comments to Disclosure Statement has been received from the following interested parties, viz the domestic industry, M/s Descon Oxychem Limited and Sitara M/s Peroxide Ltd, M/s Samuda Chemical Complex Ltd, M/s Tasnim Chemical Complex Ltd, Bangladesh, ASM Chemical Industries Ltd., M/s Thai Peroxide Company Ltd. and

Taiwan Economic Division. Most of the post disclosure comments are mere reiteration of the submissions made earlier and addressed in this finding at relevant places. However the Authority has taken account of the fresh submissions made and analyzed the same at relevant headings in the findings.

C. Product under consideration and Like Article

Submissions made by the producers/exporters/other interested parties are as follows:

a. There are three grades of hydrogen peroxide i.e. food grade, technical grade and electronic grade. All these grades are not interchangeable and the domestic industry does not have the capability to manufacture food and electronic grades. Information provided in technical data sheet makes it clear that the domestic industry is not manufacturing (i) food grade or (ii) electronic grades or (iii) technical grade having concentration above 90% . The fact was accepted by the domestic industry during the oral hearing as well.

Submissions by the Domestic Industry are as follows:

a. The product under consideration in the present petition is “Hydrogen Peroxide (H2O2) below 90% concentration”. Hydrogen Peroxide (H2O2) is produced through the process of hydrogenation. Commercially, the product is produced and sold in 35%, 50%, 60% and 70% concentration. ISRO has a very limited (insignificant) requirement of 90% and above concentration.

b. H2O2 is an extremely hazardous material. From safety point of view, the concentration should be as low as possible. However, transportation of lower concentration means paying additional freight on transportation of water. Therefore, from commercial point of view, concentration level should be as high as possible.

c. The majority of imports are of 50% concentration and majority of production of the petitioners is of 50% concentration. All data in the petition has been presented on equivalent of 50% for the purpose of determination.

d. Subject goods are classified under Chapter 28 under sub heading 28470000 of the Customs Tariff Act, 1975. The customs classification is indicative only and in no way it is binding on the scope of the investigation.

e. There is no known difference in product produced by the petitioners and that exported from the subject countries. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc.

f. There is no material difference in the production process employed by the foreign producers and that employed by the petitioner. However, every manufacturer fine-tunes its production process as per the necessities and available facilities.

g. The scope of product under consideration does not include food grade and electronic grade of Hydrogen Peroxide. The petitioners do not produce food grade and electronic grade Hydrogen Peroxide. The import data relied upon by the petitioners does not include imports of food grade or electronic grade. Technical grade of concentration 90% and above is neither imported into the country nor manufactured by the domestic industry. Food grade and electronic grade of Hydrogen Peroxide and that having concentration of 90% and above should be considered beyond the scope of PUC.

Examination by Authority

5. The product under consideration in the present investigation is "Hydrogen peroxide of concentration below 90%". Hydrogen peroxide can be produced in different concentrations. The product under consideration is sold in both loose and packed conditions. Commercially, the product is produced and sold in 35%, 50%, 60% and 70% concentration. It is generally produced and sold on 50% basis.

6. Subject goods are classified under Chapter 28 under sub heading 28470000 of Customs Tariff Act, 1975. The customs classification is indicative only and in no way it is binding on the scope of the investigation.

7. As regards the contention that food grade, electronic grade and technical grade of concentration 90% and above is not manufactured by the domestic industry, the Authority notes that the domestic industry has also accepted the same. Thus, it is concluded that the food grade and electronic grade and technical grade of concentration 90% and above of Hydrogen Peroxide is beyond the scope of PUC.

D. Domestic Industry & Standing

8. Rule 2(b) of the AD rules defines domestic industry as under:

> *"(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."*

9. Submissions made by the producers/exporters/other interested parties are as follows:

a. One of the petitioners M/s National Peroxide Ltd, which holds almost 90% shares of domestic industry, has furnished declaration that it is neither related to producer/exporter of the goods produced outside India nor any importer in India. Such

declaration is wrong and the petitioners have misled the Authority with regard to its eligibility as domestic Industry.

b. It is a matter of record that the said petitioner is related to the major exporter i.e. M/s Solvay peroxy Thai Co. Ltd. This related exporter is liable for 85% of the total import from Thailand. There are only two exporters from Thailand, so total imports of this related exporter can be verified by deducting the shares of the other exporter i.e. M/s Thai Peroxide Company Limited from the total imports from Thailand.

c. There are several evidences to substantiate the fact that Solvay peroxy Thai Co Ltd. is a related company of M/s National Peroxide Ltd. As per the Annual Report of M/s National Peroxide Ltd, Solvay SA holds 25.10% in petitioner's company during the financial year 2014-15 and 2015-16. The fact to be noted is that Solvay Peroxy Thai, which is the major exporter of the subject good is 100% owned subsidiary of Solvay SA.

d. M/s National Peroxide Ltd is a joint venture between M/s Bombay Dyeing & Mfg. Co, Ltd and Solvay SA. Annual report also suggests that Solvay SA is one of the promoters of the petitioner company. This entire series of facts make it clear that the issue of relationship is covered by Explanation (i) of Rule 2(b) as both the major exporter in Thailand and the producer Petitioner are being controlled by a third party namely Solvay SA.

e. In the present case Solvay SA is well in position to restrain or direct National Peroxide Ltd, legally as well as operationally. The entire chain of relation can be completed by these two facts that Solvay SA is a promoter of the Petitioner Company holding 25.10% share in the company as well as the technology supplier and Solvay SA is the 100% holding company of the Exporter as well as the technology supplier.

f. Section 114 of the Companies Act, 2013 states that a company can pass a special resolution for its critical business matters only if the votes cast in favour of the resolution are not less than three times of the number of the votes cast against the resolution. This precisely means that anyone holding more than 25% shares in the company can hold back or block any special resolution. This is the reason why Solvay Peroxy Thai has acquired more than 25.10% shares in M/s National Peroxide Ltd that is marginally above than the critical threshold limit.

g. The domestic industry has intentionally misled the Authority by not disclosing relevant information with regard to its eligibility under Rule 2 (b) just for the sake of getting the present investigation initiated. The Authority did not get chance to exercise its discretion on the issue of whether or not the petitioner was eligible as domestic industry.

h. The present application is filed by M/s National Peroxide Ltd and M/s Hindustan Organic Chemical Ltd. The injury determination is based on economic parameters of

both the companies. But the matter of fact is that hydrogen peroxide is manufactured in Kochi plant of HOCL and HOCL has been sick unit for the last several years.

i. The management of HOCL has informed BIFR that the company will be wound up. With the decision of HOCL being wound up the petitioner should withdraw the application as the entire purpose of imposition of anti-dumping duty is infructuous.

j. The definition of related party is not very clear in ADD Rules. The definition under Customs tariff Act is more accurate which says if any company has more than 5% share in the other company they will be treated as related parties.

k. Section 2 (6) of the Companies Act defines associate Company as the company in which anther company holds at least 20% of total capital shares. Solvay holds about 25.10% shares in the applicant company. Solvay also manufactures high quality Hydrogen Peroxide, sold under the trade name INTEROX.

10. Submissions made by the producers/exporters/other interested parties post issuance of disclosure statement are as follows:

a. The exporters have reiterated the arguments with regard to Solvay being related party to M/s National Peroxide and has 25.1% shareholding in the company, is a promoter of the company, has the power to block special resolution, have legal operational control over M/s National Peroxide Limited and not eligible to be the domestic industry.

b. NPL has entered into collaboration agreement with Solvay, Belgium and M/s. Laporte, UK and NPL has paid huge amount for transferring technology to Solvay, Belgium.

c. NPL has not filed the collaboration agreement, shareholder agreement, technical know-how agreement and Article of Association. Also, submissions of a letter by Solvay without providing it to the interested parties are of no importance.

d. Recently, in the final finding issued by the Authority in the investigation of Purified Terephthalic Acid the Authority did not consider Reliance Industries Ltd as domestic industry because it has a subsidiary company in Malaysia and they exported significant amount of the subject good to India during the POI.

e. In the recent initiation of Polyester Staple Fibre the Authority did not consider Reliance Industries Limited eligible as domestic industry because it had subsidiary in Malaysia and had exported goods during the proposed period of investigation.

f. Accounting Standard 18 defines related parties and as per that definition a related party has so many rights to control the company indirectly or directly.

g. NPL has deliberately not provided information in these regard in the petition and has made a wrong declaration which amounts to criminal contempt.

h. The issue is not that if there's any member of Solvay in the board of directors but it is that if NPL is related to a foreign investor or exporter or is a joint venture.

i. Authority has not given any legal basis for holding that since none of the members of Solvay is present on the Board of Directors, they are not in a position to block the special resolution. Just because they are not in the Board of Directors their power to block special resolution cannot be ignored.

j. It cannot be said that a company can apply restraint or control by only being present in the Board of Directors.

k. During the hearing on 14th March, 2017 the Managing Director of the company, for the first time, spoke of a letter filed by them. It was never mentioned in any of the hearing held earlier and not even the disclosure statement deals with such letter. That letter is not even placed in the public file for record. At such belated stage any new document cannot be accepted. In the case of stainless steel the Authority did not accept a report prepared by a PSU solely on the ground that it is submitted after the public hearing stage. The Authority is requested to maintain consistency in its approach.

l. The disclosure does not deal with any of the issue with regard to the relationship between Solvay as promoter of NPL. Also the disclosure does not address the issue that 85% of the import comes from M/s Solvayperoxy Thai Co Ltd that is from the related company.

11. Submissions by the Domestic Industry are as follows:

a. The petition has been filed by M/s National Peroxide Limited and M/s Hindustan Organic Chemicals Limited (referred to as Petitioner/Applicant) and supported by Gujarat Alkalies and Chemicals Ltd . Petitioner along with supporter hold 96.02% of the production share of India .

b. The production of the petitioners alone constitute a major proportion of Indian production of the like article and the petitioners have sufficient standing to file the present petition as domestic industry for the product concerned.

c. The petitioner has neither imported the subject good in the period of investigation nor related to (either directly or indirectly) to any exporter or importer of product under consideration in the subject countries. The Petitioners have standing to file the present petition as per Rule 2 (b) of the Anti-Dumping Rules.

d. Solvay SA has an affiliated producer in Thailand and has 25.10% shareholding in National Peroxide Ltd. Despite that M/s NPL and Thai Exporter (Solvay Peroxy Thai Limited)) cannot be treated as related companies. As per the definition of related parties under Rule 2 (b) (i) neither National Peroxides nor Solvay Peroxy Thai Limited

are in a position to control each other, (ii) together, these two companies are not controlled by third company.

e. It is pertinent to note that despite 25.10% shareholding, Solvay does not have a single person in the Board of Directors of National Peroxide. The same can be found in the annual report of NPL which has the details of all the Directors. This fact makes it clear that Solvay SA does not have any legal or operational control over National Peroxide Ltd.

f. The argument of the other interested parties that the petitioner tried to suppress this fact with intent of misleading the Authority is completely baseless. The petitioner has never suppressed the fact from the Authority that Solvay SA holds share in M/s NPL. In fact petitioner has filed letters and submissions to the Authority and has referred to publically available information and annual reports. Also, the annual report was a part of the petition itself.

g. The fact of shareholding of Solvay SA is clearly mentioned in the annual report of M/s NPL. Hence, the allegation of the other interested parties that this fact was suppressed from the Authority at the times of initiation is completely baseless. There is no relationship between the exporter and the petitioner and so the question of depriving the Authority from exercising its discretion does not arise.

h. The mere fact that the special resolutions require ¾ of the voting right does not make situation any different. The Authority may examine all the special resolutions passed by the petitioner over the injury period. Despite Solvay SA having 25.10% shareholding, the operations of the company have remained totally insulated from its ownership and shareholding.

i. There is no requirement of special resolution for the present matter. In the context of anti-dumping, since the relevant point is dumping causing injury, i.e. day to day operations of the domestic industry, the requirements and obligations of special resolution become entirely irrelevant.

j. In Circular weaving machine case, the exporter company had 34.67% shareholding in the petitioner company. The exporter was also a promoter and technology supplier. Despite that the Authority held that the exporter and the petitioner were not related because they did not have any legal or operational control over each other. However, in the present case the shareholding is much lower. The fact that the exporter is the promoter of the company, this fact needs to be seen with reference to the dumping in POI and at the most over the injury period. NPL was promoted several years back and technology was supplied few decades back. The fact is therefore of no consequence today.

k. The ADD Rules clearly defines the term related party and contains a specific legal provision in the form of definition with regard to relationship. So no other definition can be imposed for the present purposes.

l. There is no basis for the argument that HOCL has been wound up or sick company. Injury information of both the companies has been provided separately and that goes on to prove that even if HOCL is excluded, data relating to NPL alone is sufficient enough to show that the domestic industry has suffered injury.

12. Submissions by the Domestic Industry post issuance of disclosure statement are as follows:

a. The Authority had held in the matter of circular weaving machine from China, even when the domestic industry's 35% share were with a foreign company who owned the sole exporter of the product under consideration from the only country under investigation that the domestic industry was not related to subject exporter.

b. Relationship issue is required to be determined in the POI only. It is by now well settled legal position that the imports made by a company in POI alone are relevant to determine its eligibility. Following the corollary, relationship of an Indian domestic producer with a company in third country who may have relationship with a foreign producer in subject country is also required to be seen in the investigation period only. It is undisputed that Solvay has 25.1% of shareholding in M/s National Peroxide Ltd. and they have all the rights of shareholders in the company. But mere the fact of having 25.1% of shareholder does not make them in a position to control National Peroxide Ltd either directly or indirectly. On 19th May, 2006 Solvay SA had sent a resignation letter to M/s National Peroxide Ltd. stating that Solvay will not contribute towards operations of M/s National Peroxide Ltd. and would like to be limited as financial shareholder only. The day to day operations of the company is entirely under the domain of the board of the directors of the company and any of the members of Solvay SA was not even part of the Board of the Directors 2006 onwards.

c. Being a financial shareholder, Solvay's role is limited to receive financial dividends only. It is explicit that they have no control over the day to day operations of the company and its role is not more than a financial investor of the company.

d. Legally, Solvay has a role to play when there is a special resolution is passed. But the matter of anti-dumping has nothing to do with special resolutions. A list of business that requires general and special resolution is provided to the Authority for its reference. It would be seen from the nature of these resolutions that none of the special resolution has any relevance to antidumping.

e. If all special resolutions passed during the investigation period are concerned, it would be seen that Solvay has not attended any of the meetings either of the Board of Directors or any shareholders meeting during the POI. When the company has not

even attended any of the Board of Directors or any shareholders meeting during the POI, the company did not exercise direction or restrain over any of the affairs of the company – whether it required day to day management decision, or board of directors decision or shareholders decision.

f. The mere fact that special resolution requires 3/4th of the voting rights does not make the situation any different in the present situation as none of the shareholders meetings were attended by Solvay SA in the POI.

g. Since last 10 years, no EGM has taken place in NPL and after 2013 Solvay has not participated in any of the AGMs.

h. Action against dumping in India is not decided by shareholders. The decision against dumped imports is taken by the day to day management.

i. The production and sales in different market on day to day basis by exporters is decided by day to day management or at the best Chief Executives/Board of Directors.

j. None of the members of Solvay SA has been in the Board of Directors of M/s National Peroxide Ltd from 2006 onwards, which includes the injury period as well, and the same is evident from the balance sheets of the company.

k. There is no collaboration agreement between Solvay and M/s National Peroxide Limited. In absence of collaboration agreement Solvay can nowhere be in position to control any of the decisions taken by M/s National Peroxide Limited. So Solvay SA did not even have a deemed control over M/s National Peroxide Limited.

l. As far as the question of paying royalties to Solvay is concerned, it may be noted that M/s National Peroxide Limited has not paid any Royalty to Solvay after 2003. The Company has done three expansions after 2003 on its own and has neither taken technology from Solvay nor has paid any Royalty to them. M/s National Peroxide Limited paid Royalty to Solvay only in 2005 for the period of April 1997 to March 1998.

m. In any case, there is no automatic exclusion of such an ineligible domestic industry in the present case. The Designated Authority has discretion in such situations. Inclusion is automatic and desirable in the present case. Inclusion will not distort the injury assessment, NPL predominately manufactures the goods in India, did not participate in dumping and in fact has taken action against dumped imports in a non-discriminatory basis. It is not a case that the company has shielded itself from the effect of dumping or the injury is self-inflicting. The interested parties have given no reasons which justify exclusion of NPL and have proceeded with a mere contention of relationship. It is by now well settled legal position that mere relationship does not mean automatic exclusion. In the circular weaving machine case, in fact, the Designated Authority had considered domestic producer as an eligible domestic industry despite higher

shareholding by the foreign producer. Relevant extracts from that decision are enclosed once again.

n. Further, the dealing provision specified under the law further establishes that the control shall exist only when one producer is legally or operationally in a position to restrain or direction over other producer.

o. The explanation also makes it obvious that this provision is relevant only when such domestic producer has behaved differently than other producers.

p. There is no documentary evidence provided by any interested party that any of the NPL action shows that NPL and Thai Company were acting in collusion.

q. As far as depriving the Authority from exercising its discretion is concerned, it is submitted that question of discretion arises only if the petitioner was related to the exporter. Moreover, the fact of Solvay is having 25.1% of the shareholding in M/s National peroxide Ltd is very much mentioned in the Annual report of the company and these annual reports were part of the petition. So the allegation of not disclosing the fact to the Authority at the time of initiation of the investigation has no basis. In any case, even now, it has not been established that the Authority should have treated NPL as an ineligible domestic industry.

r. With regard to HOCL, the interested parties misled the authority in projecting that HOCL is being sold off. The fact is that the only Rasayani unit operations are being sold. As far as Cochin unit operations are concerned, the same continues to be in operation and the same is not being sold off. An email from the company has been filed with the submissions.

s. It is important to understand the intent of the legislature for drafting a law like Anti-Dumping Rule. It is drafted to encourage the rights of the manufacturers of the market, the intent is to provide a fair playing market to the producers/ manufacturers in the domestic market. Accordingly all the relevant provisions must be read in light of the intent of the discretion given under the law. The Designated Authority has been given the power, to exclude such domestic producers who benefit themselves from dumping, to enable other domestic producers from filing petition.

t. Anti dumping Rule is a special law and as per the judgement of the Supreme Court in the matter of COMMERCIAL TAX OFFICER, RAJASTHAN v. M/S BINANI CEMENT LTD. & ANR. (Civil Appeal No. 336 of 2003) the Hon'ble court held that special law should prevail over general law. In light of this judgement the concept of the related parties and legal and operational control should be examined with respect to the Anti-Dumping Rule and not any other general provisions of law.

Examination by the Authority

13. The Application has been jointly filed by M/s National Peroxide Limited and M/s Hindustan Organic Chemicals Ltd, on behalf of the domestic industry. Apart from the above domestic producers, M/s Gujarat Alkalies and Chemicals Ltd is another producer and has supported the present application. The applicants as well as the supporting company have furnished declaration stating that they have not imported the PUC from the subject countries and are not related either to any exporter or producer of the subject goods in the subject countries or any importer of the subject goods in India.

14. With regard to the argument that Solvay SA is related to M/S National Peroxide Limited, It is noted that M/s Solvay SA has an affiliated producer in Thailand and admittedly has 25.10% shareholding in National Peroxide Ltd. The key element in determining the relationship between the domestic producer and the exporter in terms of AD Rules is 'control', legal or operational. The Authority notes the arguments raised by the interested parties in this context. It is noted that merely because Solvay SA has 25.10% share in M/s National Peroxide Limited, it does not imply that Solvay SA has operational control over the other. It is further seen that the Annual report of National Peroxide Ltd mentions the list of Directors during the injury period and none of the members in the Board of the Directors of NPL was nominated by Solvay which could have been an evidence of operational control. The domestic industry has submitted a letter by Solvay to M/s NPL dated March 2006 wherein Solvay had surrendered its operational control over M/s National Peroxide Ltd. and limited itself as a financial shareholder. Interested party has argued that Solvay has the right to block special resolution. It is however noted in this regard that power to block a special resolution does not mean that Solvay gets an operational control on M/s National Peroxide Limited. Further, with regard to the argument that Solvay is the promoter of the company, it is noted that the status of promoter also does not suggest any operational or legal control.

15. The Authority holds that there is absence of legal or operational control by Solvay on NPL and Solvay is not in a position to direct or restrain or exercise any influence on M/s National Peroxide Ltd. Further, the Authority notes that behaviour of NPL as a domestic producer was not such that it could be construed that NPL has behaved as a related company. The Authority also holds that the provisions under Company's Act or requirements of special resolutions are not relevant for the present purposes.

16. Keeping in view the above the Authority holds that M/s National Peroxide Ltd is not related to Solvay Peroxy Thai Co Ltd within the meaning of Rule 2(b). Further, there must also be sufficient grounds justifying exclusion of a related domestic producer. There must be evidence that the related domestic producer has acted differently due to relationship, or has participated in dumping practices and has taken such steps which would have resulted in self inflicted injury. In the instant case, no such evidence has been provided by the interested parties.

17. As regards HOCL, the Authority notes that there is no evidence on record to show that Cochin unit of HOCL has been offered for sale. The product under consideration is produced in Cochin plant of the company. The domestic industry has provided evidence

showing continued production of the product under consideration in Cochin plant of the Company.

18. In view of the above, and as per the evidence available on record, the production of the applicants account for a major proportion in the domestic production of the like article. The Authority has determined that the applicants constitute eligible domestic industry within the meaning of Rule 2 (b) of the Anti Dumping Rules, the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules supra and the applicant companies constitute domestic industry within the meaning of antidumping rules for the purpose of the present investigations.

Confidentiality

19. With regards to confidential information Rule 7 provides as follows:

> *7. Confidential information- (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 authorize its disclosure in a generalized or summary form, it may disregard such information.*

20. **Submissions made by the producers/exporters/other interested parties**

a. Domestic industry has failed to provide essential information and has claimed excessive confidentiality with regard to soft copy of transaction wise data in MS excel format, export price adjustment calculation and computation of normal value of Thailand.

b. Not providing the above information is a clear violation of instruction no 6 of the application Performa of domestic industry which enumerates that the document/ information filed in confidential version must be accompanied by non confidential

version, otherwise the entire information should be ignore and rejected. On that account the petition ought to be rejected.

21. **Submissions by the Domestic Industry :**

a. There is no requirement of providing transaction wise data in excel file. Petitioners have complied with all requirements laid down by the authority. Requirement of soft copies for the authority cannot be read as an obligation on the domestic industry to provide such soft copies to the opposing interested parties.

b. Export price calculation has been disclosed in the non-confidential version Evidence showing adjustments in export price are business sensitive information and not susceptible to summarization. There is no error in calculation and the Designated Authority may recheck.

c. Petitioners have claimed only such information as confidential, confidentiality of which is protected under the law. Sufficient non-confidential summaries of the information have been provided on confidential basis except for those which are not susceptible to summarization. In fact the responding interested parties have resorted to excessive confidential information.

Examination by the Authority

22. The Authority holds that the information provided by interested parties on confidential basis meets the sufficiency requirement of the confidentiality claim, and has accepted the confidentiality claims wherever warranted. Information being considered confidential has not been disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available such non confidential versions of the evidences submitted by various interested parties in the form of public file.

23. Regarding the submission of opposite parties that the transaction-wise DGCIS imports data should be made available, the Authority notes the domestic industry vide non-confidential version of the petition dated 22. 01.2016 has submitted the said data and the same has been placed in public file.

Miscellaneous Submissions

24. Submissions made by the producers/exporters/other interested parties are as follows:

a. GACL being one of the biggest producers of the subject good has not participated in the present investigation due to their exceptionally good market conditions and huge profits. As per their annual report they were running their capacity utilization on 100% during the Injury period.

b. The other producer Asian Peroxide Ltd, Chennai also has not participated in the present investigation but had participated in the earlier application filed for anti-dumping in 2007.

c. The present investigation was initiated in violation of Rule 5(3) of the Anti Dumping Rules. The Domestic Industry is not suffering any material injury. In fact all the economic parameters say that their performance has been outstanding. The reason of injury is not alleged dumping but other factors.

d. The Domestic industry did not disclose the facts properly at the time of initiation and misled the Authority.

e. Imposition of duty will be detrimental to the Indian users. They will be forced to bear extra cost, restrict the competition of the market and create the shortage of high quality goods.

f. Claims of injury to the Domestic Industry is ill founded, baseless and contrary to the statements made in the Audit Report of the Company.

g. The period of investigation is faulty. The period of investigation adopted in the present case is April 2014 to June 2015. As per then guidelines issued by the DGAD the period of investigation should be 12 months. The Audited report of the company says that the plant was shut down for 61 days, during the first quarter of the period of investigation and the commercial production started from 29th September 2014.

h. National Tariff Commission of Pakistan imposed provisional ADD @ 19.32% on imports of Hydrogen Peroxide from Bangladesh. The said decision has been appealed and the final decision is yet to come.

i. The plant was shut down for almost 6 months during the POI and hence it was essential for the users to import the material at that time. Accordingly import volume should also be reduced/ adjusted at cumulative level for the subject countries while evaluating the volume effect of imports since imports during this period was essential.

j. Even after such shut down the imports from Pakistan did not increase rather it decreased around 14% in the POI from about 31% in the base year. So imports from Pakistan did not have any material effect on domestic industry.

k. The Audit report of NPL says that the company suffered adverse situation. Despite all that the company has been able to earn profit during the period of investigation. Petitioner's claim of suffering injury does not match with the Audit report.

l. The data shows that NPL has performed really well post period of investigation despite facing all odds.

25. **Submissions made by the Domestic Industry**

a. The petitioners cannot be made to suffer just because GACL has not furnished information. The applicants constitute a major proportion and fulfil the legal requirement. The authority may not kindly rely on conjectures and may kindly proceed based on verifiable information.

b. Pakistan National Tariff Commission has imposed Anti-Dumping duty against Bangladesh with respect to the same goods. Mere filing of appeal does not mean anything. The exporters have not claimed before the Designated Authority that there is no dumping.

c. The petitioners have no submissions wherein exporters have claimed absence of dumping in the present case. On the contrary, even when the Designated Authority specifically asked at the time of oral hearing whether the data shows dumping, exporter evaded the query of the Designated Authority.

d. The plant was shut down only for 63 days and the loss of production was only to the extent of 13,099 MT. This may not justify imports to the extent the goods were imported into India. This does not answer the steep decline in price over the relevant period.

e. The company was not suffering due to internal factor. The production was suspended for only for 63 days. Domestic industry recommenced production within 63 days and the plant had achieved 92.75% utilization even in the first month of commercialization of production.

f. The Designated Authority had initiated the present investigation after being satisfied with the adequacy and accuracy of evidence for the purpose of initiation of investigations.

g. There is no relevance of post- POI data in the present case. The authority has repeatedly held for the purpose of fresh investigations that the post POI data is irrelevant. Further, the CESTAT also held that post POI developments are not relevant to the authority.

h. The other interested parties have deliberately waited till public hearing to raise an objection on the eligibility of the domestic industry. They had enough time before the public hearing to raise such an objection.

Examination by the Authority

Miscellaneous submissions raised by the interested parties have been examined as under:

26. The contention of the opposing interested parties that initiation of the investigation is in violation of Rule 5(3) of the Anti Dumping Rules does not have any basis. The present investigation was initiated by the Authority after satisfying itself about the petitioner meeting this criterion.

27. Non filing of information by GACL does not make the applicants ineligible to file the present application. Non filing of information by a major producer cannot detriment the eligibility of the applicants if the applicants constitute a major proportion and satisfies the requirements laid down under the law.

28. The argument of other interested parties that the imports made were essential because the plant was shut for 6 months cannot be accepted because as per the records available the plant was shut down only for 63 days and the loss of production was only to the extent of 13,099 MT. This may not justify as much increase in imports as made during the relevant period besides steep decline of prices during the relevant period. In any case, the Authority has adjusted the loss of production while examining injury to the domestic industry.

29. As regards the argument that the period of investigation is faulty, the authority holds that suspension of production was only for 63 days. Authority has made adjustments of this production loss while carrying out injury analysis.

30. The Authority notes that the injury information for both HOCL and NPL were provided separately and it does establish that even if HOCL is excluded, data relating to NPL alone establishes injury suffered by the domestic industry.

E. Market Economy Treatment, Normal Value , Export Price And Dumping Margin

Submission by other interested parties

31. Exporters from Bangladesh made following submissions.

    a. The petition itself says that landed prices of all the countries were below NSR except for Bangladesh.

    b. Net export price for Samuda is not calculated correctly.

    c. Dumping margin varies for different concentration. It would be seen that Tasnim Chemicals did not dump in India during POI. According to DGCI&S data there is no dumping on the part of Tasnim Chemicals.

Submissions by other interested parties post issuance of disclosure statement are as follows:

a. The Authority has not considered freight cost from border to customs clearance port in the calculation of landed value whereas the Authority has consistently adopted this

method in various cases. For M/s Descon and M/s Sitara the importation port is Amritsar Railway Port but the Authority has added freight only till Wagha/Attari boarder. The Authority has not added freight from Wagha/Attari boarder to Amritsar Railway Port. The same should be revised in the Final findings

b. Net Export price for Samuda Chemicals is incorrectly calculated. The Authority has deducted ocean freight in addition to inland freight in those sales which were exported through land port. If ocean freights are deducted the net sales value will stand at ****/MT instead of ****/MT.

c. Abnormal profit margin of ****% added to arrive at normal value for Samuda Chemical is completely illogical. Only 5% as reasonable profit margin should be taken to arrive at the constructed normal value.

d. The Designated Authority has considered notional financial expenses at the time of calculation of cost per MT, but while arriving at the margin of profit the Authority has not considered such notional financial expenses. It is unjustified to charge notional finance expense.

e. The Authority has worked out normal value by adding profit to the cost of the production on the Product under consideration on gross basis whereas the export price has been worked out on ex-factory basis. This is inconsistent with Article 2.4 of the WTO Agreement. As per the disclosure statement to arrive at the Dumping Margin the Designated Authority has not made comparison between Normal value and Export Price on same level of trade.

f. It is very unfair at the part of Designated Authority to add notional interest to arrive at ex-factory cost of production and shown positive dumping margin as ****%.

g. Tasnim Chemical has made it clear that it takes loan from its sister concern and no interest is charged on that.

h. The Authority has held that Tasnim Chemical did not make imports into India during the POI but it is surprising that the Injury margin for Tansim ranges from ****%.

i. The Authority has not considered insurance cost of 1% to arrive at landed price at the Indian Port for Pakistan Exporters i.e. Descon and Sitara.

j. The Authority has considered mark up percentage for overall sales for Samuda Chemicals instead of domestic sales, which is not fair. All local sale price is same because for domestic cash sale it is required to take approval from Customs, Excise and VAT authority from time to time.

k. The Authority has wrongly applied the viability test to assess whether the goods sold in the domestic market are in the ordinary course of trade.

l. The Authority has applied 80:20 tests in a wrong manner by applying this test on loose and packed forms.

Submission by the domestic industry

a. The Designated Authority may kindly recalculate Samuda's net export price in case the Designated Authority finds any errors in the calculations or in the methodology.

b. Different dumping margin for different concentration merely implies a need for separate dumping margin for different types. However, eventual dumping margin is required to be determined for Product Under Consideration.

Submissions by the domestic industry post issuance of disclosure statement are as follows:

a. Since the product is sold in packed as well as in loose form the dumping and injury margin may be calculated separately for both.

b. The product under consideration is exported to India from the subject country below normal value resulting dumping from the subject country.

c. The dumping margin and injury margin are significant.

d. The dumping margin for M/s Tasnim Chemical is much lower than M/s Samuda Chemicals even when both the companies are selling from the same country and in the similar market.

e. Questionnaire response of Samuda should be rejected, given that the company has modified its response several times and even after verification visit.

Examination by the Authority

32. With regard to the argument by the exporter that freight cost from border to customs clearance port has not been considered in the calculation of landed value, it is noted that the exporters have not provided any material to show that place of custom clearance is not Wagah/Attari border but Amritsar Railway station. Further, DGCI&S transaction wise data also shows port of import as Attari Road. Further, freight cost incurred by the exporters, for movement of goods within the Country cannot be added to the landed price of imports when freight cost incurred by the domestic industry on movement of the goods within the country has not been added to the domestic product.

33. As regards the argument by Samuda Chemicals that the Authority has deducted ocean freight in addition to inland freight in those sales which were exported through land port, it is clarified that freight has been deducted only to the extent claimed by the exporter in

their questionnaire response. No additional amount has been deducted. The data provided by the exporter (M/s Samuda Chemicals) was shown to the company representatives when they came to attend the post-disclosure hearing, which clearly demonstrated that the freight data provided by the exporter only has been used for deduction. Fresh set of data submitted by Samuda Chemicals at the belated stage of post issuance of disclosure statement cannot be entertained since enough opportunities had already been provided.

34. As regards the argument that abnormal profit margin of ****% has been considered to arrive at normal value for Samuda Chemical, it is noted that the figure has been taken from final version of Appendix-7 submitted by the Exporter themselves. However, since the Authority has added notional interest cost to the cost of production, the profit margin has been re-determined, which comes to ****%. Considering the claim made by the exporter, profit margin of ****% has now been used to determine dumping margin.

35. As regards the submission that all local sales are the same due to statutory regulations, it is noted that there are two other exporters from the same country participating in the present investigation. Information provided by these two other producers does not show the same selling price for different consumers. Besides, the product under consideration is not an item in respect of which price is administered by the government authorities. The argument/submission is fallacious and devoid of merit. Further, Authority has considered the information provided by the exporter only and has determined normal value accordingly. Further, all comparisons have been made at same level of trade.

36. The argument that Tasnim Chemical has not made any exports to India is absolutely incorrect. This was acknowledged by the advocate representing the exporter during post-disclosure hearing.

37. With regard to the argument that the Authority has wrongly applied the viability test to to assess whether the goods sold in the domestic market are in the ordinary course of trade, the Authority notes that and the same is in accordance with the provisions of antidumping rules. It is an admitted position that the loans are from affiliated company and therefore the interest cost is not reflected at arm's length in the books of accounts of the company. Further, loose and packed form of subject goods have significant difference in cost and price and therefore viability test has been appropriately applied separately for both forms.

'Normal Value' under the Rules-

38. According to Section 9A (1) (c) of the Customs Tariff Act, 1975 'Normal Value' in relation to an article means:-

> *comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

39. Normal value has been determined for loose and packed subject goods, separately, in view of significant difference in cost and price.

Normal value in Pakistan

40. The Authority notes that consequent upon issue of initiation, the following producers/exporters from Pakistan have filed exporter questionnaire response:

    a. M/s Sitara Peroxide Ltd., Pakistan
    b. M/s Descon Oxychem Ltd., Pakistan

Normal Value for M/s Sitara Peroxide Ltd., Pakistan

41. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s Sitara Peroxide Ltd, Pakistan is a producer/exporter of the subject goods. As per information available in the EQ response, during the Period of investigation, in the domestic market of Pakistan, Sitara Peroxide Ltd, has sold the subject goods **** MT of subject goods for the Gross invoice value of **** Million PKR out of which negligible quantity of **** MT was sold to affiliated parties.

42. For working out normal value 80/20 test has been conducted and % of profitable sales as a % of Total Sales is determined. Profitable Sales % is determined as lower than 80% of total Sales so only profitable sales has been considered in determining Normal Value. Normal Value has been determined for both loose and packed to facilitate comparison on like to like basis. Adjustments on account of taxes, discount, commission, inland freight and credit cost has been claimed and allowed.

43. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Weighted average Normal Value has been determined as USD **** USD per MT.

Normal Value for M/s Descon Oxychem Ltd., Pakistan

44. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s Descon Oxychem Ltd, Pakistan is a producer/exporter of the subject goods. As per information available in the EQ response, during the Period of investigation, in the domestic market of Pakistan Descon Oxychem Ltd, has sold the subject goods. Descon Oxychem Ltd, has sold the subject goods **** MT of subject goods for the Gross invoice value of **** Million PKR out of which negligible quantity of **** MT was sold to affiliated parties.

45. For working out normal value 80/20 test has been conducted and % of profitable sales as a % of Total Sales is determined. Profitable Sales % is determined as lower than 80% of total Sales so only profitable sales has been considered in determining Normal Value.

46. Domestic Sales in period of investigation was in packed form so Normal Value has been determined in packed form. Normal Value in loose form is determined by deducting per MT Packing Cost given in Appendix 8. So normal Value has been determined for both and Loose and Packed to facilitate comparison on like to like basis. Adjustments on account of taxes, commission, inland freight and credit cost has been claimed and allowed.

47. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Weighted average Normal Value has been determined as **** USD per MT.

Normal value for M/s ASM Chemicals Ltd Bangladesh,

48. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s ASM Chemicals Ltd , Bangladesh is a producer/exporter of the subject goods

49. ASM Chemicals Ltd, has sold the subject goods **** MT of subject goods for the Gross invoice value of **** Million BDT. All Domestic sales were made to unaffiliated parties.
50. For working out normal value 80/20 test has been conducted and % of profitable sales as a % of Total Sales is determined. Profitable Sales % is determined as lower than 80% of total Sales so only profitable sales has been considered in determining Normal Value.

51. Normal Value has been determined for both and Loose and Packed to facilitate comparison on like to like basis. Adjustments on account of interest, bank charges, inland freight has been claimed and allowed. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Weighted average Normal Value has been calculated as USD **** per MT.

Normal value for M/s Tasnim Chemicals Ltd Bangladesh,

52. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s Tasnim Chemicals Ltd , Bangladesh is a producer/exporter of the subject goods. Tasnim Chemicals Ltd, has sold the subject goods **** MT of subject goods for the Gross invoice value of **** Million BDT. All Domestic sales were made to unaffiliated parties.

53. Normal Value has been determined for both Loose and Packed to facilitate comparison on like to like basis. For working out normal value 80/20 test has been conducted and % of profitable sales as a % of Total Sales is determined. Profitable Sales % so determined is lower than 80% of total Sales for Packed Sales, so only profitable sales has been considered in determining Normal Value, while for loose sales profitable sales were close to 100% so entire sales has been considered in determining Normal Value. Adjustments on account of bank charges, inland freight and Taxes has been claimed and allowed.

54. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Weighted average Normal Value has been calculated as USD **** per MT.

Normal value for M/s Samuda Chemicals Ltd Bangladesh,

55. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s Samuda Chemicals Ltd, Bangladesh is a producer/exporter of the subject goods. Samuda Chemicals Ltd. has sold the subject goods **** MT. Samuda provided master invoice only, not individual transaction-wise invoices despite several opportunities having been provided. Secondly and more importantly, the domestic selling price was exactly the same throughout the POI despite supplies to different customers for 50% Packed Sales in Cash. The sale data of this exporter has been found to be unreliable. Accordingly, Normal Value in their case has been determined by adding profit margin worked out by this office in Appendix 7 to the their cost of production per MT (both for Loose and Packed sales).

56. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Normal Value on weighted average basis comes as **** USD per MT.

Normal value for M/s Thai Peroxide Co Ltd, Thailand

57. From the Exporter Questionnaire (EQ) response, the Authority notes that M/s Thai Peroxide Co Ltd, Thailand is a producer/exporter of the subject goods. Thai Peroxide Ltd, has sold **** MT of the subject goods for the Gross invoice value of **** Million THB. Only **** MT of Domestic sales were made to affiliated parties. Normal Value has been determined for product both in Loose and Packed condition to facilitate comparison on like to like basis.

58. For working out normal value 80/20 test has been conducted and % of profitable sales as a % of Total Sales is determined. Profitable Sales % so determined is lower than 80% of total Sales for Packed Sales, so only profitable sales has been considered in determining Normal Value, while for loose sales profitable sales were more than 80% so entire sales has been considered in determining Normal Value. Adjustments on account of inland freight and credit cost has been claimed and allowed.

59. Normal Value for packed quantity has been determined as USD **** per MT and normal value for loose quantity has been determined as USD **** per MT. Normal Value on weighted average has been calculated as USD **** per MT.

Normal value for Indonesia, Korea and Taiwan

60. In the absence of availability of information/evidence of price of subject goods in the domestic market of Indonesia, Korea and Taiwan and in view of non cooperation from the producer-exporters in these countries, the Authority has determined normal value in the above subject countries on the basis of best estimates of cost of production , and reasonable profits.

F. Estimates of Export Price

61. According to Section 9A(1)(b) of the Customs Tariff Act, 1975, 'Export Price' in relation to an article means:-

> *(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in `cases where there is not export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);*

Calculation of Net Export Price for Sitara Peroxide Ltd, Pakistan

62. The producer/exporter exported **** MT of Hydrogen Peroxide to India during POI at a weighted average Net Export Price of USD ****/MT, Loose at **** USD/MT, Packed at **** USD/MT. Claimed adjustments considered by the authority are on account of Inland Freight, and Bank Charges to determine net export price at ex-factory level.

Calculation of Net Export Price for Descon Oxychem Ltd, Pakistan

63. The producer/exporter exported **** MT of Hydrogen Peroxide to India during POI at a weighted average Net Export Price of**** USD /MT, Loose at **** USD/MT and Packed at **** USD/MT .Claimed adjustments considered by authority are on account of Inland Freight, Commission, Customs Handling Charges and Bank Charges to determine net export price at ex-factory level.

Export Price of Non Cooperative exporters from Pakistan

64. The Authority notes that no other producer/exporter from Pakistan has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Pakistan, the Authority has determined the net export price as **** USD/MT on the basis of best available information.

Calculation of Net Export Price from M/s ASM Chemicals Ltd Bangladesh

65. ASM Chemicals Ltd exported **** MT of Hydrogen Peroxide to India during POI at a weighted average Net Export Price of USD ****/MT, Loose at **** USD/MT and Packed at **** USD/MT. Claimed adjustments considered by authority are on account of Inland Freight and Bank Charges to determine net export price at ex-factory level.

Calculation of Net Export Price from M/s Tasnim Chemicals Ltd Bangladesh

66. Tasnim Chemicals has exported **** MT of Hydrogen Peroxide to India during POI at a weighted average Net Export Price of USD ****/MT, Loose at **** USD/MT and Packed at **** USD/MT. Claimed adjustments considered by authority are on account of Inland Freight, Bank Charges, Taxation and Handling Charges to determine net export price at ex-factory level.

Calculation of Net Export Price from M/s Samuda Chemicals , Bangladesh

67. Thai Samuda Chemicals has exported **** MT of Hydrogen Peroxide to India during POI at a weighted average and Packed Net Export Price of USD ****/MT. Claimed adjustments considered by authority are on account of Ocean Freight, Inland Freight, Credit Cost and Bank Charges to determine net export price at ex-factory level.

Calculation of Net Export Price from Non Cooperative Exporters –Bangladesh

68. The Authority notes that no other producer/exporter from Bangladesh has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Bangladesh, the Authority has determined the net export price as USD ****/MT on the basis of best available information.

Calculation of Net Export Price from M/s Thai Peroxide Ltd Thailand

69. Thai Peroxide Ltd has exported **** MT of Hydrogen Peroxide to India during POI at a weighted average Net Export Price of USD ****/MT, Loose at **** USD/MT and Packed at **** USD/MT. Claimed adjustments considered by authority are on account of Ocean Freight, Ocean Insurance, Inland Freight and Bank Charges to determine net export price at ex-factory level.

Calculation of Net Export Price from Non Cooperative Exporters -Thailand

70. The Authority notes that no other producer/exporter from Thailand has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Bangladesh, the Authority has determined the net export price as USD ****/MT on the basis of best available information.

Export Price of Taiwan, Korea and Indonesia

71. The Authority notes that no producer/exporter from Taiwan, Korea and Indonesia has filed exporters questionnaire response in the present investigation. Therefore for all producers/exporters in Taiwan, Korea and Indonesia, the Authority determines the weighted average net Export Price as USD **** per MT for Taiwan, **** per MT for Korea and **** per MT for Indonesia respectively on the basis of DGCI&S import prices after making necessary adjustments for freight, insurance etc.

DUMPING MARGIN

72. Comparing the aforesaid normal values and export prices as determined, the dumping margin proposed to be determined for the subject countries during POI are as follows:

Country	Exporter/ Producer	Normal Value US$/MT	Net Export Price US$/MT	Dumping Margin US$/MT	Dumping Margin %	Dumping Margin % Range
Indonesia	All producers/ exporters	****	****	****	****	20-30
Taiwan	All producers/ exporters	****	****	****	****	40-50
Korea RP	All producers/ exporters	****	****	****	****	30-40
Thailand	Thai Peroxy Limited, Thailand	****	****	****	****	25-35
	Non-Co-operative producers/ exporters	****	****	****	****	40-50
Pakistan	Sitara Peroxide Limited, Pakistan	****	****	****	****	70-80
	Descon Oxychem Limited, Pakistan	****	****	****	****	60-70
	Non-Co-operative producers/ exporters	****	****	****	****	120-130

Bangladesh	Samuda Chemicals, Bangladesh	****	****	****	****	10-20
	Tasnim Chemicals, Bangladesh	****	****	****	****	0-10
	ASM Chemicals, Bangladesh	****	****	****	****	10-20
	Non-Co-operative producers/ exporters	****	****	****	****	40-50

Determination of Injury and Causal Link

73. **Submissions made by the producers/exporters/other interested parties**

a. There is no causal link between the injury and the alleged import. The domestic industry is suffering injury due to other factors such as adversities in pulp and paper industry.

b. All the volume parameters showed improvement in the petition. Merely decline in profitability cannot be attributed to imports. Price undercutting has been negative in POI and in the previous years as well.

c. The plant was effectively shut for almost 5 months and no commercial production was taking place during this time. Proper adjustment for cost of shutdown and the new plant should be made.

d. No commercial production took place due to plant shut down and so the company was suffering due to its own internal problems. The domestic industry was adversely affected by expansion.

e. The adjustment made by the petitioner by inflating production has no basis. The Authority is requested, while determining NIP, to carry out proper adjustments to account for the plant shut down, which falls entirely in the POI, as well as for the start up cost.

f. The annual report of the company underlines two broad factors affecting the performance of the company i.e. Long term contract with GAIL. The cost of the company did not go in line with the fall in crude oil prices because the company has a long term contract with GAIL and secondly the plant was shut down.

g. The company accepted during the public hearing that the contract is not between GAIL and NPL per se but GAIL in general. This amounts to disowning the disclosure in the annual report itself.

h. The Authority may call the contract and examine the facts on its own. They are contradicting their own audited annual report and putting the facts to suit their case before the Authority.

i. The domestic industry has not suffered any injury and the same is evident from the fact that the production, domestic sales and capacity utilization of the domestic industry have increased as compared to the base year.

j. Imports from Thailand declined by 5%. Imports from all subject countries also declined by 14.9% in period of investigation in comparison to the immediately preceding year.

k. Based on the information provided in the application it can be figured that the number of employees and wages has increased. Capacity of the domestic industry was enhanced. Production and sales of the other producers has also increased.

l. If the domestic industry is still suffering any injury it may be due to increase in depreciation cost, fixed cost and interest cost. The company has increased its capacity during the POI. The production decreased due to plant shut down.

m. Import from Bangladesh was being made because of the lower price of natural gas as compared to NPL.

n. NPL's long term contract with GAIL adversely affected the petitioners. The supply of natural gas from Reliance industries' KG Basin has been seriously affected. The imports of LNG have also been low due to weak demand. This is on account of its reduced competitiveness compared with liquid fuels such as naphtha due to sharp price decline.

o. The Kochi terminal is operating close to 5% capacity. This is because of laying the gas pipeline to connect Bengaluru to Tamilnadu having been affected due to the problems of land acquisition.

p. There is a significant change in the natural gas market due to significant drop in crude oil prices leading to sharp decline in liquid fuels such as naphtha. Since long term gas prices are based on 60 months' average of crude oil prices with a cap and floor price the current spot prices of natural gas are much lower than the long term contract prices.

q. Price injury cannot be determined on the basis of loose and packed product. The claim of Domestic Industry that price undercutting will not be negative if analyzed separately for loose and packed cannot be accepted because determination of price undercutting

only on loose and packed basis and rest of the parameters on combined basis is nothing but a pick and choose approach and the Authority is requested to observe uniformity in the approaches and comparisons.

r. There should be apple to apple comparison. Sales, both in domestic market and exports, is presented in PCN basis consisting three factors i.e. type/nature/category of the product, concentration level and packaging. So, the dumping and injury should be calculated on PCN basis.

s. The landed value of the imports from Bangladesh is higher than then the net sales realization of the Domestic Industry. This trend has continued throughout the injury period and that is the reason that the price undercutting of imports from Bangladesh has been negative.

t. Landed price of Bangladesh is higher by 10% as compared to other countries and 20% as compared to Domestic industry.

u. The price undercutting has been negative for Bangladesh Imports throughout the injury period. That is an important parameter for determining injury. The imports from Bangladesh are 25% of the total imports. Prices of Thailand are almost similar to the prices of Bangladesh and the total imports from Thailand are 46%. Since 71% of the total imports are not undercutting the prices of the domestic industry and above almost 20% above the prices of the domestic industry how can that cause injury to the Domestic Industry.

v. The petition suggests that there is huge demand- supply gap. The capacity utilization of the DI is 93%. Marginal shortfall in capacity utilization is not due to imports. Such industries cannot achieve 100% capacity utilization. Imports have increased due to demand supply gap.

Submissions made by the producers/exporters/other interested parties post issuance of disclosure statement are as follows:

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a. Number of employees and salaries of the domestic industry increased during the entire injury period.

b. The exporter reiterated the argument with regard to injury due to plant shut down, long term contract with GAIL, negative price undercutting of Bangladesh and no material injury to the domestic industry.

c. The interested parties/exporters/importers reiterated the arguments with regard to minimal or almost no imports from Taiwan. Considering the amount of imports from Taiwan as compared to the imports from other subject countries, it will not be justified to cumulate the imports of Taiwan with the imports of other countries.

d. The Designated Authority should use its discretion keeping in mind the bilateral trade relations with the other county.

e. The imports from Taiwan were below de-minimis but in the petition it was shown 3.7% and the same has been seen in the disclosure statement as well. Copy of import statement should be provided to the Government of Taiwan for its examination.

74. **Submissions made by the Domestic industry**

a. The domestic industry is suffering injury due to dumping. Other factors can be examined by the Authority examining the industry's performance on quarter by quarter basis.

b. Profitability of domestic industry deteriorated steeply within the POI and after full commercial production started. The Domestic Industry had better profitability when the production was suspended. It became adverse when full commercial production commenced

c. The domestic industry was able to achieve optimum capacity utilization in next quarter itself. Despite that the domestic industry suffered losses. So there clearly is a link between the decline in profitability and dumping of the product in the country.

d. It would be relevant and useful to refer the decision of the CESTAT in the matter of Forum of Acrylic Fibre Manufacturers vs. Designated Authority (Final Order Nos. 34-35/2006-AD, dated 2-8-2006, in Appeal Nos. C/848) which underlines that Profits, ROI and cash profits are the most important injury parameters.

e. Relevant adjustments of costs accounting for shutdown period have been made. The issue was raised by the Directorate prior to initiation of investigation and the same was addressed by the petitioners before initiation itself.

f. Demand of PUC in the country was always rising and positive.

g. Dumping should not be the sole reason of injury. Where dumping is one of the factors causing injury along with other factors the Authority will determine injury due to dumping after neutralizing injury caused by other factors.

h. The impact on production due to suspension can be examined by the Authority by appropriately enhancing production of the domestic industry. Petitioners have already done the same. It is seen that the petitioners would have still faced injury even if then production was not suspended due to shut down.

i. The natural gas price in Bangladesh is not lower. It is subsidised. Low price of natural gas in Bangladesh does not imply that the Domestic industry should suffer injury from dumping.

j. Lower cost of production in exporting counties does not address the question of dumping. The finding notified by the Pakistan authorities clearly establishes existence of significant dumping in the product.

k. Statement of imports and landed price of imports is on record. It is not true that Landed price of Bangladesh is higher by 10% as compared to other countries and 20% as compared to Domestic industry.

l. A statement of price undercutting from subject countries will show that the price undercutting is positive.

m. The figures of demand show that that there is demand for the product and capacities in India. The Indian producers can meet about 95% of demand for the product in the country. Imports however are occupying 24% of the market, which clearly shows that imports are holding a share far higher than what is justified by demand supply gap.

n. Downtrend in sale price of PUC claimed by the exporters implies that the dumping of the product is causing injury to the domestic industry. If the downward trends in prices are experienced only in PUC in export markets and not in the domestic markets of the exporters, it must be concluded that dumping of the PUC is causing injury to the domestic industry.

o. The statement that landed prices of all the countries were below NSR except Bangladesh is on the basis of comparison of weighted average basis and without including freight costs. Since a significant proportion of imports are on the basis of packed condition and further significant Bangladesh imports are occurring only in West Bengal region, whereas a significant proportion of the domestic industry sales are in loose condition and in Northern region, any such price comparison must be done after considering the difference in cost and price of loose and packed product. Further, associated freight must be added. The relevant information is on records. It would be seen that the imports are undercutting the prices of the domestic industry over the entire period.

p. On analyzing month wise production of the petitioner it would be seen that the petitioners have achieved reasonable capital utilisation immediately after recommencing production. So it is definitely not a case where the fixed costs were high due to start-up operations.

q. Employment and wages have shown improvement in the injury period. But this is not the sole criteria for determining injury. Increase in wages and employment is due to

setting up of new capacities and enhancement of production. Employment and wages don't reflect the performance of the industry.

Submissions made by the domestic industry post issuance of disclosure statement are as follows:

a. The Non Injurious price calculated by the Authority is not correct. The calculation done by the Authority for the Production for determining per unit capital employed is not correct and the profit considered by the Authority is grossly understated. The Authority has determined capital employed after dividing the figures by 15 months production instead of 12 months.

b. The enhancement of the capacity of the company (NPL) was commercialized in 2014 and this capacity was available to the petitioner only for part of the Period of investigation. NFA for this plant is required to be divided by production of this period. Considering NFA for this period and dividing by production of 12/15 months is inappropriate.

c. The CSR expenses have been disallowed while determining NIP.

d. The depreciation cost taken for HOCL is not correct. There is an error in considering the utilities cost.

e. The NIP determined is inappropriate and against the object of dumping law as also against the judgement of the Supreme Court in the matter of Reliance industries Ltd Vs. Designated Authority.

f. Freight is not included while determining NIP. It is important to add freight in this present case because in case of loose product the freight is very high and such freight cost is included for exporters while determining the landed price.

g. The Designated Authority must add excise duty to the domestic industry's non injurious price and countervailing duty (additional duty of customs) on the imports for determining injury margin.

h. Injury margin is understated to the proportionate extent if the sales tax is not added in the non-injurious price.

i. Since the product under consideration is sold in different concentration and the prices vary accordingly, the Authority is requested to determine injury margin, dumping margin and price undercutting after taking into account the difference in consumption factors.

Examination by the Authority

75. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties. Specific submissions have been addressed herein below.

76. With regard to the argument that decline in profitability parameter does not make difference and cannot become the reason of injury for the domestic industry, the Authority notes that profitability is one of the most important parameters which should be considered while determining injury. Decline in profitability is a major factor which goes on to show that the domestic industry is suffering injury.

77. With regard to the argument that injury to the domestic industry is due to other factors, the Authority notes that Rules does not prescribe that the injury should be solely due to dumping. Injury may be caused due to other factors as well. Authority has adjusted the loss of sales due to shut down at appropriate places.

78. The injury examination undertaken shows that there is no decline in demand. The demand has increased during the injury period and the domestic industry has suffered injury due to increased imports.

79. With regard to the argument that there exists demand supply gap, the Authority notes that demand supply gap per se cannot justify the act of dumping by the subject countries. It is further observed that Indian Producers as a whole have the capacity to fulfil 95% of the demand of the market; yet a significant amount of market share is captured by the subject countries and the same cannot be attributed to demand supply gap. Further, the Authority has found adverse price effect of dumped imports on the domestic industry. The conclusion on injury are largely based on material deterioration in performance of the domestic industry in respect of parameters such as profits, return on investments and cash profits.

80. With regard to the argument that imports from Taiwan are minimal, the investigation has shown that imports from Taiwan are above de-minimus limits and the import price is below normal value. The investigation has shown positive dumping margin and injury margin in case of imports from Taiwan. There is no material provided by the interested parties which show that the imports from Taiwan should not be cumulated with the imports from other countries.

81. As regards the argument on the calculation of NIP, the Authority notes that NIP has been determined as per Annexure III and considering past practice of the Authority.

Cumulative Assessment

82. The Annexure II (iii) of the Anti-Dumping Rules requires that where imports of a product from more than one country are being simultaneously subjected to antidumping

investigations, the designated authority will cumulatively assess the effect of such imports, only when it determines that ;

i. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the import of like article or where the export of individual countries is less than three percent, the imports collectively accounts for more than seven percent 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.

83. The Authority notes that the dumped imports are entering the Indian market simultaneously from the subject countries. The conditions for cumulation of injury laid down under the rules are satisfied in the present case. None of the interested parties have provided any evidence which shows that it would not be appropriate to cumulatively assess effects of dumped imports onto the domestic industry. The issue of cumulative assessment of the injury caused to the domestic industry due to dumped imports from these sources has been examined with respect to the above parameters and it was observed that:

i. The margins of dumping of individual products from each of the subject countries are more than the de-minimis limit;

ii. The volume of imports of individual products from each of the subject countries is more than the de minimis;

iii. Imports from the subject countries are undercutting the prices of the domestic industry in the market;

iv. 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.

84. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the domestic industry in the light of conditions of competition between imported product and like domestic product.

85. Annexure-II of the Anti-dumping 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.

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

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

87. 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.

88. For the purpose of the injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The volume and price effect of dumped imports have been examined below.

Volume Effect of the dumped imports on the Domestic industry

I. Demand and Market Share

89. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below. The Authority notes that the demand of the product under consideration has increased over the period.

Particulars	UOM	2011-12	2012-13	2013-14	Apr14-Jun15	Apr14-Jun15
Imports Volume						Annualized
Subject Countries	MT	17,464	33,759	63,286	67,300	53,840
Other Countries	MT	7,404	53	19	-	-

Total	MT	24,868	33,812	63,305	67,300	53,840
Share in Imports						
Subject Countries	%	70.23	99.84	99.97	100.00	100
Other Countries	%	29.77	0.16	0.03	-	-
Demand		100.00	100.00	100.00	100.00	100
Subject Countries	MT	17,464	33,759	63,286	67,300	53,840
Other Countries	MT	7,404	53	19	-	-
DI domestic Sales	MT	70,810	89,139	87,161	109,336	87,469
Other Indian Producers	MT	66,789	63,815	62,781	102,493	81,994
Total	MT	162,468	186,766	213,247	279,128	223,303
Market Share						
Subject Countries	%	10.75	18.08	29.68	24.11	24.11
Other Countries	%	4.56	0.03	0.01	-	-
DI domestic Sales	%	43.58	47.73	40.87	39.17	39.17
Other Indian Producers	%	41.11	34.17	29.44	36.72	36.72
Total	%	100.00	100.00	100.00	100.00	100.00

90. Considering imports from various sources and sales of the domestic industry, market share of subject imports in demand in India was examined. Whereas share of dumped imports from subject countries increased substantially as compared to the base year, it has declined slightly as compared to the previous year. The share of the Domestic Industry has decreased to a significant level during the Period of investigation.

II. <u>Import Volume and Market Share:</u>

91. Imports of the product under consideration have increased from subject countries in absolute terms over the period.

Particulars	**UOM**	**2011-12**	**2012-13**	**2013-14**	**Apr14-Jun15**	**Apr14-JUNE15** (Annualized)
Import Volume						
Subject Countries	MT	17,464	33,759	63,286	67,300	53,840
Bangladesh	MT	1,925	4,571	11,862	17,475	13,980
Chinese Taipei		-	-	40	2,495	1,996
Indonesia	MT	2,678	7,066	5,445	4,457	3,566
Korea RP		1	2,815	12,032	3,007	2,405
Pakistan	MT	7,545	4,614	7,930	9,034	7,227
Thailand	MT	5,315	14,693	25,977	30,832	24,666
Other Countries	MT	7,404	53	19	-	-
Total	MT	24,868	33,812	63,305	67,300	53,840
Share in Imports						

Subject Countries	%	70.23	99.84	99.97	100.00	100.00
Bangladesh	%	7.74	13.52	18.74	25.97	25.97
Chinese Taipei		-	-	0.06	3.71	3.71
Indonesia	%	10.77	20.90	8.60	6.62	6.62
Korea RP		0.00	8.33	19.01	4.47	4.47
Pakistan	%	30.34	13.64	12.53	13.42	13.42
Thailand	%	21.37	43.46	41.04	45.81	45.81
Other Countries	%	29.77	0.16	0.03	-	-
Total	%	100.00	100.00	100.00	100.00	100.00

92. Since interested parties have contended that the increase in imports is due to suspension of production by the domestic industry, the Authority has determined volume of imports from subject countries after reducing imports for the loss of production volumes by the domestic industry due to suspension of production. The volume of imports of the subject goods from the subject countries after adjusting loss of production on account of shutdown is as under. It is observed from the table that even after adjusting imports because of loss of production by the domestic industry, imports from subject countries increased significantly over the injury period with some decline in the Period of Investigation as compared to the previous year.

Particulars	**UOM**	**2011-12**	**2012-13**	**2013-14**	**Apr14-Jun15**	**Apr14-JUNE15** (Annualized)
Subject Countries (after deducting loss of sales)	MT	17,464	33,759	63,286	54,200	43,360
Other Countries	MT	7,404	53	19	0	0
DI domestic Sales after adding loss of sales)	MT	70,810	89,139	87,161	122,435	97,948
Other Indian Producers	MT	66,789	63,815	62,781	102,493	81,994
Total	MT	162,468	186,766	213,247	279,128	223,303
Market Share						
Subject Countries	%	10.75	18.08	29.68	19.42	19.42
Other Countries	%	4.56	0.03	0.01	-	-
DI domestic Sales	%	43.58	47.73	40.87	43.86	43.86
Other Indian Producers	%	41.11	34.17	29.44	36.72	36.72
Total	%	100.00	100.00	100.00	100.00	100.00

III. <u>Share of imports in relation to Production & Consumption</u>

93. Authority notes that imports from the subject countries have increased in relation to production and consumption in India and the same is evident from the table below showing imports in relation to production and consumption:

Imports	UOM	2011-12	2012-13	2013-14	Apr14-Jun15
In relation to production	%	14	22	42	33
In relation to consumption	%	11	18	30	24

PRICE EFFECT

Price effect of dumped imports and impact on domestic industry

94. 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 product 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. For the purpose of this analysis, the weighted average cost of sales (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject countries.

Price Undercutting

95. The net sales realization has been arrived after deducting outward freight and taxes. Landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty including applicable cess to the Assessable value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the price undercutting from the subject countries is positive during the POI. The Authority has determined the landed value of the subject goods at ex-port level and the net sales realization of the domestic industry at ex-factory level as per its established practice.

Country	Pack/loose	Quantity	Landed Price	Net Sales Realization	Price Undercutting			
		MT	Rs/MT	Rs/MT	Rs/MT	Rs Lacs	%	Range
Bangladesh	Packed	17,475	****	****	****	****	****	0-(-5)
China Taipei	Packed	2,495	****	****	****	****	****	0-(5)
Indonesia	Loose	4,437	****	****	****	****	****	0-(-5)

Indonesia	Packed	20	****	****	****	****	****	(-25)-(-30)
Indonesia	Total	4,457	****	****	****	****	****	0-(-5)
Korea RP	Loose	26	****	****	****	****	****	(-10)-(-15)
Korea RP	Packed	2,981	****	****	****	****	****	0-(5)
Korea RP	Total	3,007	****	****	****	****	****	0-(5)
Pakistan	Packed	9,034	****	****	****	****	****	15-(20)
Thailand	Packed	30,832	****	****	****	****	****	0-(-5)
Total		67,300	****	****	****	****	****	0-(5)

Price Underselling

96. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. For this purpose, fair selling price i.e. Non-injurious Price determined for the domestic industry has been compared with the landed price of imports. The landed price of imports considered for the purpose of price undercutting has also been adopted for the purpose of determining price underselling. Comparison of weighted average NIP (Non-Injurious Price) of the domestic industry with weighted average landed price of imports is shown as under :

Country		Quantity	Landed Price	NIP	Price Underselling			
		MT	Rs/MT	Rs/MT	Rs/MT	Rs Lacs	%	Range
Bangladesh	Packed	17,475	****	****	****	****	****	10-20
China Taipei	Packed	2,495	****	****	****	****	****	10-20
Indonesia	Loose	4,437	****	****	****	****	****	0-(-10)
Indonesia	Packed	20	****	****	****	****	****	10-(-20)
Indonesia	Total	4,457	****	****	****	****	****	0-(-10)
Korea RP	Loose	26	****	****	****	****	****	-10-(-20)
Korea RP	Packed	2,981	****	****	****	****	****	10-20
Korea RP	Total	3,007	****	****	****	****	****	10-20
Pakistan	Packed	9,034	****	****	****	****	****	30-40
Thailand	Packed	30,832	****	****	****	****	****	0-10
Total			****	****	****	****	****	10-20

		67,300						

Price Suppression and Depression

97. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

Particulars	UOM	2011-12	2012-13	2013-14	Apr14-Jun15
Cost of Sales	Rs/MT	****	****	****	****
Indexed		100.00	101.19	113.69	120.05
Selling Price	Rs/MT	****	****	****	****
Indexed		100.00	105.48	113.81	99.96

98. The Authority notes that cost of sales has increased during the injury period whereas the selling price has decreased in the injury period. It is thus evident that the imports are depressing the prices of the domestic industry.

G. Economic Parameters of the Domestic Industry

I. Capacity, Production, Capacity utilization and Sales Volume

99. Capacity, production, capacity utilization and sales volume of the Domestic Industry over the injury period is given in the following table. It is noted that capacity of the domestic industry has increased whereas capacity utilization has decreased (even after adjusting loss of production) during the period of investigation as compared to 2012-13 and 2013-14.

Parameters	Unit	2011-12	2012-13	2013-14	Apr14-Jun15
					Annualized
Capacity	MT	94,450	94,450	94,450	103,250
Production	MT	67,373	88,089	93,288	83,863
Production Adjusted	MT	67,373	88,089	93,288	94,342
Capacity Utilization	%	71.33	93.27	98.77	81.22
Adjusted Capacity Utilization	%	71.33	93.27	98.77	91.37
Domestic Sales	MT	70,810	89,139	87,161	87,469

100. Sales of the domestic industry have increased during the POI as compared to the base year. However, increase in sales volume is less as compared to the increase in the share of dumped imports and increase in demand during the same period.

II. Profit/Loss, Cash Flow, Return on Capital Employed

101. The profitability of the domestic industry is given in the following table. It is seen that profitability of the domestic industry declined over the injury period. Profitability of the domestic industry has declined drastically in Period of investigation. Cash profit and return on investment have also declined in the POI as compared to base year. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. It is seen that the cash profits of the domestic industry declined significantly in the Period of investigation as compared to the previous years as well as base year.

Parameters	Unit	2011-12	2012-13	2013-14	Apr14-Jun15
Profitability	Rs./MT	****	****	****	****
Indexed		100	125	114	9
ROI	%	****	****	****	****
Indexed		100	175	147	28
Cash Profits	Rs.Lacs	****	****	****	****
Indexed		100	138	125	34

III. Inventories

102. It is noted that inventories with the domestic industry increased in the POI as compared to the base year as well as the previous year.

Particulars	UOM	2011-12	2012-13	2013-14	Apr14-Jun15
Inventory – Average Stock	MT	****	****	****	****
Indexed		100	39	96	111

IV. Employment, Wages& Productivity

103. The Authority notes that productivity, employment with the domestic industry and wages paid have increased during the POI as compared to the base year.

Particulars	UOM	2011-12	2012-13	2013-14	Apr14-Jun15
Wages	Rs Lacs	****	****	****	****
Indexed		100	119	138	176

Wages	Rs/MT	****	****	****	****
Indexed		100	91	100	113
No of Employees	Nos	****	****	****	****
Indexed		100	100	100	106
Productivity per Employee	Nos	****	****	****	****
Indexed		100	131	138	118
Productivity per Day	Nos	192	252	267	240
Indexed		100	131	138	124

V. Magnitude of dumping

104. 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 margins determined in respect of the subject countries are above de-minimus.

VI. Growth

105. The Authority notes that growth of the domestic industry in respect of profit/loss, ROI, cash flow was adverse.

Particulars	UOM	2011-12	2012-13	2013-14	Apr14-Jun15
Change over preceding period					
Production	%		30.75	5.90	(10.10)
Sales	%		25.88	(2.22)	0.35
Capacity Utilization	%		21.93	5.50	(17.55)
Profit/Loss per Unit	%		24.83	(8.39)	(91.86)
Cash Profit	%		38.14	(9.47)	(73.19)
Return on Capital Employed	%		12.74	(4.66)	(20.39)

VII. Ability to raise capital investment

106. One of the petitioners, M/s National Peroxide Ltd expanded capacity during period of investigation. Petitioners have submitted that since capital investment decision is a long term proposition, it does not have any bearing on current ability to raise capital investment. However, if dumping persists it would be difficult for domestic industry to generate sufficient returns for servicing interest and loan instalments of finance institutions.

VIII. Factors affecting Domestic Prices

107. The examination of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc. shows that the landed value of imported material from the subject countries is below the non-injurious price of the domestic industry, causing significant price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of the imports of dumped subject goods from subject countries.

108. The injury margin determined for subject countries, during POI as follows:

Country	Exporter/ Producer	Injury Margin US$/MT	Injury Margin %	Injury Margin % Range
Indonesia	All	****	****	0-(-10)
Taiwan	All	****	****	10-20
Korea RP	All	****	****	10-20
Thailand	Thai Peroxy Limited, Thailand	****	****	0-10
	Non-Co-operative producers/ exporters in Thailand	****	****	10-20
Pakistan	Sitara Peroxide Limited, Pakistan	****	****	10-20
	Descon Oxychem Limited, Pakistan	****	****	10-20
	Non-Co-operative producers/ exporters in Pakistan	****	****	30-40
Bangladesh	Samuda Chemicals, Bangladesh	****	****	10-20
	Tasnim Chemicals, Bangladesh	****	****	10-20
	ASM Chemicals, Bangladesh	****	****	20-30

	Non-Co-operative producers/ exporters in Bangladesh	****	****	20-30

IX. Conclusion on Injury

109. In view of the foregoing analysis, the Authority concludes that the dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India. Imports of the subject goods from the subject countries are undercutting the prices of the domestic industry in the market. The imports were suppressing the prices of the domestic industry. The dumped imports are leading to price underselling. With regard to consequent impact of the dumped imports on the domestic industry, it is found that though demand for the subject goods increased significantly, the production and sales of the domestic industry has not increased in proportion to the increase in demand and it's the market share of the domestic industry declined . As a result of significant price depression, performance of the domestic industry declined significantly during POI in respect of parameters such as Profits, Cash Profits and return on capital employed . Growth in respect of price parameters shows an adverse impact on the domestic industry. Even when the decline in capacity utilisation is due to suspension of production, decline in parameters such as profits, cash profits and return on investments is due to price undercutting and price depression caused by the dumped imports. It is thus concluded that the domestic industry has suffered material injury.

H. Causal link

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

a) Volume and prices of imports from third countries

111. During POI, imports of the subject goods from countries other than the subject countries are negligible in volume. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

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

112. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

c) Contraction of demand or Changes in the pattern of consumption

113. The Authority notes that demand for the product showed increase during the injury period and also during POI. The Authority thus concludes that injury to the domestic industry was not due to contraction in demand.

d) Development in Technology

114. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry. Nor investigation has shown existence of possible develoments in technology as a factor of injury to the domestic industry.

e) Export performance of Domestic Industry

115. There are no significant exports by petitioner companies during period of investigation. Therefore, any possible decline in export performance is not a cause of injury to the domestic industry.

f) Productivity of the Domestic Industry

116. Productivity of the domestic industry has increased during the POI. However, profitability of the domestic industry showed declining trend.

117. From the foregoing, the Authority concludes that there is no evidence of injury being caused to the domestic industry due to other factors.

I. Factors establishing causal link

118. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated over the injury period. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

i. 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.
ii. The imports are suppressing the prices of the domestic industry.
iii. Profits, Cash Profits and Return on capital employed has steeply declined in period of investigation.
iv. Growth of the domestic industry was negative in respect of profits, return on capital employed and cash profits on account of dumped imports.

v. It has been contended that the production and consequently performance of the domestic industry deteriorated due to suspension of production by NPL for capacity expansion. Considering that the suspension of production by a company impacts its production and performance in respect of various other parameters, the Authority has examined the performance in detail. As far as expenses during the period of production suspension are concerned, the same have in any case not been charged to income statement. Further, after commencement of production, the company had achieved reasonable level of capacity utilisation very soon. In any case, the Authority had added production for the suspension period and thereafter determined performance and injury margin. It is also noted that there was significant decline in the selling price during the investigation period on month on month basis. The price depression suffered by the domestic industry could not have been due to suspension of production. The price depression suffered by the domestic industry due to dumping in the Country led to decline in profits, return on investment and cash flows.

119. Thus the Authority concludes that the domestic industry suffered material injury due to dumped imports of the subject goods, originating in or exported from the subject countries.

J. Magnitude of Injury Margin

Injury Margin

120. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries. The weighted average injury margins are as below:

Country	Exporter/ Producer	Injury Margin US$/MT	Injury Margin %	Injury Margin % Range
Indonesia	All	****	****	0-(-10)
Taiwan	All	****	****	10-20
Korea RP	All	****	****	10-20
Thailand	Thai Peroxy Limited, Thailand	****	****	0-10
	Non-Co-operative producers/ exporters in Thailand	****	****	10-20
Pakistan	Sitara Peroxide Limited, Pakistan	****	****	10-20

	Descon Oxychem Limited, Pakistan	****	****	10-20
	Non-Co-operative producers/ exporters in Pakistan	****	****	30-40
Bangladesh	Samuda Chemicals, Bangladesh	****	****	10-20
	Tasnim Chemicals, Bangladesh	****	****	10-20
	ASM Chemicals, Bangladesh	****	****	20-30
	Non-Co-operative producers/ exporters in Bangladesh	****	****	20-30

K. Indian industry's interest & other issues:

121. 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 countries 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.

L. Recommendation

122. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

a) The product under consideration has been exported to India from the subject countries below normal values.

b) The domestic industry has suffered material injury on account of subject imports from subject countries.

c) The material injury has been caused by the dumped imports of subject goods from the subject countries.

123. The Authority notes that the investigation was initiated and it was notified to all the interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the Anti-dumping Rules and having established a positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of anti-dumping duty is necessary to offset dumping and injury. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the Anti-dumping duty equal to the amount indicated in Column 8 of the table below is recommended to be imposed by the Central Government on the imports of the subject goods originating in or exported from subject countries.

Duty Table

SN	Sub-Heading or Tariff Item	Description on of goods	Country of Origin	Country of export	Producer	Exporter	Amount	Currency	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	2847	Hydrogen Peroxide *	Bangladesh	Bangladesh	M/s Samuda Chemicals	Samuda Chemicals	46.90	USD	MT
2	2847	Do *	Bangladesh	Bangladesh	Tasnim Chemicals	Tasnim Chemicals	27.81	USD	MT
3	2847	Do *	Bangladesh	Bangladesh	ASM Chemicals	ASM Chemicals	46.29	USD	MT
4	2847	Do *	Bangladesh	Bangladesh	Any combination other than mentioned in S.N. 1,2 & 3 above		91.47	USD	MT
5	2847	Do *	Bangladesh	Any country other than those subject to	Any	Any	91.47	USD	MT

				antidumping duty					
6	2847	Do *	Any country other than those subject to antidumping duty	Bangladesh	Any	Any	91.47	USD	MT
7	2847	Do *	Pakistan	Pakistan	M/s Sitara Peroxide Ltd	M/s Sitara Peroxide Ltd	51.91	USD	MT
8	2847	Do *	Pakistan	Pakistan	Descon Oxychem Ltd	Descon Oxychem Ltd	61.05	USD	
9	2847	Do *	Pakistan	Pakistan	Any combination other than mentioned in S.N. 7 & 8 above		117.94	USD	MT
10	2847	Do *	Any country other than those subject to antidumping duty	Pakistan	Any	Any	117.94	USD	MT
11	2847	Do *	Pakistan	Any country other than those subject to antidumping duty	Any	Any	117.94	USD	MT
12	2847	Do *	Thailand	Thailand	M/s Thai Peroxide Co Ltd	M/s Thai Peroxide Co Ltd	16.91	USD	MT
13	2847	Do *	Thailand	Thailand	Any combination other than mentioned in S.N. 12 above		63.32	USD	MT
14	2847	Do *	Any country other than those	Thailand	Any	Any	63.32	USD	MT

			subject to antidumping duty						
15	2847	Do *	Thailand	Any country other than those subject to antidumping duty	Any	Any	63.32	USD	MT
16	2847	Do *	Korea	Korea	Any	Any	46.16	USD	MT
17	2847	Do *	Korea	Any country other than those subject to antidumping duty	Any	Any	46.16	USD	MT
18	2847	Do *	Any country other than those subject to antidumping duty	Korea	Any	Any	46.16	USD	MT
19	2847	Do *	Taiwan	Taiwan	Any	Any	56.33	USD	MT
20	2847	Do *	Taiwan	Any country other than those subject to antidumping duty	Any	Any	56.33	USD	MT
21	2847	Do *	Any country other than those subject to antidumping duty	Taiwan	Any	Any	56.33	USD	MT

Further procedure

124. An appeal against the order of the Central Government that may arise out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Dr Inder Jit Singh)
Designated Authority