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**No.14/4/2012-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti Dumping & Allied Duties
Udyog Bhawan, New Delhi**

17th December, 2013

Final findings

Sub: Anti-dumping investigation concerning imports of Meta Phenylene Diamine (MPDA) originating in or exported from China PR -

Having regard to Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the AD rules).

A. PROCEDURE

1. The procedure described below has been followed:

- (i) The Designated Authority (hereinafter referred to as the Authority), under the above Rules, received a written application from M/s Aarti Industries Ltd., Mumbai (hereinafter referred to as the applicant) on behalf of the domestic industry, alleging dumping of **Meta Phenylene Diamine (MPDA)** originating in or exported from People's Republic of China PR (hereinafter referred to as China PR or subject country).
- (ii) Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented.
- (iii) The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country.
- (iv) The Authority notified the embassy of the subject country in India about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub- Rule 5(5) of the AD Rules.
- (v) The Authority issued a public notice dated 19th June 2012 published in the Gazette of India, Extraordinary, initiating anti-dumping investigation

concerning imports of the subject goods.

- (vi) The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the Applicant) and industry associations and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.
- (vii) The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India and advised them to make their views in writing within forty days from the date of the letter.
- (viii) The Authority provided a copy of the non-confidential version of application to the known exporters and the embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.
- (ix) The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rule 6(4) of the AD Rules:

Shanghai Amino-Chem Co. Ltd. 31/F King Tower, No. 28 Xinjinqiao Road, Pudong, Shanghai, 201206 P.R.C
Jaingsu Tianjiayi Chemical Co., Limited Nijiaxiang, Zhouzhuang, Jiangyin, Jiangsu, China 214423

- (x) In response to the initiation notification, the following exporters / producers from China PR have responded:

S.N.	Name of Exporter/ Producer	Exporter/ Producer
1	Zhejiang Amino Chem Co. Ltd.	Producer & Exporter
2	Changshan Haichang Chemical Co. Ltd.	Exporter
3	Jiangsu Tianjiayi Chemical Co. Ltd.	Producer

- (xi) A response was also filed by M/s Shanghai Amino-Chem. Co. Ltd stating that the company has only sold the subject goods in the domestic market and has not exported the subject goods to India.
- (xii) Questionnaires were sent to the following known importers / users of subject

goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

Aaishwariya Chemicals Pvt. Ltd. 263/2, Phase-2,GIDC,Vatva, Ahmedabad-382445
Ankur Chemicals, G 1 - 198, Gudli Industrial Area, Udaipur.
Aries Organics Pvt. Ltd., Plot No.441,Phase-II, G.I.D.C. Vatva, Ahmedabad-382445
Chemworld Inc., 409,Haash Business Centre, Near Ankur School, Fateh Nagar, Paldi, Ahmedabad
Hexone Interchem Pvt. Ltd., Opp. Katwad Patiya, N.H. No.8, Dalpur, Tal-Prantij, Dist-Sabarkantha, 393002,Gujarat
Indo Colchem Ltd., Plot No.36,Phase-II, GIDC, Vatva, Ahmedabad-382445 Gujarat
Krishna Industries, L/30/46/1&2,Phase-III,GIDC, Naroda, Ahmedabad-382330,Gujarat
Macsen Laboratories, Ambamata Ki Ghati, Village Titerdi, Tehsil Girva, Udaipur , 313001
Novacid Pvt.Ltd., 263/A-B, G.I.D.C., Pandesara, Surat, Gujarat
Prashant Industries, Plot No:3408/D, Phase-IV, G.I.D.C. Estate, Vatva, Ahmedabad-382445 Gujarat
Shree Pushkar Petro Products Ltd., B-103 MIDC Lote Parshuram, Taluka Khed, Dist Ratnagiri, Maharashtra, 415722
Solar Dyes Industries, Plot No.8103,GIDC Estate, Sachin, Surat,394230,Gujarat
Hindprakash International, A-414,Atma House, Opp. Old RBI, Ahmedabad
Yash Chemex Inc., Plot No : 457,Phase-II, G.I.D.C Estate ,Vatva, Ahmedabad-382445
Anil Colours Industries Pvt. Ltd., Plot No.125/1,GIDC Estate, Nandesari, Gujarat
Aries Dye Chem Industries, C-1/260,Phase II,GIDC, Vatva, Ahmedabad-382445, Gujarat
Bodal Chemicals Ltd Unit I, Plot No.110, Phase-II, G.I.D.C.Estate, Vatva, Ahmedabad, Gujarat

Chhatariya Dye Stuff P.Ltd., Near G.I.D.C.Estate, Mahuva, Bhavanagar-364290, Gujarat
Hexone Interchem Pvt. Ltd., Palak,Sahjanand Park, Jeevan Dhara Society, Gayatri Mandir Road, Mahavirnagar, Himmat Nagar – 383001
Jainik Industries, 605-A,Phase-IV,Gidc,Vatva, Ahmedabad-382445, Gujarat
Loxim Industries Limited, Plot No. 105/109-A,ECPL Road, Village- Ekalbara, Padra Dist., Vadodara,391440
Monica Industries, C/1,421,422,Phase-II, Near Vinzol Crossing, G.I.D.C., Vatva, Ahmedabad-382445, Gujarat
Orjet Intermediates Pvt. Ltd., C-1/B-13,Phase-II, G.I.D.C., Vatva, Ahmedabad-382445, Gujarat
Rohan Dyes & Intermediates Ltd., Plot No.115-117,123, Phase-I, G.I.D.C., Vatva, Ahmedabad-382445
Shreeji Organics, Plot No.3421,Phase-IV, G.I.D.C., Vatva, Ahmedabad-382445
Synthopharma Chemicals, C-1-220-221/3, Phase-II,G.I.D.C, Naroda, Ahmedabad-382330
Chemex Chemical, 107,Udyog Kshetra, Link Road, Mulund (W),400080, Mumbai

- xiii In response to the initiation notification, the following importers/users and association have made submissions:
1. The Dyestuffs Manufacturers' Association of India
 2. M/s. Ravi Dyeware Co. Ltd.
 3. M/s Lonsen Kiri Chemical Industries Ltd.
 4. M/s. Spectrum Dyes & Chemicals
- xiv The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. During the investigation proceedings, the interested parties mentioned above as well as the domestic industry submitted information pertinent to the investigations and submissions made by all interested parties have been taken into account in present findings.
- xv Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being

satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

- xvi. Further information was sought from the applicant and other interested parties to the extent deemed necessary.
- xvii. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;. Investigation was carried out for the period starting from 1st October 2010 to 31st December 2011(POI). The examination of trends, in the context of injury analysis covered the period from 2008-09, 2009-10, 2010-11 and POI.
- xviii. Exchange rate for conversion of US\$ to Rs. is considered for the POI as Rs.46.58 as per customs data.
- xix. Request was made to the Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods in India for the period of investigation and preceding three years and the same was received.
- xx. The verification of the domestic industry's and exporter's information & data, to the extent deemed necessary, was conducted.
- xxi. The Authority, having regard to the Act and the AD Rules, recommended imposition of provisional Anti-Dumping duties concerning imports of MPDA originating in or exported from China PR, vide its Preliminary findings Notification No 14/4/2012 DGAD dated 1st January, 2013. The recommendations made by the Designated Authority were accepted by the Ministry of Finance and interim duties were levied vide notification no. 02/2013 dated 22nd March, 2013.
- xxii. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 5th March, 2013.

xxiii. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered.. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have been considered in Final Findings. The following interested parties have commented to the disclosure statement

- i. Zhejiang Amino-Chem Co., Ltd. (Producer/Exporter)
- ii. Lonsen Kiri Chemical Industries Limited (Importer)
- iii. The Dyestuffs Manufacturers' Association of India (Association)
- iv. Ravi Dyeware Co. Ltd.(Importer)
- v. The domestic industry

xxiv. The Central government upon the request from DGAD extended the date for completing the subject investigations and notifying the final findings till 18th December, 2013.

xxv. *** in this final findings represents information furnished by the applicants on confidential basis, and so considered by the Authority under the Rules.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

2. The product under consideration in the present investigation is 'Meta Phenylene Diamine' (MPDA). Commercially, it is also called MPD or MPDA. Under normal (room) conditions, it is a colourless or white colour solid, which tends to turn red, purple (dark colour) in air, on storage. Meta Phenylene Diamine has two amino groups attached to a Benzene ring, at Meta position, with respect to each other. It is an isomer of o- Phenylene Diamine (Ortho Phenylene Diamine) and p-Phenylene Diamine (Para Phenylene Diamine). Meta Phenylene Diamine functions as a chemical intermediate. MPDA as a chemical intermediate is used for manufacturing dyes, engineering polymer, aramid fiber and in photography & medical applications.
3. 'Meta Phenylene Diamine' is classified under Chapter 29 at subheading no. 29215120 in the Customs Tariff Act. However, Customs classifications are indicative only and in no way binding on the scope of this investigation and proposed measures.

B.1 Views of Exporters, Importers, Consumers and other Interested Parties

4. The following are the views of Zhejiang Amino Chem:
 - a) There are four types of MPDA produced by the company – grey molten (99.5%), grey flake (99.9%), white molten (99.9%) and white flake (99.9%).

- b) The company has exported grey molten and white flake to India in the investigation period.
- c) While the subject goods are produced in four different grades, grey and white are two major classification where again white grade is extremely different in terms of chemical specifications, manufacturing process and technology, end use application, interchangeability and difference in cost and selling price.
- d) Further, domestic industry neither has production technology nor does it produce white molten/flake MPDA; as such it must be excluded.
- e) Post disclosure, the exporter M/s Zhejiang Amino Chem has reiterated its views with regard to product under consideration and like article. It has been submitted that the product Scope and Like Article determination requires detailed examination as Grey grade and White grade MPDA are two different products. It has been reiterated that Aarti Industries Ltd. does not have production techniques and required equipment to produce the white molten/white flake MPDA. The grey molten/grey flake MPDA and the white molten/white flake MPDA has non-interchangeable and different function/using purpose. Those different types of MPDA have significant different end-using fields.

B.2 Views of the Domestic Industry

5. The following are the views of the domestic industry:

- (i) The product under consideration in the present petition is 'Meta Phenylene Diamine', also referred to as MPDA in the petition. Other names of the product under consideration are *m*- Phenylene Diamine, 1,3- diaminobenzene, 1, 3- Benzenediamine, *m*- Aminoaniline, *m*- Benzenediamine, *m*- Diaminobenzene, 1,3- Phenylenediamine, 3- Aminoaniline, *m*- Fenylenediamin, Phenylenediamine, *m*, *m*- Aminoaline and Phenylenediamine, meta. Commercially, it is also called MPD or MPDA.
- (ii) Under normal (room) conditions, it is a colourless or white colour solid, which tends to turn red, purple (dark colour) in air, on storage.
- (iii) Meta Phenylene Diamine has two amino groups attached to a Benzene ring, at Meta positions, with respect to each other. It is an isomer of *o*- Phenylene Diamine (Ortho Phenylene Diamine) and *p*- Phenylene Diamine (Para Phenylene Diamine).
- (iv) The responding exporter has not established having exported both grades of the product under consideration.
- (v) There is no known import of white form of MPDA in India.
- (vi) The applicant in fact produced and supplied both forms of MPDA.
- (vii) Mere bald statements by exporters as to different product grades in the absence of supporting evidence may be rejected.
- (viii) Significant imports of the product under consideration are being reported in

other classifications as well. The applicant, therefore, requested the Authority to call import data from the DGCI&S for the customs classification 29215190

- (ix) Post Disclosure, the domestic industry has submitted that it is producing and selling both white and grey grades of MPDA and therefore exclusion of the white grade from the scope of product under consideration is not warranted/justified.
- (x) The Petitioner has requested the Designated Authority to kindly specify in the duty table, either as product description, or by way of footnote, all description of the product under consideration, i.e., '*Meta Phenylene Diamine*' (MPDA), also known as *m*- Phenylene Diamine, 1,3- diaminobenzene, 1, 3- Benzenediamine, *m*- Aminoaniline, *m*- Benzenediamine, *m*- Diaminobenzene, 1,3-Phenylenediamine, 3- Aminoaniline, *m*- Fenylendiamin, Phenylenediamine, and *m*-Aminoaline, Phenylenediamine meta.

B.3 Examination by the Authority

- 6. The Authority has noted the arguments advanced by various interested parties. It is noted that the difference in the physical form of the product does not mean that the product is a different product. While claiming that the product under consideration is produced in different forms, the responding exporter has not provided any information to establish that these different grades differ significantly in terms of their associated costs and prices. Nor the responding exporter has provided any verifiable evidence nor established the need for exclusion of any particular product type. All types of the product under consideration are within the scope of present investigations.
- 7. Accordingly, the product under consideration is defined as '*Meta Phenylene Diamine*' (MPDA), also known as *m*- Phenylene Diamine, 1,3- diaminobenzene, 1, 3- Benzenediamine, *m*- Aminoaniline, *m*- Benzenediamine, *m*- Diaminobenzene, 1,3-Phenylenediamine, 3- Aminoaniline, *m*- Fenylendiamin, Phenylenediamine, and *m*-Aminoaline, Phenylenediamine meta.
- 8. The subject goods fall under Tariff Item '29215120' of the Customs Tariff. However, customs classifications are indicative only and in no way binding on the scope of the present investigation and proposed measures. It has been contended by the applicant that the imports of the product have also been reported under customs classification 29215190. It is noted that significant volumes of the product have been reported in the above mentioned classification as well. Therefore, imports of the product reported under customs classification 29215190 have also been considered.

B.4 Like Article

- 9. Rule 2(d) of the AD Rules defines like article as follows:

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

10. The applicant has claimed that the subject goods produced by the domestic industry are identical to the product under consideration being imported into India. The applicant claimed that there is no known difference in the applicant’s product and product under consideration exported from the subject country and the two are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. There is no significant difference in the subject goods produced by the applicant and those exported from the subject country and both are technically and commercially substitutable. It has been contended by other interested parties that the product under consideration is produced and sold in two major grades - grey and white. They have further contended that the domestic industry produces only grey grade of the goods and white grade should be excluded from this investigation in terms of its extreme difference, and the applicant industry could not produce them. The domestic industry has provided evidence that they have produced and supplied white grade of the product.

11. The Authority has examined the matter and notes that there is no known difference in subject goods produced by the domestic industry and exported from the subject country. The subject goods produced by the domestic industry and that imported from the subject country are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the same, the subject goods produced by the applicant company are being treated as domestic like article to the product under consideration imported from the subject country in accordance with the anti dumping Rules.

C. SCOPE OF DOMESTIC INDUSTRY AND STANDING

12. 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”

13. The application was filed by M/s Aarti Industries Ltd, Mumbai (referred to as the applicant) as the domestic industry of the subject goods in India. The applicant is the only producer of MPDA in the Country and, therefore, the production of the applicant accounts for 100% of domestic production of like article in India. None of the interested parties have raised any objection with regard to standing and domestic industry status of the applicant. In view of the same and after due examination, it is held that the applicant satisfies the requirements of standing and constitutes domestic industry in terms of Rule 2(b) and Rule 5(3) of the AD Rules respectively.

D. NORMAL VALUE AND DUMPING MARGIN

D.1 Normal value in China PR

D.1.1 MET Examination and normal value for all producers and exporters from China PR

14. The Authority notes that in the past three years China PR has been treated as non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD rules, China PR is to be treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules for the purposes of present determination.
15. As per Paragraph 8 of the Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provides information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporters/producers of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-
 - a) The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labor, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
 - b) The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
 - c) Such firms are subject to bankruptcy and property laws which guarantee legal

certainty and stability for the operation of the firms and
d) The exchange rate conversions are carried out at the market rate.

16. The Authority notes that responding producers/exporters of the subject goods from China PR have submitted their questionnaire responses and responses to the market economy questionnaire consequent upon the initiation notice issued by the Authority and have sought to rebut the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporters have been examined for determination of normal value of the responding producers/ exporter of the subject goods from the subject country as follows.

Views of the Domestic Industry on the issue of MET treatment and dumping

The following are the views of the domestic industry:

- (i) Para 8(2) of Annex I to Antidumping Rules 1995 casts a presumption that any country that has been determined to be, or has been treated as NME country for purposes of an anti-dumping investigation by the Authority themselves or by the competent authority of any WTO member country during the three year period preceding the investigation, shall be treated as a NME country. The Authority itself, in every investigation conducted in the last three years, has treated China PR as a Non-Market Economy country. It is well known that almost every WTO member including USA and the European Union have repeatedly been treating China PR as a NME country.
- (ii) Proviso to Paragraph 8(2) of Annex I to the Antidumping Rules 1995 provides that exporters may rebut the presumption by providing information and evidence that establishes China PR is not a NME country.
- (iii) Paragraph 8(3) of Annex I to AD Rules provides that individual exporters may provide information and evidence to establish that market economy conditions prevail for them. The claim made by the co-operating exporters under this paragraph, however, should not be accepted for various reasons provided in subsequent paragraphs.
- (iv) It is pertinent to point out that the responses, besides being inadequate and insufficient in terms of information, also does not meet the set proforma provided by the Authority.
- (v) While there is barely any information furnished in the non-confidential version in any of the responses, the information provided elsewhere is incomplete and merely acts as a 'reference book' or replica of sample format. Being devoid of relevant information, the responses do not provide any opportunity for domestic industry to make objective comments.
- (vi) On the MET status claimed by Zhejiang Amino it is submitted that the same may be rejected and the exporter cannot be given market economy treatment on the following grounds: Former chairman, Mr. Ruan Shuilong, of the holding company Longsheng Group Co., Ltd. is a well known member of the Communist Party of China. This is in the light of the fact that the current

- chairman Mr. Ruan Weixiang of the holding company is son of Mr. Ruan Shuilong, thus, establishing a strong nexus between the State and exporter.
- (vii) Further, one of the affiliate companies, Hangzhou Longhsan Chemical Co. Ltd. used to be a well known state-owned factory and it has only recently seen a turnaround in its shareholding pattern. This company is also one of the major suppliers of raw material to the exporter. Thus, exporter's independence from State actions is highly doubted.
 - (viii) Zhejiang Amino-Chem Co. Ltd. has not filed any EQR and MET questionnaire response for its related companies who are involved in production and sale of the product under consideration.
 - (ix) China Commodity Net under the auspices of Ministry of Commerce (China) does function as a chamber of commerce in helping decide prices and Shanghai Amino-Chem Co. Ltd. (affiliated company) is one of the members of the network.
 - (x) In the absence of objective evidence, claims of raw materials supplies from related companies at a fair market price in ordinary course of business cannot be accepted. It cannot be denied that such procurement may have involved intermediary products like MDNB from these affiliates.
 - (xi) In light of the investment policy of the Hangzhou Bay Shangyu Industrial Park which provides for various incentives and concessions for investments and export sales (supported by evidence enclosed herewith) the exporter cannot be given a market economy status. The same applies to the Export Tax rebate of 17% which fact itself has been conceded to by the Exporter in its response.
 - (xii) Further, one of the affiliates Shanghai Amino-Chem Co. Ltd. is claimed only to be a trader but evidence on the contrary highlight the fact that even Shanghai Amino-Chem has capacity of 25,000 MT/year for MPDA in addition to exporter's own capacity of 55,000 MT/year.
 - (xiii) On the MET status claimed by Jiangsu Tianjiayi and Changshan Haicheng, it is submitted that the same may be rejected and the exporter-producer combination cannot be given market economy treatment. In the absence of relevant information relating to members of board of shareholders and directors, as also raw material suppliers and other business information; the independence of both the producer as well as the exporter is highly dubious.
 - a. Further, the role played by M/s. Jiangyin Nijiexiang Chemical Co. Ltd. in raw material procurement by the producer make it ineligible for claiming such a treatment.
 - (vi) One of the conditions for claiming market economy treatment is whether Chinese exporters are able to establish that their books are consistent with International Accounting Standards (IAS). But nothing on record has been provided that such records are consistent with the International Accounting Standards.
 - (vii) No reliance can be based on the cases cited by exporters for granting them a market economy status given the case specific nature of such determination and given the plethora of cases against those cited by the exporters.
 - (viii) The exporters/producers have not made out, given the lack of evidence, a clear

case for market economy status when onus is on them and not on the domestic industry or Designated Authority to establish that the Chinese companies are not eligible for market economy status.

- (ix) In view of glaring issues in the questionnaire responses, the Designated Authority should deny individual dumping margin to the responding Chinese exporters and producers.

D.1.2 Views of the Responding Producers/Exporters seeking MET

17. It may be recalled that claims have been submitted by Zhejiang Amino Chem Co. Ltd., Changshan Haichang Chemical Co. Ltd. and Jiangsu Tianjiayi Chemical Co. Ltd. in respect of grant of market economy treatment. All these producers and exporters of subject goods had sought MET treatment. In the preliminary findings, the Authority had decided not to grant market economy status to the company at the stage of preliminary findings pending verification of records during onsite verification and it was further noted that a final view in this matter will be taken by the Authority after verification of information submitted by all responding producers and exporters from China PR. In the circumstances the Authority in the preliminary findings had proceeded with the provisions of para 7 of Annexure-I to the Rules for determination of Normal Value for responding producers and exporters in this investigation.

Jiangsu Tianjiayi Chemical Co. Ltd.

18. Jiangsu Tianjiayi has claimed that it is ***% owned by Jiangsu Tianjiayi Investment Co., Ltd and ***% owned by Jiangsu Nijiaxiang Group Co., Ltd. In its submission, the company claims that it is a fully Chinese limited liability company and both shareholders are of Chinese nationality. It has been submitted by Jiangsu Tianjiayi that it is only a producer of the merchandised goods and has never exported subject goods to India. It also has been submitted that there is no other affiliated company dealing in production, sale or distribution of subject goods. It has also been submitted that Jiangsu Nijiaxiang Group Co. Ltd. acts as the parent company of the producer.
19. During verification at the premises of M/s Jiangsu Tianjiayi Chemical Co. Ltd, the verification team requested the company to make available the originals of various documents for verification of its claim on grant of MET. In this regard, the producer submitted a letter to the verification team stating that due to paucity of time and resources, they are not able to provide required information sought to substantiate its claim of Market Economy status. Accordingly, they have forgone their claim of treating them as operating under Market Economy conditions.

Changshan Haichang Chemical Co. Ltd

20. M/s Haicheng Chemical has claimed that it is ***% owned by Mr. Xu Guiyang and ***% owned by Mr. Chen Jun. In its submission, the company claims that it is a fully Chinese limited liability company. It has been claimed by Haicheng Chemical that it is only an exporter of the merchandised goods and has no role in its production. It has also been claimed that there is no other affiliated company dealing in production, sale or distribution of subject goods. It is noted from the response that M/s Haicheng purchased the product concerned in domestic market from two suppliers and then exported to the world market including India. One is Shanghai Amino-Chem™ Co. Ltd. , which is a trading company related to M/s M/s Zhejiang Amino Chemical Co. Ltd. M/s Shanghai Amino-Chem™ Co. Ltd filed a response claiming that they have only sold the subject goods in the domestic market and have not exported the subject goods to India., The response has been filed by M/sTianjiayi as producer and M/s Haicheng as exporter. During verification at the premises of M/s, Changshan Haichang Chemical Co. Ltd the verification team requested the company to make available the originals of various documents for verification of its claim on grant of MET. However, during the course of on the spot verification the companies expressed their inability to produce the documents sought for and therefore expressed its desire to withdraw their claim of MET. Accordingly, they have forgone their claim of treating them as operating under Market Economy conditions.

Zhejiang Amino Chem Co. Ltd.,

21. M/s Zhejiang Amino has claimed that it is ***% owned by Zhejiang Longsheng Group Co. Ltd. and ***% owned by Metrogem Holdings Limited. In its submission, the company claims that it is a foreign (co-operative or equity) joint venture of Zhejiang Longsheng Group Co., Ltd. which is a publicly listed company on Shanghai Stock Exchange and Metrogem Holdings Limited is an investment company registered in Hong Kong. It has also been submitted that M/s. Shanghai Amino Chem Co. Ltd. (affiliated company) is a trading company and has not exported the subject goods during the POI. It has been claimed that Zhejiang Hongsheng Chemical Co. Ltd. is an affiliated company which also produces MPDA and Shanghai Amino-Chem Co., Ltd. is an affiliated company which also trades in the subject merchandise. It has also been submitted by the exporter that another affiliated company, Hangzhou Longshan Chemical Co. Ltd., is also a raw material supplier of Zhejiang Amino. During verification at the premises of M/s Zhejiang Amino Chem Co. Ltd., the verification team requested the company to make available the originals of various documents for verification of its claim on grant of MET. In this regard, the exporter submitted a letter to the

verification team stating that due to paucity of time and resources, the producer was not able to provide required information sought to substantiate its claim of Market Economy status. Accordingly, they have forgone their claim of treating them as operating under Market Economy conditions.

D.1.4 Examination and determination of normal value by the Authority

D.1.4.1 Determination of Normal Value for producers and exporters in China PR

22. In this connection Para 7 of Annexure I of the Rule provides that:

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

23. The Authority notes that in the past three years China PR has been treated as non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules for the purposes of present determination.
24. As per Paragraph 8 of the Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary.
25. The cooperating exporters/producers of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the criteria enumerated therein.
26. In view of the withdrawal of the claim of the MET from the responding producers and exporters from China PR, it has been decided not to further examine their claim for the MET.

D.1.4.4 Determination of Normal Value for all producers and exporters from China PR

D.1.4.4.1 Submissions by other interested parties excluding the domestic industry on normal value determination

27. The other interested parties have made the following submissions in this regard:
- (i) Difference in grades calls for different normal value, dumping margin and NIP.
 - (ii) In case there is inclusion of white molten/flake MPDA, the Authority is requested to calculate normal value on the basis of information of raw material consumption provided by the Exporter given the facts that no other reliable information can be solicited from any other source, stark contrast in prices and cost of grey grade and no production and sales by DI of white grade.
 - (iii) Further, reliance on domestic consumption and conversion cost would create unreliable fiction in case of white grade and is further laden with inefficiencies of DI while considering normal value for grey grade. Such construction is further skewed in terms of benzene prices taken from undisclosed sources.
 - (iv) The Benzene price of domestic industry is not representative of international price as domestic industry itself has admitted at the time of oral hearing that the losses during 2008-09 was related to stock of Benzene.

D.1.4.4.2 Submissions by Domestic Industry

28. The domestic industry has made the following submissions in this regard:
- (i) Zhejiang Amino-Chem Co. Ltd. has not filed any EQR and MET questionnaire response for its related companies who are involved in production and sale of the product under consideration.
 - (ii) The exporters have admitted that raw materials as well as utilities have been procured from affiliated companies. Such being the case, it needs to be established that the prices of inputs substantially reflect market value. No evidence has been provided on this account.
 - (iii) While the exporters may not be directly State-owned but that does not imply that there is no significant state interference in the Company.
 - (iv) The applicant has requested the Designated Authority to consider Benzene price of the domestic industry as the representative price of the international Benzene prices.
 - (v) With regard to the contention of the other parties that the conversion cost of the domestic industry is high because of low capacity utilization and should not be adopted for construction of normal value, the applicant has claimed that they are producing a large number of products at the same location. The fixed costs are being shared by all these products and are being apportioned to the product only in proportion to the level of activities of the product. Thus, fixed cost in the product under consideration are not high because of low capacity utilization.
 - (vi) The consumption norms reported by exporters cannot be considered as, even

though, Indian Accounting Standards provide for reporting of quantitative information with financial accounts, the Chinese standards do not provide for any such reporting, thus, making such sources unreliable. Further, since domestic industry is producing multiple products, its fixed cost is not high.

- (vii) There is no basis for accepting difference in cost and prices of different grades in the absence of evidence to that regard.

D.1.4.4.3 Examination by the Authority

29. Under the circumstances, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the above named Chinese companies and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules. According to these Rules, the normal value in China can be determined on any of the following basis:

- a. On the basis of the price in a market economy third country, or
 - b. The constructed value in a market economy third country, or
 - c. The price from such a third country to other countries, including India.
 - d. If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.
30. The Authority notes that for determination of normal value based on third country cost and prices, complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with regard to an appropriate market economy third country. Therefore, the normal value has been determined on “any other reasonable basis”. Accordingly, normal value has been constructed based on international price of major inputs, and conversion cost of domestic industry as verified by the Authority and after including a reasonable profit margin.

D.2 Export Price

D.2.1 Submissions by domestic industry

31. The domestic industry has made the following submissions in this regard:

- (i) The export price claimed by responding exporters does not corroborate with the prices reported to Indian Customs. Even verification of data at the premises of responding exporters would not establish the correct factual position for the following reasons –

(a) VAT invoice may contain only FOB value of exports, whereas the exporters might have exported on CIF basis; (b) possibilities of commercial invoice presented to

Indian Customs and VAT invoice presented to Chinese Customs not getting corroborated; (c) given the limited number of transactions per responding exporter and corresponding importer, it is vital to corroborate the claims made by the exporters with the data compiled and consolidated by DGCI&S.

- (ii) In case of significant differences in the prices now claimed before the Designated Authority and the prices reported to Customs, the applicant has submitted that the prices reported to the Customs only can be relied upon for determining export prices.

Export Price determination of M/s Jiangsu Tianjiayi Chemical Co. Ltd. China PR (producer) exported through Changshan Haicheng Chemical Co. Ltd. (exporter)

32. The Authority notes that M/s Jiangsu Tianjiayi Chemical Co. Ltd. China PR has exported the subject goods through M/s Changshan Haicheng Chemical Co. Ltd. which has claimed to be an unrelated trader from China. It is also noted from the response that M/s Changshan Haicheng has also sourced the subject goods from another unrelated trader M/s Shnghai Amino. The present response has been filed by M/s Tianjiayi (producer) and Haicheng as (exporter.) The information submitted by M/s Jiangsu Tianjiayi Chemical Co. Ltd. China PR (producer) and M/s Changshan Haicheng Chemical Co. Ltd. (exporter) was verified by the authority. The Authority notes that the company reported exports of ***Mt (US\$ ***) of MPDA to India during the POI. It was further noted that out of these *** transactions, *** were related to goods sourced from Tianjayi and remaining were sourced from Shanghai Amino. Of the *** Mt of subject goods sourced from M/s Shanghai Amino, *** Mt has been exported through *** (trader) located in Singapore. However, no questionnaire response has been filed by M/s ***
33. It is noted that in their response, M/s Changshan Haicheng has provided transaction-wise information relating to exports to India in the form and manner prescribed. The Authority notes that the export sales to India are on CIF basis. Adjustments have been claimed by the exporter in respect of overseas freight, overseas insurance, commission, handling, bank charges, inland freight and credit cost. The adjustments in this regard have been allowed, as verified by the Authority. The Authority further notes that while the subject goods have been procured by M/s Changshan Haicheng at ex factory price from the producer, the associated expenses have been incurred by the trader Changshan Haicheng. The analysis of the Financial Accounts of M/s Haicheng indicates that the company has incurred financial losses. Therefore, the authority has considered appropriate adjustments on account of profit margin for the trader in determination of ex-factory export price. Further, in the absence of detailed response by M/s Shanghai Amino-Chem™ Co. Ltd and considering the company has not exported the subject goods to India during the POI, no separate export price has been determined by the Authority in respect of M/s Shanghai Amino-Chem™ Co. Ltd. Thus, the net export price i.e. export price at ex-factory level, for goods produced by Jiangsu Tianjiayi Chemical Co. Ltd. and exported by Changshan Haicheng Chemical Co. Ltd.

China PR, is determined and is mentioned at the table showing dumping margin.

D.2.3 Determination of Export Price of M/s Zhejiang Amino

34. The data submitted by the company was verified by the Authority. It is noted that M/s Zhejiang Amino has reported export of *** MT of MPDA to India during the POI. The sales to Indian customers are in CIF terms. The exporter has claimed adjustments towards domestic freight, ocean freight, handling charges, marine insurance to India, and credit expenses to arrive at ex-factory export price. However, no adjustment towards VAT has been made as based on the verification of the data Authority notes that the full amount of VAT payable of 17 % is refunded in respect to export sales. The Authority has determined the export price of the above exporter as mentioned in the table showing dumping margin.

D.2.4 Export Price determination for Non cooperating producers and exporters from China PR

35. Export price in respect of product under consideration for other producers and exporters has been determined as per facts available. For the purpose, the Designated Authority has considered questionnaire response filed by the responding exporters and Indian customs data relating to imports of the product under consideration in India. Price adjustments have been allowed on the basis of facts available. The export sales to India (net of all the adjustments) have been considered as ex-factory export price, which have been compared with the normal values of the product under consideration to determine the dumping margin. After the analysis of the data, the dumping margin is worked out as mentioned in the table.

36. After the analysis of the data, the dumping margin is worked out as mentioned in the table below :

Producer	Exporter	NV	EP	DM	DM % Range
Jiangsu Tianjiayi Chemical Co. Ltd.	Changshan Haicheng Chemical Co. Ltd.	***	***	***	30-40
Zhejiang Amino-Chem Co. Ltd.	Zhejiang Amino-Chem Co. Ltd.	***	***	***	20-30
Any Other producer/exporter from China PR	Any other producer/exporter from China PR	***	***	***	35-45

E. INJURY

E.1. Submissions made by Domestic Industry

37. The domestic industry has made the following submissions in this regard:

- a) Imports from the subject country have remained significant in absolute terms and in relation to production and consumption in India;
- b) Imports from the subject country are undercutting the prices of domestic industry to a significant extent. The import price is undercutting the domestic price, in spite of low prices already offered by the domestic industry.
- c) Whereas the cost of production was increasing, the selling prices declined. Further, even when there was some decline in the cost of production (in earlier years), the decline in prices was more than the decline in costs. Overall, the imports are suppressing and depressing the domestic prices.
- d) Production, sales and capacity utilization of the domestic industry improved till 2010-11 and then declined in the POI. The market share of the domestic industry also declined.
- e) Demand decline - The volume of imports being reported in DGCI&S data is grossly understated for the reason that significant imports of the product under consideration are being reported in other classification 29215190 as well. The decline in demand assessed earlier and in the preliminary findings is understated because of significant imports of the product under consideration having been reported under other classification.
- f) Increase in volume of imports in absolute terms in a situation where the demand for the product has declined at the least shows aggravated injury to the domestic industry caused by dumped imports.
- g) Market share of the domestic industry declined and that of dumped imports increased in POI. This is clearly due to dumping. Further, the market share of the domestic industry declined despite the fact that the applicant has significant unutilized capacities.
- h) The sales volume of domestic industry has declined more than its production which if persists, will naturally have further adverse effect on production and capacity utilization compelling the domestic industry either to reduce production or to reduce selling price.
- i) The profitability of domestic industry declined severely to cause losses due to significant increase in cost of raw materials and inability of the domestic industry to increase prices due to presence of low priced dumped imports. Profit before interest & tax, cash profit and return on capital employed were on declining trend .
- j) As for the return on capital employed is concerned, the allowance to be made by the Authority cannot be based on past performance as the industry commenced production only in 2007. Further, profit allowed is still below the operation profit.
- k) The applicant is the only producer of the product under consideration in the country.

Thus, in the absence of dumping, the domestic industry should have been able to post significant improvements in production and capacity utilization. But contrary is visible from above.

- l) The employment figure shows an increasing trend with similar increase in wages up to 2010-11, however, there is decline in wages during POI.
- m) Productivity has increased in line with increase in production up to 2010-11 and then declined in the POI.
- n) The average level of inventories increased in 2010-11 and then declined slightly in the POI. However, the inventory was significant during POI which is adverse in light of the fact that the domestic industry also undertook exports and reduced its production.
- o) Growth of the domestic industry in terms of sales, production, capacity utilization, profits, return on investment and cash profits all are adverse.
- p) The present situation clearly establishes that if the imports would further increase from the subject country, it will further intensify dumping of the subject goods causing further injury.
- q) There can be no selective basis for determining price undercutting and any negative trend in the same does not dilute the fact of injury.
- r) The adoption of fictitious 100% capacity utilization on one hand highlights the injury of the domestic industry, and on the other, such adoption is against the law, as causal link is duly established.
- s) While there is no delay or denial on the part of domestic industry to supply subject goods to its consumers, there might still be an occasion of delayed payment on the part of the consumer which in the light of common business prudence be adequately considered.
- t) There is no extra-ordinary/abnormal plant shutdown/breakdown, hence, no question of adjusting the cost on these accounts.
- u) Performance of the domestic industry with regard to profits, return on investment and cash profits was declining and became negative in POI.
- v) Post Disclosure, it has been submitted that dumping margin as a measure of extent of dumping is quite significant.
- w)The petitioner requests a copy non confidential version of the verification report to the exporter. This is vital as the petitioner is unable to comment on the appropriateness or otherwise of the claim of individual dumping margin lodged by the responding exporters.The Authority has rightly rejected the claim of MET as the exporters have not provided requisite information and forgone their right for MET claim.
- x) The quantum of dumping margin determined is significant.Imports of the product under consideration have increased from China. The import price is undercutting the domestic price, in spite of low prices already offered by the domestic industry. Further, the imports are suppressing and depressing the domestic prices. Performance of the domestic industry with regard to profits, return on investment and cash profits was declining and became negative in POI. Domestic industry has suffered material injury. Fixed quantum of anti dumping duties are required to be expressed in terms of

US\$ in view of changes in the cost structure with changes in the raw material prices and increase in the input cost.

E.2 The following submissions have been made by the exporters / importers and other interested parties with regard to injury parameters to the domestic industry:

38. The non-confidential version of the petition is wholly deficient and inadequate to enable the other parties to render their comments. It seriously hampers the right to provide meaningful rebuttal through adequate and essential submissions to enable the Authority to arrive at fair conclusions.

a) **Demand and Market Share**

- (i) The demand of the product under consideration was increasing till 2009-10. The same has, however, declined during 2010-11 and in the period of investigation. Therefore, any decline in market share during POI as compared to 2009-10 and 2010-11 should be seen in the light of the decline in the demand.
- (ii) Spectrum Dyes has further raised the issue that domestic industry has never fulfilled their demand of subject goods. Its monthly demand of subject good is around 20 to 25 MT. However, domestic industry has offered only 10 MT of subject goods.
- (iii) Despite low capacity utilization, the domestic industry has failed to fulfil demand of subject goods of importers.
- (iv) Post Disclosure, it has been submitted that Inclusion of imports reported under other headings not been disclosed to the interested parties

b) **Capacity, Production and Capacity Utilization**

- (i) The production of the applicant during 2008-09 was 684 MT which went up to 1,151 MT during POI. As a result, the capacity utilization which was only 19% during 2008-09 increased to 32% during POI. Further, it may be noted that demand in India of the subject goods has declined during POI as compared to 2009-10 and 2010-11. Therefore, any decline in the production and capacity utilization during POI as compared to 2009-10 and 2010-11 should be seen in the light of the decline in the demand.
- (ii) Despite negative price undercutting during 2008-09, the applicant was operating the plant for subject good at 19%. Thus, there is no injury to the domestic industry on account of alleged imports from subject country.
- (iii) Given the sub-optimal capacity utilization of domestic industry during injury period, the Authority may consider a fictitious 100% capacity utilization for NIP calculation as adopted in Aniline originating in or exported from the European Union.
- c) The sales volume of the applicant in the domestic market has increased by 19% over the base year. Despite negative price undercutting during 2008-09, the sales volume of the applicant in the domestic market was at lowest level whereas it

should have been at highest levels. An obvious question would then arise as to what prevented the applicant from raising its volume during 2008-09 when the price undercutting was negative. Further, it may be noted that demand in India for the subject goods has declined during POI as compared to 2009-10 and 2010-11. Therefore, any decline in the sales during POI as compared to 2009-10 and 2010-11 should be seen in the light of the decline in the demand. Thus, there is no injury to the domestic industry on account of alleged dumped imports from subject country.

d) **Cost of Production**

- (i) It is submitted that the cost of production of the applicant is abnormally high as compared to other foreign producers. The capacity utilization of the applicant was in the range of 19% to 44% during entire injury period. As a result of lower plant utilization, the cost of production of the applicant was highly inflated by fixed cost. Even though there was negative price undercutting during base year, the applicant could not improve its capacity utilization. In fact, during that time capacity utilization was at lowest level which is 19%. Therefore, the Authority should critically look into the entire cost structure of the applicant and set aside the higher cost of production caused by inefficiencies while conducting injury examination during investigation.
- (ii) There is no adjustment made in the injury data by the Authority while analyzing alleged injury to the domestic industry with regard to breakdowns in the plant of subject goods.

- e) **Profitability:** Losses to the applicant has occurred between 2010-11 and the POI, when volumes of the alleged dumped imports increased by only 545 MTs compared to an increase of 1,264 MTs in 2009-10, when the applicant was still making profits. Moreover the drop in the demand of subject goods on the domestic market should have created deteriorating effects on its profitability. Thus, any injury to the applicant is because of higher cost as the applicant was inefficient and the same cannot be attributed to alleged dumped imports from subject country.

f) **Price Undercutting**

- (i) The applicant managed to increase its sales volume from 614 MTs in 2008-09 to 1,228 MTs in 2010-11 and 730 MTs in the POI. If there was an existence of such price undercutting in real terms as determined by the applicant, the domestic industry would have found it difficult to maintain its sales volume rather show such an increase in sales volume. Thus, there is no correlation between net sales realization vis-à-vis landed price of subject goods.
- (ii) Since there is full co-operation from exporters there must be assigned weighted average export price in determining price effect, which in this case shows a negative undercutting and further, raises questions on reduction in prices of domestic industry during POI. Such negative undercutting highlights the attributability of injury to other factors (particularly during 2008-09) requiring critical enquiry.

g) **Non Injurious Price**

- (i) The Non Injurious price calculated by the Authority is highly inflated. A reasonable return (pre-tax) on average capital employed for the product may be allowed for recovery of interest, corporate tax and profit. Reasonableness of interest cost may further be examined.
- (ii) 22% Return on Capital Employed (all components) is hypothetical, unreasonable and too high. In light of CESTAT ruling (in Bridgestone Tyre Manufacturing v. DA), 22% ROCE would colour the injury determination. Further, reasonability of 22% ROCE was questioned in Hyosung & Co. V. DA, as such Authority must consider the return earned on the basis of past performance of the industry.
- (iii) The applicant was inefficient even after one year of start of commercial production. Submission of the domestic industry further shows that the applicant is still inefficient in terms of raw material and conversion cost. Therefore, the Authority is required to adjust the raw material and conversion cost of applicant for the injury analysis and calculation of NIP.
- (iv) Post disclosure, it has been submitted that the domestic industry has achieved only 19% capacity utilization in the base year evidently because of their abnormally high cost on account of self inflicted reasons. And the same was only 32% in the POI. The best possible utilization which the domestic industry could ever achieve was 44% only. We again request the Authority to consider the capacity utilization of the domestic industry at normal and reasonable levels par with the industry standards while determining NIP of the domestic industry.

h) Others

- (v) It has been submitted that the Authority should recommend duties, if any, only in terms of Indian Rupee and not in terms of USD as users are predominantly SMEs and imposing the duties in terms of USD would make their situation and existence extremely vulnerable.

i) **The year 2008-09 was an abnormal year**

- (i) There is nothing mentioned in the preliminary finding with regard to the year 2008-09 to show that the said year was an abnormal year. Moreover, domestic industry has also not raised this issue in their petition.
- (ii) It is not understood why the Authority should treat 2008-09 as abnormal year if the increase in export price of the subject good was more than increase in Benzene price. It may be noted that the domestic industry did not disclose any such facts in their petition and negative price undercutting during 2008-09 was calculated by the domestic industry itself. Thus, the submission of the domestic industry of abnormal increase in price of subject goods in 2008-09 is required to be rejected as there is no merit in their submissions.
- (iii) At the time of oral hearing, counsel for the domestic industry has replied that the

reason for losses during 2008-09 was due to Benzene stock. However, in the written submission they have changed the reasons which shows domestic industry is confused and biased while trying to establish reasons for losses during 2008-09. Further, it is also submitted that the domestic industry has argued that the increase in prices of subject goods in certain month was higher than Benzene price therefore the year 2008-09 was abnormal and losses during 2008-09 was due to higher raw material consumption. This clearly again shows that the domestic industry has failed to establish their reasons for losses during 2008-09. Thus, there is a clear cut contradiction practiced by the domestic industry while justifying negative price undercutting during 2008-09 and losses during 2008-09 which needs to be examined critically.

E.3. Examination by the Authority

39. Rule 11 of Antidumping Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to suppress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
40. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
41. The Authority has considered the views of the interested parties and addressed the same appropriately. The specific submissions of interested parties have been dealt with by the Authority at appropriate places in these findings while examining the injury parameters to the domestic industry.
42. The Authority has analyzed injury parameters in accordance with the rules. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been treated confidential and not disclosed to other interested parties. Wherever possible, parties providing

information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

43. As regards the capacity utilization of the domestic industry being low, the Authority has considered the best capacity utilization attained by the domestic industry during the injury period and POI in order to eliminate the inefficiencies in operation for the purpose of determination of non-injurious price for the domestic industry. In this regard, it is further noted that the domestic industry has a composite production facility producing a number of chemicals. The domestic industry is also producing captively the major input i.e. MDNB which is used for the manufacture of MPDA. There are separate capacities for manufacture of both MDNB and MPDA. The Authority has appropriately considered the optimum usages of capacities, as per consistent practice, in order to eliminate the higher costs on account of inefficient uses. As regards the reduction in the demand for the subject goods, over the injury period, it has been claimed by the domestic industry that there are imports of the subject goods under other classifications as well. The Authority has examined the response and notes that while there was a reduction in the demand for the subject goods, the decline in the volume of imports from the subject country was insignificant as compared to the loss of sales of the domestic industry. Further, during the POI, the landed value of imports declined significantly in spite of an increase in the input cost. With regard to the fact that the petition is grossly deficient, it is noted that the application accepted by the Authority for initiation was duly documented. Further, during the process of investigation, it was noted that the procurement price of benzene of domestic industry was in line with the prevailing international price of benzene. Post disclosure, the domestic industry has submitted that NIP determined by the Authority is grossly low and insufficient to protect the interest of domestic producer. The matter has been examined and it is noted that NIP has been determined by the Authority in accordance with the principles laid down under Annexure III of the anti dumping rules. Further, the Authority has allowed the returns @ 22% as per consistent practice in all the cases.

E.3.1 Volume Effect of dumped imports and Impact on domestic Industry

a) Assessment of Demand and Market Share

44. The Designated Authority has determined demand as the sum of domestic sales of the domestic industry and imports of the subject goods in India from all sources. The demand so assessed is shown in the following table. It is seen that demand for the subject goods had grown significantly up to 2010-11 and then declined in the POI. However, it is noted that demand of subject goods was higher in the POI as compared to base year 2008-09. The Authority further notes that even though there was some decline in the demand for the subject goods during the POI, the decline in the share of domestic industry was notably higher than the decline in the volume of imports from the subject country. It is seen that in the declined market, the imports increased their share and the domestic industry lost market share.

Demand	Unit	2008-09	2009-10	2010-11	POI	POI-Annualized
Sales of Domestic Industry	MT	614	1,006	1,228	913	730

Subject country-Imports	MT	1,919	3,377	3,743	3,836	3,069
Other Countries-Imports	MT	1	0	117	232	186
Total demand	MT	2,534	4,383	5,088	4,982	3,985
<i>Trend</i>		<i>100</i>	<i>173</i>	<i>201</i>	<i>157</i>	<i>157</i>
Market Share in Demand						
Sales of Domestic Industry	%	24%	23%	24%	18%	18%
Subject country-Imports	%	76%	77%	74%	77%	77%
Other Country -Imports	%	0%	0%	2%	5%	5%

45. It is noted that both, the imports from the subject country and sales of the domestic industry, increased significantly up to 2010-11 and declined thereafter in POI. It is also noted that the market share of imports of subject goods from the subject country has remained significant during the injury period and has, in fact, the same increased during the POI from the preceding year. It is also noted that even when the demand for the product was increasing till 2010-11, share of domestic industry remained in similar region. However, during the POI, when demand for the product declined to some extent, the share of domestic industry declined as against the share during entire injury period . Further the market share of the domestic industry was lowest in the POI.

b) Import Volumes and share of subject country

46. It was contented by the domestic industry that the imports of the product are also reported under customs classification 29215190 in significant volumes. The Authority analyzed the import information and noted that the imports of the product have been reported under 29215190 as well. The authority has therefore considered imports reported under 29215120 and 29215190. It is noted from the questionnaire response filed by the two exporters that the combined exports made by the two exporters during the POI were *** MT, as against 3836 MT imports reported in DGCIS. With regard to arguments of the exporter that they were not aware about the information with regard to revised import data, it is stated that a copy of revised proforma IV A containing imports of subject goods from both the heads were submitted by the domestic industry and the same was put in the public file for information to all concerned.

47. Imports of the product under consideration from China PR have recorded a significant increase in absolute terms during injury period i.e. from 1,919 MT in 2008-09 to 3,836 MT during POI (3,069 MT on annualised basis). Further, imports have been significantly high in absolute terms as well as in relation to production and consumption in the country. Even though imports from other countries have also, at the same time, increased, the volume of these imports is not very significant.

Particulars	Unit	2008-09	2009-10	2010-11	POI	POI-Annualized
Imports -						
China PR	MT	1,919	3,377	3,743	3,836	3,069
Other Countries	MT	1	0	117	232	186
Total Imports	MT	1,920	3,377	3,860	4,068	3,255
Imports from subject country in relation to						
Total Imports	%	99.95%	100%	96.97%	94.29%	94.29%
Consumption	%	76%	77%	74%	77%	77%
Production	%	281%	254%	235%	267%	267%

E.3.2 Price Effect of the Dumped imports on the Domestic Industry

a) Price Undercutting

48. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."

49. With regard to the effect of the dumped imports on prices, it has been examined 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. In this regard, a comparison was made between the landed value of the product concerned and the average selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex factory level. This comparison showed that during the period of investigation, the subject goods originating in the subject country were imported in the Indian market at prices which were lower than the domestic industry selling prices. It is, thus, noted that imports of subject goods were undercutting the domestic prices and margin of undercutting with respect to imports from China PR is considered significant.

50. The price undercutting margin is determined as below:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Net Selling Price	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>104</i>	<i>92</i>	<i>87</i>
Landed price of imports	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>78</i>	<i>80</i>	<i>73</i>
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	(-15)-0%	10-20%	0-10%	0- 10 %

51. It is noted from above that both the net selling price of the domestic industry and the landed price of imports from China PR have declined over the injury period. However, the landed price has declined more than the net selling price. Thus, the imports of subject goods from the subject country undercut the prices of the domestic industry by 5-15% during the POI.

52. The interested parties have contended that price undercutting in 2008-09 was negative and the domestic industry has suffered financial losses in spite of negative price undercutting. The Authority notes, in this regard that the actual consumption some of the inputs in the manufacture of subject goods was noted to be abnormal and excessive. In the subsequent period, there has been noticeable change in the consumption pattern of these inputs. In the determination of NIP for the domestic industry, the most efficient consumption factors, as per consistent practice of the Authority, have been considered by the Authority.

b) Price Suppression and Depression

53. The cost and price movement of the domestic industry and the landed value of imports from the subject country have been compared over the injury period to examine whether the effect of dumped imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree.

Particulars	Unit	2008-09	2009-10	2010-11	POI
Landed price of imports	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>78</i>	<i>80</i>	<i>73</i>
Net Selling Price	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>104</i>	<i>92</i>	<i>87</i>
Cost of Sales	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>87</i>	<i>76</i>	<i>95</i>

54. The Authority notes from the above that the selling price of the subject goods produced by the domestic industry has declined by 13% during the injury period whereas the cost of sales of the subject goods produced by the domestic industry has declined by 5% over the same period. Further, whereas the cost of sales increased significantly during the POI as compared to the previous year, the landed price and consequently selling price of the domestic industry declined. Thus, it is noted that there is price suppression on account of imports of subject goods from the subject country. Further, as there is decline in the selling price of the subject goods produced by the domestic industry, it is noted that the domestic industry has suffered price depression during the injury period. The Authority notes that during the POI, there was significant increase in the input cost of the subject goods as compared to the previous year. As a result, the cost of production of the domestic industry increased significantly. On the other hand, in spite of increase in the prices of basic raw materials, the landed value of imports of subject goods declined significantly during the same period. As a result, the domestic industry was not able to increase its selling price even when the cost increased. This resulted in significant erosion of profitability of the domestic industry during the POI.

c) **Price underselling margin**

55. The Authority has also examined price underselling if any, suffered by the domestic industry on account of dumped imports from the subject country. After examination, it is determined that the domestic industry has suffered significant price underselling during the investigation period.

Particulars	Unit	POI
Non Injurious Price	Rs/Kg	***
Landed Price	Rs/Kg	***
Price underselling	Rs/Kg	***
Price underselling	(%)	***
Price underselling	Range	20-30

E.3.3 Economic parameters of the domestic industry

56. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of performance of the domestic industry reveals

that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

a) **Capacity, Production, Capacity Utilization and Sales**

57. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2008-09	2009-10	2010-11	POI	POI-Annualized
Capacity	MT	3,600	3,600	3,600	4,500	3,600
Production	MT	684	1,327	1,592	1,439	1,151
Capacity Utilization	%	19%	37%	44%	32%	32%
Sales Domestic	MT	614	1,006	1,228	913	730
Demand	MT	2,534	4,383	5,088	4,982	3,985

58. It is noted that the production, sales and capacity utilization of domestic industry increased up to 2010-11 and then declined in POI. Further, it is noted that though the demand for the product has increased by 57% between base year and the POI; the Domestic Industry could utilize only 32% of its total capacity in the POI. It is also noted that the domestic industry lost significant sales due to dumped imports of subject goods from the subject country.

b) **Profits, Return on Capital Employed and Cash Profit**

59. The profits, return on investment and cash flow of the domestic industry has been examined as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI	POI-Annualized
Cost of Sales	Rs/KG	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>87</i>	<i>76</i>	<i>95</i>	<i>95</i>
Selling price	Rs/KG	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>104</i>	<i>92</i>	<i>87</i>	<i>87</i>
Profit/loss per Unit	Rs/KG	***	***	***	***	***
<i>Trend</i>		<i>-100</i>	<i>33</i>	<i>35</i>	<i>-153</i>	<i>-153</i>
Profit/loss	Rs. Lacs	***	***	***	***	***
<i>Trend</i>		<i>-100</i>	<i>54</i>	<i>69</i>	<i>-182</i>	<i>-182</i>

Profit before Interest and Tax	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		-100	183	211	-272	-272
Profit before Interest and Tax	Rs./kg	***	***	***	***	***
<i>Trend</i>		-100	112	106	-229	-229
Return on capital employed	%	***	***	***	***	***
<i>Trend</i>		-100	159	181	-266	-266
Cash Profit	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		-100	119	146	-222	-222
Cash profit per unit	Rs./kg	***	***	***	***	***
<i>Trend</i>		-100	73	73	-187	-187

60. The profitability of the domestic industry in respect of domestic sales of subject goods has been examined. The Authority notes the following:

- (i) The domestic industry incurred losses in 2008-09. The profitability of the domestic industry for the subject goods improved thereafter. The improvement in profitability of domestic industry was noted on account of increase in volume of sales, reduction in cost as well as on account of better sales realization and more efficient usage of inputs. However, the profitability has significantly deteriorated during POI. The decline in profitability of the domestic industry was noted, as the domestic industry was not able to increase its sales realization commensurate with the increase in the cost of production during POI. On the other hand, the landed value of imports declined despite increase in the input cost, which has forced the domestic industry to reduce its selling price.
- (ii) It is noted that the cash profits of the domestic industry have seen a trend similar to the profitability.
- (iii) The return on capital employed has been determined considering profit before interest and capital employed for the product concerned. It is noted that return on capital employed has significantly deteriorated in POI.
- (iv) It is seen that the domestic industry has suffered financial losses in 2008-09. Petitioners submitted that the reasons for these financial losses were high consumption of raw materials in this year and significant and sudden decline in the prices of raw materials and the product as a result of global recession. It is noted that the domestic industry consumption of raw materials in 2008-

09 was significantly higher. The domestic industry was able to improve its profitability and earn profits in 2009-10 and its consumption of raw materials stabilized. However, the domestic industry once again suffered financial losses in the period of investigation due to decline in prices when there was significant increase in the cost of production. In fact, in POI, whereas cost had increased, the import price and selling prices of the domestic industry have declined. It is, thus, seen that the deterioration in performance of the domestic industry in terms of profits, return on investment and cash profit during POI was because of dumping of the product in the country.

c) **Employment and wages:**

61. The status of employment levels and wages of the domestic industry has been as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI	POI- Annualized
Wages	Rs. Lacs	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>223</i>	<i>291</i>	<i>224</i>	<i>224</i>
Employment	Nos.	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>105</i>	<i>105</i>	<i>110</i>	<i>110</i>

62. The Authority notes that employment level with the domestic industry has remained almost stagnant; whereas wages increased up to 2010-11 and then declined in the POI.

d) **Productivity**

63. The productivity of the domestic industry is given in the following table:

Productivity	Unit	2008-09	2009-10	2010-11	POI	POI- Annualized
Per day	MT	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>194</i>	<i>233</i>	<i>168</i>	<i>168</i>
Per employee	MT	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>185</i>	<i>222</i>	<i>153</i>	<i>153</i>

64. It is noted that the productivity has increased up to 2010-11 and then declined in the POI as the production of the domestic industry declined.

e) **Inventories**

65. The Designated Authority has examined the inventory level of the domestic industry, which is given in the following table:-

Stock (Volume)	Unit	2008-09	2009-10	2010-11	POI
Average	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>39</i>	<i>817</i>	<i>522</i>

66. It is noted that the inventory of the domestic industry has increased substantially during the period of investigation.

f) **Factors Affecting Domestic Prices**

67. Consideration of the import prices from the subject country 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 shows that the landed value of imported material from the subject country is below the selling price of the domestic industry, causing significant price undercutting in the Indian market. It is further noted that most of imports of subject goods from other countries are at much higher prices. There is no viable substitute to this product. It is also noted that demand for the subject goods was showing significant increase during the injury period and this could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is landed value of subject goods from subject country and cost of raw materials.

g) **Ability to raise capital**

68. With regard to ability to raise investments, it is noted that the domestic industry has not been able to utilize the existing capacities during the injury period. It is further noted that the existing capacity is sufficient to meet the demand of the product in the country.

69. The applicant has argued that given the current state of affairs where the product is consistently not performing well because of persistent dumping, any fresh investments are not envisaged.

h) **Growth**

70. On examination of various economic parameters of the domestic industry, the Authority notes that both the volume parameters such as production and sales, and price parameters of the domestic industry show improvement up to 2010-11 and then show a decline in the POI. Thus, the growth of the domestic industry is adverse on the volume parameters as well as price parameters. The domestic industry has recorded a negative growth both in volume terms and financial terms in the POI as compared to previous year 2010-11. Further, the market share of the domestic industry shows negative growth despite existing capacities in the Country. Thus, overall growth of the domestic industry

was adverse.

Growth (year by year)	Unit	2008-09	2009-10	2010-11	POI- Annualized
Production	%	-	93.94	19.98	-27.68
Sales Volume	%	-	63.81	22.11	-40.52
Profit/Loss per unit	%	-	-133.21	4.29	-542.34
Return on Investment	%	-	13	1	-22
Market Share	%	-	-1.28	1.19	-5.81

i) **Magnitude and Margin of Dumping**

71. It is noted that the imports coming into India from the subject country are above the de minimis level of dumping margin. The dumping margin determined from the subject country is considered significant.

E.4 Causal Link

E.4.1 Submissions of other interested parties

72. The other interested parties have made the following submissions in this regard:

- (i) The reduction in demand of subject goods is a pertinent factor in determining injury to the DI and must be given adequate consideration particularly when the imports from China too have declined during POI as compared to 2009-10 and when imports under any other heading have not been claimed.
- (ii) There is no causal link between imports and injury which may be attributable to other factors like inefficiencies and decline in demand.
- (iii) The Indian Industry is plagued by monopolization, inefficiency and obsolescence of technology undermining its competitiveness against Chinese imports.

E.4.2 Submissions of domestic industry

73. The domestic industry has made the following submissions in this regard:

- (i) It is submitted that the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, export performance or the productivity of the domestic industry have not been the cause of injury to the domestic industry as submitted in the following paragraphs.
- (ii) Injury to domestic industry is caused due to dumped imports as:
 - a. Subject imports available at prices lower than domestic industry resulting in switching over to imports, thus forcing the domestic industry to offer sub-

- optimal prices.
- b. Whereas the cost of production increased in POI, the selling price declined due to sub optimal sales.
 - c. The imports occurring at low and dumped prices are undercutting the prices of the domestic industry showing consequent injury on account of profits, return on investment and cash flow.
 - d. The undercutting of the domestic prices is forcing domestic industry with price depression and price suppression in the market.
 - e. As regards decline in demand, the import data adopted in the preliminary findings is grossly understated and also decline in imports is lower than decline in demand clearly establishes injury and causal link.
 - f. Neither other factors established as causing injury, nor inefficiency established on the basis of any evidence let alone any reliable evidence.
 - g. Mere conjectures have been made in the name of monopolization, inefficiency and obsolescence of technology; highlighting ulterior motive of hampering Indian economy.

E.4.3 Examination by the Authority

74. As per the AD Rules, the Designated Authority is, inter alia, required to examine any known factors other than dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. The Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry. The examination of causal link has been done as follows:

a) **Imports from third countries and other Known Factors**

75. During the POI, more than 94% imports were from the subject country. Imports from third countries were negligible in volume and could not have caused injury to the domestic industry.

b) **Contraction in demand and / or change in pattern of consumption**

76. The Authority notes that the demand for the subject goods has shown significant increase during the injury period except during the POI. A further analysis of the data by the Authority indicates that the decline in the volume of dumped imports was significantly lower than the decline in the sales of the domestic industry. Therefore, the domestic industry suffered injury primarily on account of dumped imports than on account of change in the demand. From the available information, no change in the pattern of consumption was noted.

c) **Trade Restrictive practices of and competition between foreign and**

domestic producers

77. It is noted that there is a single market for the subject goods where dumped imports from the subject country compete directly with the subject goods supplied by the domestic industry. It is noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

d) Developments in Technology

78. There is no allegation of developments in technology, nor has the investigation so far shown that possible injury to the domestic industry could have been caused by developments in technology.

e) Export performance

79. The applicant has significant exports. However, the Authority has considered only domestic operations and domestic profitability.

f) Productivity of the Domestic Industry

80. It is noted that there is no material change in productivity of the domestic industry. Possible decline in productivity cannot be the reason for the established injury to the domestic industry.

E.4.4 Parameters establishing causal link

81. The Authority notes that while listed known other factors do not show that injury to the domestic industry has been caused by these factors, following parameters show that injury to the domestic industry has been caused by dumped imports.

- (a) Market share of the domestic industry declined in POI and that of subject imports increased as a result of increase in imports.
- (b) Imports were causing significant price undercutting in the domestic market. As a consequence, sales volumes of the domestic industry declined far more than the decline in demand in the POI as compared to the previous year 2010-11 and the decline in the share of domestic industry was notably higher than the decline in the volume of imports from the subject country.
- (c) Dumped imports from the subject country are depressing the prices of the domestic industry. As, the domestic industry has tried to align its selling prices close to the landed prices, there has been a decline in prices whereas the cost of production has increased. It is noted that price depression being felt by the

domestic industry is due to lower prices of dumped imports from the subject country and this depression has increased in the POI.

- (d) The domestic industry was forced to reduce prices in the POI in spite of increase in cost, due to presence of dumped imports in the market. This has resulted in decline in profits and return on investment.
- (e) Landed price of imports were undercutting and underselling the prices of the domestic industry. As a result of price undercutting, price underselling and significant volume of imports from the subject country, the market share and overall profitability of the domestic industry has declined.
- (f) Decline in sales volumes and market share of the domestic industry resulted in decline in production of the domestic industry in the POI. Consequently, capacity utilization of the domestic industry also declined.

82. The Authority has determined non-injurious price for the domestic industry taking into consideration cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports of the responding producers and exporters to determine injury margin. The injury margins have been worked out as follows:

(US \$/ Kgs)

Producer	Exporter	NIP	LP	IM	IM%	I.M. Range
Jiangsu Tianjiayi Chemical Co. Ltd.	Changshan Haicheng Chemical Co. Ltd.	***	***	***	***	15-25
Zhejiang Amino-Chem Co. Ltd.	Zhejiang Amino-Chem Co. Ltd.	***	***	***	***	15-25
Any Other producer/exporter from China PR	Any other producer/exporter from China PR	***	***	***	***	20-30

83. The level of dumping margins and injury margins as determined are considered significant.

E.5 Conclusion on Injury and Causation

84. There has been a significant increase in the volume of dumped imports from the subject country at the absolute level. The market share of dumped imports in total imports of subject goods has remained significantly high. It is also noted that the dumped imports were undercutting the prices of the domestic industry in the market. It is also determined that the dumped imports have had significant adverse price effect in terms of price depression and price underselling. Further, the dumping margins from responding producers and exporters from the subject country have been determined and are considered significant.

85. It is noted that dumped imports of subject goods from the subject country have adversely impacted the production and sales levels of the domestic industry. Further, it is also noted that the dumped imports have had significant adverse price effect in terms of price depression and price suppression, which in turn have led to significant deterioration in profits and return on investments. Therefore, the Authority concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the subject country. The Authority therefore, holds that material injury to the domestic industry has been caused by the dumped imports of subject goods from the subject country.

F. Indian industry's interest & other issues:

F.1 Submissions by other interested parties

86. The other interested parties have made the following submissions in this regard:

- (i) Exorbitant and unwarranted provisional duties imposed for a totally ineligible and undeserving case resulting in violation of Rule 12 due to inadequacy of reason and circumstances for such imposition.
- (ii) Given the balance of convenience for single industry producer vis-a-vis the national interest and also the volatile prices of benzene, reference price based duty is most apt as also held by CESTAT in Kalyani Steel Ltd v. Designated Authority.

F.2 Submissions by domestic industry

87. The domestic industry has made the following submissions in this regard:

- (i) The provisional duty is rightly imposed by the Authority as has been reasoned out in the preliminary finding. Such reasoned imposition cannot be held as unwarranted and arbitrary in light of the case set out by the applicant.
- (ii) There is no legal basis for separate anti dumping duty for Changshan Haicheng Chemical Co., Ltd. as the same has not responded on one hand and also there is precedent of the Authority. The law does not warrant determination of separate dumping margin first for producers and thereafter for exporters.
- (iii) In light of fluctuating benzene prices, fixation of reference price will be impracticable and error apparent resulting in continued dumping and injury to the domestic industry.

88. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re- establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way; and therefore, would not affect the availability of the product to the consumers.

89. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

G. Recommendations

90. 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 country below normal value.
 - (b) The domestic industry has suffered material injury on account of subject imports from the subject country.
 - (c) The material injury has been caused by the dumped imports of subject goods from the subject country.

91. The Authority notes that the investigation was initiated and it was notified to all interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports as notified in the preliminary findings; the Authority is of the view that imposition of definitive duty is required to offset dumping and injury. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. For the purpose of determining injury margin, the landed value of imports of product under consideration has been compared with the non-injurious price of the domestic like product produced by domestic industry determined for the period of investigation.
92. With regard to duty structure, keeping into account factual matrix of the case and having regard to contentions raised, information provided and submissions made by interested parties, it is deemed appropriate to recommend fixed form of anti dumping duty in US\$.
93. 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, antidumping duty equal to the amount indicated in Col 7 of the table below is recommended to be imposed on all imports of subject goods originating in or exported from China PR.

Duty table

Col. No.	1	2	3	4	5	6	7	8	9
SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount of duty	Unit	Currency

1	29215120 & 29215190	'Meta Phenylene Diamine' (MPDA)*	China PR	China PR	Jiangsu Tianjiayi Chemical Co. Ltd	Changshan Haicheng Chemical Co. Ltd.	0.574	Kg	US\$
2	29215120 & 29215190	'Meta Phenylene Diamine' (MPDA)*	China PR	China PR	Zhejiang Amino-Chem Co. Ltd Ltd	Zhejiang Amino-Chem Co. Ltd	0.615	Kg	US\$
3	29215120 & 29215190	'Meta Phenylene Diamine' (MPDA)*	China PR	China PR	Any combination other than mentioned in Sr. no.1 &2 of above producer and exporter		0.780	Kg	US\$
4	29215120 & 29215190	'Meta Phenylene Diamine' (MPDA)*	China PR	Any other than China PR	Any	Any	0.780	Kg	US\$
5	29215120 & 29215190	'Meta Phenylene Diamine' (MPDA)*	Any other than China PR	China PR	Any	Any	0.780	Kg	US\$

**Meta Phenylene Diamine' (MPDA), also known as*

m- Phenylene Diamine, 1,3- diaminobenzene, 1, 3- Benzenediamine, m- Aminoaniline, m- Benzenediamine, m- Diaminobenzene, 1,3-Phenylenediamine, 3- Aminoaniline, m- Fenylendiamin, Phenylenediamine, and m-Aminoaline, Phenylenediamine meta.

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

95. Subject to the above, the Authority confirms the preliminary findings dated 1st January, 2013.

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

(J S Deepak)
Designated Authority