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**F. No.6/19/2018-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**(Directorate General of Trade Remedies)**  
**4<sup>th</sup> Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

Dated 22<sup>nd</sup> August, 2019

**NOTIFICATION**

**FINAL FINDINGS**

**Subject: Anti-subsidy investigation concerning imports of Atrazine Technical from China PR.**

**A. BACKGROUND OF THE CASE**

**F. No. 6/19/2018-DGAD:** Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the “Act”), and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the “Rules” or the “Countervailing Duty/ CVD Rules”) thereof:

1. Whereas, M/s Meghmani Industries Limited (hereinafter also referred to as the “Petitioner” or “Domestic Industry”) has filed a petition, supported by M/s Insecticides (India) Limited, before the Designated Authority (hereinafter also referred to as the “Authority”) in accordance with the Countervailing Duty Rules for imposition of Countervailing Duty on imports of “Atrazine Technical” from People’s Republic of China (hereinafter also referred to as the “subject country”).
2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the petitioner, issued a public notice vide Notification No. 6/19/2018 - DGAD dated 27<sup>th</sup> August, 2018, published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/ countervailing duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

## **B. PROCEDURE**

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
  - a. The Authority notified the Embassy of People's Republic of China in India about the receipt of the present anti-subsidy application before proceeding to initiate the investigation in accordance with Rule 6(5) of the Countervailing Duty Rules.
  - b. The Authority invited the Government of China PR for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 11<sup>th</sup> July, 2018 in New Delhi, which was attended by the representatives of the Government of China PR (hereinafter also referred to as GOC). The issues clarified by the GOC were taken on record.
  - c. The Authority issued a public notice dated 27<sup>th</sup> August, 2018 published in the Gazette of India Extraordinary, initiating countervailing duty/ anti-subsidy investigation concerning imports of the subject goods from the subject country.
  - d. The Authority sent a copy of the initiation notification dated 27<sup>th</sup> August, 2018 to the Embassy of People's Republic of China, known producers/ exporters from People's Republic of China, known importers/ users in India and the domestic industry as well as the supporter, M/s Insecticides (India) Limited as per the names and addresses made available by the petitioner and requested them to make their views known in writing within the prescribed time limit.
  - e. The Authority provided a copy of the non-confidential version of the application to the known producers/ exporters and to the embassy of the People's Republic of China in India in accordance with Rule 7(3) of the Rules supra.
  - f. The Embassy of People's Republic of China in India was also requested to advise the producers/ exporters from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/ exporters was also sent to them along with the names and addresses of the known producers/ exporters from the People's Republic of China.
  - g. The Authority sent questionnaires to the GOC (Govt. of China) in order to seek relevant facts/ information with regard to various schemes/ programs where countervailable benefit might have been conferred by the GOC.
  - h. In addition, the Authority sent questionnaires to the following known producers/ exporters in People's Republic of China, in accordance with Rule 7(4) of the Rules:

- i. Zhejiang Zhongshan Chemical Industry Group Co. Ltd.
  - ii. Shandong Binnong Technology Co., Ltd.
  - iii. Shandong Weifang Rainbow Chemical Co., Ltd.
  - iv. Zhejiang Province Changxing First Chemical Co., Ltd.
  - v. Shandong Vicome Greenland Chem Co., Ltd.
  - vi. Liaoning Tianyi Pesticide Chemical Co., Ltd.
  - vii. Jinan Kesai Agrochem Co., Ltd.
  - viii. Shandong Qiaochang Chemical Co., Ltd.
- i. In response, the following producers/ exporters from the subject country filed Exporter's Questionnaire Response (EQR) in the prescribed format:
- i. Xiangshui Zhongshan Bioscience Co. Ltd.
  - ii. Zhejiang Zhongshan Chemicals Industry Group Co. Ltd.
  - iii. Anhui Zhongshan Chemicals Industry Co. Ltd.
- j. The Authority sent Importer's Questionnaires to the following known importers/ users of subject goods in India calling for necessary information in accordance with Rule 7(4) of the Rules:
- i. Rallis India Limited
  - ii. Vijayalakshmi Insecticides Pesticides Limited
  - iii. PI Industries Ltd.
  - iv. Vantech Chemicals Limited
  - v. Sudarshan Consolidated Ltd
  - vi. Nagarjuna Agrichem Limited
  - vii. GSP Crop Science Private Limited
  - viii. Best Agrochem Pvt. Ltd.
  - ix. HPM Chemicals & Fertilizers Ltd.
- k. In response, the following importers from India filed the Importer's Questionnaire Response (IQR) in the prescribed format:
- i. ADAMA India Private Limited;
  - ii. Crystal Crop Protection Limited;
  - iii. Krishi Rasayan Exports Private Limited.

- l. Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of M/s China Crop Protection Industry Association (CCPIA).
- m. The Authority made available non-confidential version of the evidence presented/ submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- n. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the Period of Investigation (POI), which was received by the Authority. The Authority has, relied upon the DGCI&S data, wherever required, for computation of the volume of imports and required analysis after due examination of the transactions.
- o. The Non-Injurious Price (NIP) based on the cost of production and cost to make & sell the like article of 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 countervailing duty lower than the subsidy margin would be sufficient to remove injury to the domestic industry.
- p. Physical inspection through on-spot verification of the information provided by the applicant domestic industry, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present final findings.
- q. Verification of the information provided by the responding producers/ exporters, to the extent deemed necessary, was carried out by the Authority and such information/ evidence, to the extent provided by these parties within reasonable time, has been relied upon for the purpose of present final findings.
- r. The Period of Investigation (POI) for the purpose of the present anti-subsidy investigation is from April, 2017 to March, 2018 (12 Months). The injury investigation period has however, been considered as the period from 2014-15, 2015-16, 2016-17 and the POI.
- s. In accordance with Rule 7(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 15<sup>th</sup> February, 2019. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were advised to offer their rebuttals/rejoinders.

- t. The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present final findings, to the extent considered relevant and necessary for the present purposes.
- u. The submissions made by the interested parties during the course of this investigation, wherever found relevant and material, have been addressed by the Authority, in this final findings.
- v. Information provided by the 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 as 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.
- w. Wherever an interested party has refused access to, or has otherwise not provided necessary information or provided unreliable information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the final findings on the basis of the facts available.
- x. A Disclosure Statement was issued to interested parties on 9<sup>th</sup> August, 2019 containing essential facts under consideration of the Designated Authority, giving time up to 16<sup>th</sup> August, 2019 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately in the present final findings.
- y. The exchange rate adopted by the Authority for the subject investigation is US\$1=₹65.33

### **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

4. At the stage of initiation, the product under consideration is defined as:

*“The product under consideration is “Atrazine Technical”, classifiable under various tariff subheadings No. 38089199, 38089390 and 38089990. The scientific name for Atrazine is 6- chloro-N-ethylN'-(1-methylethyl)-triazine-2,4-diamine.”*

5. Atrazine technical is a commonly used herbicide. It is a systemic triazine herbicide registered for the control of pre and post emergence of broadleaf weeds and grassy weeds. Pure atrazine is an odourless white powder, which is not very volatile, reactive, or flammable. It is synthesized in chemical factory made in the laboratory and does not occur naturally. It is used mostly on farms on crops such as sugarcane, corn, pineapples,

sorghum, and macadamia nuts and also to prevent weeds from growing on both highway and railroad rights-of-way. It can be sprayed on croplands before crops start growing.

6. Atrazine Technical is designated as a Restricted-Use Pesticide (RUP), and is not available to the general public. RUP's are, by law, only available for sale to certified applicators or persons under their direct supervision, and only for the purpose covered by the applicator's certification. It is known by various names such as
  - (a) 6-Chloro-N-Ethyl-N'-(1-Methylethyl)-Triazine-2,4-Diamine;
  - (b) 2-Chloro-4-Ethylamino-6-Isopropylamine-S-Triazine;
  - (c) 2-Chloro-4-(Ethylamino)-6-(Isopropylamino)-S-Triazine;
  - (d) 2-Chloro-4-(Ethylamino)-6-(Isopropylamino)-Triazine;
  - (e) Chloro-4-(Propylamino)-6-Ethylamino-S-Triazine;
  - (f) Chloro-4-(Propylamino)-6-Ethylamino-S-Triazine, etc
7. Scope of PUC includes all synonyms of the PUC.

#### **D.1. Submissions made by the Domestic Industry**

8. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:
  - a. The product under consideration in the present investigation is "Atrazine Technical". Atrazine Technical is used like Active Pharma Ingredient in Pharma industry. This Technical grade is used in making the formulation of various kinds like Atrazine-50% WP, Atrazine -80% WP, Atrazine- 50% SC, Atrazine -80% WDG and products with different combinations for its marketing and sale as approved by Central Insecticides Board and Registration Committee (CIBRC). The formulations so made are used as fertilizers.
  - b. Pure atrazine is an odourless white powder, which is not very volatile, reactive, or flammable. It will dissolve in water. Atrazine is made in the laboratory and does not occur naturally.
  - c. The product under consideration may be classified under 3808 91 99, 3808 93 90 and 3808 99 90.
  - d. There is no known difference in the subject goods produced by the Indian industry and exported from subject country. The consumers are using the two interchangeably.
  - e. The petition clearly shows that the product under consideration has been defined as "Atrazine technical" and its manufacturing process, usage, raw materials, product specifications, etc. have been stated.

- f. The petition states that formulation is packed in bulk or retail packing, for sale to farmers. It has also been mentioned that the producers of formulations sell the same under their own brand name. Therefore, the scope of product under consideration is clear in the petition.
- g. There are no substitutes of the product under consideration, as a producer of atrazine formulation would only be able to use any other product.
- h. No evidence has been provided to show that atrazine as herbicide can be substituted. In any case, different herbicides are appropriate for use in different crops.
- i. Based on the increasing demand and imports, it can be safely concluded that there are no technically and commercially viable substitutes for atrazine technical.

## **D.2. Submissions made by the other interested parties**

- 9. The submissions made by the exporters, importers, users and other interested parties with regard to product under consideration and like article, and considered relevant by the Authority, are as follows:
  - a. The petitioners have provided incorrect information with regard to usage of the product, stating that it can be sprayed on croplands and used by farmers. However, the product under consideration is atrazine technical which cannot be directly used by the farmers. The farmers can use directly only the atrazine formulations.
  - b. Applicant industry categorically submitted that there are no viable substitutes. The information about substitutes are available on the website of CIBRC, Therefore, applicant industry cannot take the plea that such information was not known to them. Thus, the information provided in the petition, shows that the applicant industry has taken Hon'ble Authority for granted while filing the application. Therefore, the petition does not satisfy requirements of Rule 6(3).
  - c. The petition fails to fulfil the requirements of Rule 6(3) as the applicant industry have referred both atrazine technical and formulations as subject goods, although the petition is only in respect of "Atrazine Technical".
  - d. Domestic industry has changed the scope and usage of the PUC. The scope and usage of PUC are different in the application of the domestic industry which is only pertaining to "Atrazine Technical" than in the initiation notification issued by DGTR where the investigation has been initiated for both "Atrazine Technical" and its formulations.
  - e. The CIB registration form of applicant industry shows that subject goods are used to produce formulation to show that the usage of PUC mentioned by the domestic industry is with respect to the formulations derived from the PUC i.e., "Atrazine Technical" and not for "Atrazine Technical" itself. Certificate shows that the subject

goods are not fit for use on the crops directly by farmers, as mentioned by the applicant industry in their petition.

### **D.3. Examination by the Authority**

10. The Authority has noted submissions made by various interested parties with regard to scope of the product under consideration and like article offered by the domestic industry. With respect to the product under consideration, the Authority notes that the product under consideration in the present investigation, as defined in the initiation notification, is “Atrazine Technical”. The scientific name for Atrazine is 6- chloro-N-ethylN'-(1-methylethyl)-triazine-2,4-diamine.
11. The product under consideration is classified under Chapter 38 of the Customs Tariff Act, 1975, and further classified under customs sub-heading 38089199, 38089390 and 38089990. The customs classification is indicative only and in no way binding upon the product scope.
12. Pure atrazine is an odourless white powder, which is not very volatile, reactive, or flammable. It will dissolve in water. Atrazine is made in the laboratory and does not occur naturally. Pure atrazine cannot be used directly by the farmers on their farms and the farmers can use only the atrazine formulations.
13. With regard to the submissions raised by the domestic industry and other interested parties, the Authority notes as under:
  - a. Although the petition filed includes reference to both atrazine and atrazine technical; the Authority notes that all details including, but not limited to, manufacturing process, usage, raw materials, product specifications and nomenclature, have been provided by the domestic industry.
  - b. In any case, the Initiation Notification dated 27<sup>th</sup> August, 2018 makes it clear that the product under consideration is only “Atrazine Technical”. Therefore, the scope of product under consideration was clear from the stage of initiation and did not include “atrazine formulations”. Thus, there is no discrepancy or confusion with regard to the scope of product under consideration.
  - c. With regard to the availability of substitutes of the subject goods, it is noted that the interested parties have not provided any details with regard to what products may be considered as a substitute for the product under consideration. Further, it is noted that substitutes of atrazine formulations are irrelevant for the present investigation as the formulations are not the product under consideration, but only the downstream product..
14. The Authority, after analysing the submissions made by all the interested parties, has examined the product scope, and has consequently decided to continue with the scope as defined in the initiation notification.

15. None of the interested parties have made submissions in regards to like article. The Authority holds that there is no known difference between the subject goods exported from China PR and the like article produced by the petitioner. Like article produced by the petitioner and the subject goods imported from China PR are comparable in terms of product characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Therefore, the Authority holds that the Atrazine Technical produced by the domestic industry is a like article to the product under consideration imported from China PR as per the Rules and the Agreement on Subsidies and Countervailing Measures (ASCM).

## **D. SCOPE OF DOMESTIC INDUSTRY AND STANDING**

### **D.1. Submissions made by the Domestic Industry**

16. The submissions made by the domestic industry during the course of the investigation with regard to the scope of domestic industry and standing are as follows:
- a. The petitioner accounts for a major proportion of the total domestic production and therefore, constitutes domestic industry as defined in Rule 2(b) of the CVD Rules.
  - b. There is no other producers of subject goods. The entities identified by the interested parties are producers of atrazine formulations, and therefore, users of the product under consideration.
  - c. The petitioner and the supporter, both have provided all the relevant information. The production of the petitioner company constitutes a major proportion of total Indian production. The petitioner is not related to any producer-exporter of the subject product outside India.
  - d. The SEZ plant of the domestic industry cannot be excluded from the scope of domestic industry, as it is engaged in domestic production. Rule 2(b) refers to “domestic production” and not “sale” or “utilization of production”.
  - e. The SEZ plant is, in fact, engaged in sales in domestic market as well.
  - f. As regards arguments with regard to Section 54 of the SEZ Act which deems SEZ units to be outside the customs territory, it was submitted that the Section creates a deeming fiction under that law and only for the purpose of that law.
  - g. It is only for the purposes of SEZ Act that SEZ units are treated as “outside India”. However, this is merely a legal fiction created for the purposes of that Act, and it does not change the status of the SEZ unit as an Indian entity. This is settled by judgment of the Hon’ble High Court of Allahabad in the case of India Exports Vs. State of U.P.

- h. All domestic laws are applicable to SEZs and therefore, they cannot be excluded only because it is allowed to import inputs without payment of duty.
- i. The interested parties have not identified any provision of the Customs Tariff Act, 1975 which allows for exclusion of SEZ unit.
- j. Direct tax exemption does not disentitle a unit from being considered. A number of entities are entitled to 100% tax exemption, under Section 80-IA, Section 80-IB and so on, which are considered as part of domestic industry.
- k. Exports from SEZ units may attract trade defence measures in other jurisdictions as exports originating in India. In fact, countervailing duties have been imposed against exports from India because of the benefits that have been given to such a unit.
- l. The sales made by the SEZ unit to DTA are not recorded as imports in the import data provided by DGCI&S, while its exports are treated as exports from India.
- m. A number of countries maintain schemes similar to SEZ. Goods exported from such territory are treated as exports from such countries and ADD/CVD considered by the Designated Authority. By the same reasoning, production in SEZ must be considered as part of domestic industry in India.
- n. In the past findings of the Designated Authority, such as in the case of solar cells, polypropylene, etc., SEZ units are considered as part of domestic industry.
- o. Moreover, in a number of other cases, the Designated Authority has considered an EOU to be a part of domestic industry. However, a comparison of EOU benefits and provisions applicable to SEZ units and EOU units would show that SEZ unit have a higher eligibility to be treated as a domestic producer as opposed to EOU units. This is because while a 100% EOU is barred from selling more than 50% of its output in the domestic market, no such bar is placed on the SEZ units.
- p. High courts have consistently noted that SEZ units cannot be considered outside the territories of India. Therefore, such a unit cannot be excluded.
- q. Without prejudice, even if SEZ unit is excluded, the petitioner shall nevertheless account for a major proportion of the domestic production.
- r. There is no merit in the submission that exclusion of India Insecticides Ltd. has been done to distort the performance indices of the state of the industry in India as the petitioner accounts for a major proportion.
- s. The non-participation by Insecticides India Limited is presumably for the reason that Atrazine Technical is not a major product for the producer, and its share in the total revenue of the company is much lower and constitutes a relatively small share of its revenue.

- t. The petitioner company, therefore, constitutes domestic industry within the stipulated criteria provided under the Countervailing Duty Rules and satisfies the requirement of standing.

## **D.2. Submission of other interested parties**

17. The submissions made by interested parties with regard to the scope and standing of the domestic industry are as follows:
  - a. As per the current practice of the Authority and legal position in the country, the production of domestic industry in SEZ unit cannot be taken for determining domestic industry.
  - b. As per Section 54 of the SEZ Act, SEZ unit shall be deemed to be outside the customs territory of India for the purposes of undertaking authorized operations. Such authorized operations include production, exports, imports, etc.
  - c. After exclusion of the production of SEZ unit, the applicant industry would no longer be major proportion of the total domestic production in India.
  - d. Authority should look into the data and information of Insecticides India Ltd. to ensure that their exclusion from the scope of the domestic industry is not done to wilfully distort the performance indices of the state of Indian industry.
  - e. SEZ plant of petitioner, Meghmani Industries Limited should be excluded from the scope of domestic industry as it caters primarily to the export market, as stated by the authority in the Manual of Operating Practices for Trade Remedy Investigations and as held in the final findings of "Solar Cells whether or not assembled in modules or panels".

## **D.3. Examination by the Authority**

18. Rule 2(b) of the Countervailing Duty Rules defines domestic industry as follows:

*“domestic industry means the domestic producers as a whole of the like article or domestic producers 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 subsidized article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry”.*

19. The petition has been filed by M/s Meghmani Industries Limited (MIL), and supported by M/s Insecticides (India) Limited. Apart from these two producers, there are no other known producers of the subject goods in India.

20. It is noted that the petitioner has a unit situated in Special Economic Zone (SEZ). The Authority notes as under with regard to inclusion or otherwise of SEZ unit within the scope of domestic industry:
- a. The SEZ Act, 2005 was enacted to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.
  - b. Domestic Tariff Area in section 2(i) of the SEZ Act, 2005 means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones.
  - c. As per Section 2(m) (ii) of the SEZ Act, 2005 “export” includes “supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer” (in a SEZ).
  - d. Section 53 of the SEZ Act, 2005 further provides that –  
  

*“(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.*

*(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:*

*Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.”*
  - e. A perusal of the provisions of the SEZ Act makes it clear that even though SEZ units are a part of the sovereign territory of India, they are distinguished from DTA units. The fundamental objective of establishing SEZ units is promotion of exports. Further, SEZ is excluded from the definition of DTA.
21. In view of the above, the Authority notes that the SEZ unit of the petitioner cannot be treated as part of domestic industry.
22. As regards the DTA unit, the Authority notes that the petitioner has neither imported the subject goods nor is related to any exporter or importer of the subject goods. The Authority further notes that, after excluding the petitioner’s SEZ production from both its production and the total Indian production, the petitioner commands a major proportion of the production of the subject goods in India. Accordingly, for the purpose of this investigation, the Authority holds that the petitioner constitutes domestic industry within the meaning of Rule 2(b) of the Countervailing Duty Rules.

23. Further, since the petitioner and the supporter are the only producers of the like article to subject goods in India, the Authority holds that the petitioner satisfies the requirements of Rule 6(3) of the Rules.

## **E. ISSUES RELATING TO CONFIDENTIALITY**

### **E.1. Submissions by domestic industry**

24. The following submissions have been made by the domestic industry with regard to confidentiality issues:
- a. The exporters have violated the principles laid down by Trade Notice No. 10/2018 dated 7th September, 2018, which was in force at the time when the responses have been filed. Since the principles laid down by the trade notice are clarificatory in nature, the same should have been followed by the exporters in filing the response.
  - b. The exporters have claimed publicly available information as confidential.
  - c. Zhejiang Zhongshan Chemical Industry Group Co. Ltd. has accepted the receipt of benefit under a subsidy named Special Fund for Development of Open Economy. However, it has claimed the information about benefit received as confidential in spite of the fact that it's publicly available.
  - d. The non-confidential summaries have not been indexed properly and therefore, fail to convey any meaningful information.
  - e. Even the channel of distribution has been claimed confidential.
  - f. There is no merit in the allegation that the domestic industry has claimed excessive confidentiality as it has provided trends of all injury parameters which is sufficient for the importers to argue on merits of the case.
  - g. The disclosures of the domestic industry are consistent with the requirements prescribed under the Trade Notice No. 10/2018.
  - h. Formats A to L contain costing and pricing information of a company, which is highly business-sensitive information. However, non-disclosure thereof does not cause any prejudice to the other parties.
  - i. With regards to arguments regarding DGCI&S data, it was submitted that the domestic industry is not authorized to disclose the same Trade Notice 07/2018. Further, the domestic industry at the time of procurement of the data, undertakes that it shall not share it or get it placed in public domain.

- j. If the interested parties wanted to obtain the transaction-wise DGCI&S data, they could have submitted the necessary declaration to the Investigating Officer to obtain the same in terms of the trade notice.
- k. The total Indian production has not been disclosed as there are only two producers of subject goods and the disclosure of such production would amount to disclosure to each producer of the production of the other producer.

## **E.2. Submissions by other interested parties**

25. The following submissions have been made by other interested parties with regard to confidentiality issues:
- a. The domestic industry has not provided the following information required as per Trade Notice 10/2018:
    - (i) Relationship of petitioners with foreign producers/ exporters/ importers/ domestic producers;
    - (ii) Names and addresses of all other Indian Producers/ users/ importers of the subject goods in India;
    - (iii) Volume and Value of production by all other producers except domestic industry. The domestic industry has not provided this information in actual figures.
  - b. The petitioner has claimed excessive confidentiality, in contravention of the Rule 8 and Trade Notice No. 1/2013 as in section VI, the petitioner has replied to all questions as 'Enclosed. Business Proprietary information.' The petitioner should be asked to disclose the information or provide non-confidential summary.
  - c. The petitioners cannot keep assessment of subsidy as confidential from the exporters.
  - d. The petitioner has not provided transaction-wise DGCI&S import data, although it has provided ITAS import data.
  - e. The applicant industry has claimed excessive confidentiality with regard to new costing formats, volume related information, share of production, demand in India. It has not even provided a non-confidential summary.
  - f. Formats A to L have been claimed confidential in a single page. The non-confidential version has to be a true reflection of the confidential version and should mention all pages, formats and Annexures that are being claimed confidential.
  - g. The rights of defence of parties cannot be fully exercised, since significant data provided in the petition is not properly indexed in the non-confidential version.

### **E.3. Examination by the Authority**

26. With regard to confidentiality of information, Rule 8 of Anti-Subsidy Rules provides as follows:

*“Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*(3) Notwithstanding anything contained in subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.*

27. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection.
28. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality to the extent considered relevant and material, were examined by the Authority and addressed accordingly. Information provided by the 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. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

## **F. MISCELLANEOUS SUBMISSIONS**

### **F.1. Submissions made by other interested parties**

29. The following miscellaneous submissions have been made by other interested parties:

- a. Levy of countervailing duty will be contrary to public interest. Inappropriate protection measures may not only protect domestic industry but damage its long term and fundamental interest. The rising prices will cause the downstream industry to shrink and a decline in overall demand; and would form an uncompetitive environment.
- b. The petitioners have deliberately concealed information in relation to the importers and users of the subject goods, with intent to mislead Authority and create confusion about product scope. This has impaired the rights of the interested parties to offer comments on product scope and domestic industry.
- c. The intent of providing incorrect information was to reduce the number of interested parties who can counter the misleading and incorrect information provided in the petition.
- d. The effect of exclusion is that the buyers have not been able to provide information regarding purchases from domestic industry, which would have allowed the Designated Authority to verify the sales data furnished by the applicant industry.
- e. It is further submitted that the information relating to actual importers and users have not been provided in the petition. The list of importers provided by applicant industry is of the licensed manufacturers of subject goods, who are not presently manufacturing the subject goods. This is a fact very well known to all companies who are associated with this product as Atrazine Technical is a Restricted Use Pesticide (RUP) and its import, manufacture and sale are also restricted to certain importers/ users/ manufacturers as registered and regulated by Central Insecticides Board (CIB) under Insecticides Act, 1968. Therefore, it is curious as to why the names of these companies were provided to the Authority with a specific assertion that they are importers of the product while they actually are the producers of PUC in India. It is clear that the applicant has provided misleading information with the object of getting the protection with least resistance from the users/ importers of the PUC.
- f. The information supplied by domestic producers should be rejected on grounds of serious mistakes, inconsistencies and inaccuracies. This is especially because in the recent past, the Authority has rejected responses of the exporters for clerical errors also.

- g. Since the subject goods cannot be sold to any unauthorized person, the applicant industry cannot claim that the importers/users are not known to them.
- h. Despite repeated reminders, the revised petition for the period of investigation had not been received.
- i. If India has followed the examples of USA and other countries to insist on initiation of countervailing duty investigations, despite the fact that China has been devoting itself to the construction of market economy; it would negatively impact the dialogue and economic and trade cooperation between the two governments.
- j. The problems arising from bilateral trade should be solved through consultations. The petition filed should be treated considering the broad picture of stable bilateral economic and trade relationship.
- k. The petitioner has provided transaction-wise ITAS data, and not DGIC&S data.
- l. The current CVD proceedings are not justified and should be terminated. Domestic industry has filed erroneous and misleading information in its application. The deficiencies in the application of the domestic industry are irreparable in nature and the same cannot be rectified.
- m. The other interested parties also submitted that, according to its information, the DGTR is recommending CVD duty to the extent of 60% of the existing price of the PUC which has resulted in price rise by 15-20% of “Atrazine Formulations”, the downstream product of the PUC. This increase will further worsen the condition of the Indian farmers, who are already in fix due to huge loans and other financial issues. In this context, this will go against the Hon’ble Prime Minister’s vision of doubling the farmers’ income.
- n. Domestic producers are getting benefit from the subsidized imports of major raw material imported from China. Therefore, assuming that there is subsidy in China, would not impact much to the Domestic Industry, as they are also benefitted by such subsidy.
- o. It is shocking that the domestic producers have intentionally not named any of the farmer associations in the petition despite the fact that it is a legal requirement. It is clear that this non-inclusion of farmers associations clearly is an attempt to get the duties without getting any input from the parties associated with it.

## **F.2. Submissions made by domestic industry**

- 30. In response to the submissions of the interested parties, the domestic industry submitted as under:

- a. Regarding argument that details of importers and users were suppressed, it was submitted that the domestic industry has given the list of importers as listed in publicly available data.
- b. The list of importers provided by domestic industry is those that are engaged in formulations of subject goods. Any producer of atrazine formulation would invariably be a user or importer of atrazine technical.
- c. Regarding impairment of rights of interested parties to participate, it was submitted that once the initiation notification is published in the Official Gazette, all importers and users are presumed to have notice thereof.
- d. When the exporters are limited to certain authorized exporters, who received the notice of initiation; they must have informed their importers in India regarding the same, who in turn would have informed their buyers, that is, the users in India. In fact, even the ability of the responding importers to participate in the investigation has in no way been impeded by virtue of not being listed in the petition.
- e. As regards arguments of public interest, it was submitted that it is not for the exporter to comment upon when onslaught of cheap imports from the subject country has caused material injury to the domestic industry. Moreover, the duty will ensure level playing field in the market for both Indian and foreign suppliers and the same will not restrict availability of subject goods.

### **F.3. Examination by the Authority**

31. Various submissions made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:
  - a. The Authority notes that the petitioner had filed a duly substantiated petition, as per the prescribed proforma and formats, seeking initiation of countervailing duty investigations. The sufficiency of the petition was analyzed at the stage of initiation and the investigation was initiated after due consideration.
  - b. With regards to the submission that all the importers of the subject goods were not identified in the petition, the Authority notes that initiation notification was published by the Authority in the Official Gazette. No prejudice can be claimed due to non-inclusion of some importer's name in the petition.
  - c. Regarding the requests made by certain interested parties seeking updated information for the POI considered by the authority, such updated information was filed by the domestic industry and the same was circulated to all interested parties before the oral hearing and the same was placed simultaneously in the public file.

- d. The Authority further notes that the domestic industry had provided transaction-wise import data as per DGCI&S in the petition, and not as per secondary sources, as claimed by the interested parties.
- e. As regards public interest, the Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization 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 countervailing duty would not prohibit imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers at fair prices. Imposition of countervailing measures would remove the unfair advantages gained by subsidization, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods at fair prices.
- f. Considering the subsidy margin and injury margin as established by the Authority, the impact, if at all, on downstream users of the CVD duty will be minimal.
- g. The mandate of the Authority in the present investigation is to investigate only the subsidies alleged for the PUC (i.e. Atrazine Technical), not those of the raw material of the PUC.
- h. With regards to the submission that the farmers' association were not identified in the petition, the Authority notes that initiation notification was published by the Authority in the Official Gazette. No prejudice can, therefore, be claimed due to non-inclusion of farmer association' name in the petition.

**G. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN**

- 32. The petition filed by the Domestic Industry alleged existence of countervailable subsidies in China. The domestic industry filed submission showing how each of the scheme identified in the petition was required to be investigated.
- 33. Government of China (GOC) was invited for consultation, which was held on 11<sup>th</sup> July, 2018 in New Delhi and was attended by the representatives of the Government of China (GOC). In the said consultation, GOC contended as follows:
  - a. Programs in form of preferential loans/ lending and programs in the form of Provision of goods and services refers to commercial activities of state owned enterprises but these enterprises cannot be termed as public bodies.
  - b. Program in the form of Income tax refund for re-investment of profits by foreign investment was rescinded.
  - c. Preferential policy for the enterprises of Northeast Region is no longer in force.

- d. The famous brand program is no longer in force.
  - e. Certain Chinese laws, regulations and policies used as evidence of allegation have expired or do not exist.
34. The authority analyzed the list of programs alleged in the petition. Petitioner withdrew following 3 programs from the list of alleged programs vide its letter dated 10.08.2018 stating that it has not been able to gather enough evidence with regard to these schemes:
- (i) Program No. 17: Clean Production Project Subsidy
  - (ii) Program No. 20: Various grants provided to Beijing Province:
    - (a) Program No. 20(a): Award for Maintaining the Growth by Beijing Governments
    - (b) Program No. 20(b): Award by Beijing Technology Trading Encouraging Centre
  - (iii) Program No. 59: Provision of Water for Less Than Adequate Remuneration
35. In view of the submissions raised during the pre-initiation consultation with the GOC and after examination of the schemes alleged in the petition and submission of the petitioner, the Authority identified 4 more programs which were not required to be investigated for the present investigation, as these programs were either withdrawn, and/or the alleged benefit under these programs already expired before the POI or the petitioner has not provided sufficient evidence for these programs. No investigation was therefore initiated in respect of these following 4 programs:
- (i) Program No. 31: Tariff and VAT exemptions for imported Technologies and equipment
  - (ii) Program No. 32: VAT refunds for domestic Firms on Purchases of Chinese made Equipment
  - (iii) Program No. 33: VAT Exemptions and Deductions for Central Regions
  - (iv) Program No. 47: Government Policy Lending

### **SUBSIDY SCHEMES UNDER INVESTIGATION**

36. The Authority initiated investigations for the following subsidy programs wherein the producers of the product under consideration may have potentially received the countervailable benefits:

#### **I. Programs Identified in the form of Grants**

- 1. Program No.1: The State Key Technology Renovation Projects Fund

2. Program No.2: Famous Brands Program/ Incentive fund for famous-brand products
3. Program No.3: Grants for Anti-dumping/Anti-subsidy Investigations
4. Program No.4: Research & Development (R&D) Assistance Grant
5. Program No.5: Export Assistance Grant
6. Program No.6: Grants for Listing Shares
7. Program No.7: Grants provided through the Provincial Fund for Fiscal and Technological Innovation
8. Program No.8: International Market Fund for Export Companies
9. Program No.9: Project funds allowance
10. Program No.10: Special Fund for Energy Saving Technology Reform
11. Program No.11: Funds for supporting technological innovation for the technological small and medium-sized enterprises/ Small and Medium-sized Enterprise Support Funds
12. Program No.12: State Special Fund for Promoting Key Industries and Innovation Technologies
13. Program No.13: Enterprise Development Funds
14. Program No.14: The Clean Production Technology Fund
15. Program No.15: Grants for High and new technology industries
16. Program No.16: Special fund for the development of foreign trade and economic Cooperation
17. Program No.18: Various grants provided to Jiangsu province
  - a. Jiangsu Province Finance Supporting Fund
  - b. Environment Protection Award (Jiangsu)
  - c. Jiangsu City Industrial Economy Performance Award
  - d. Changzhou Qishuyan District Environmental Protection Fund
  - e. Changzhou Technology Plan
  - f. Supportive Fund provided by the Government of Xuyi Country
  - g. Enterprise Technology Centers/ Support Funds for Construction of Project infrastructure
18. Program No.19: Various grants provided to Guangdong province
  - a. Special fund for developing trade through science and technology of Guangdong Province
  - b. Guangdong - Hong Kong Technology Cooperation Funding Program
  - c. Guangdong Supporting Fund

- d. Special Fund for Significant Science and Technology by Guangdong Governments
  - e. Provincial Government of Guangdong Science and Technology Bureau Project Fund
  - f. Provincial Loan Discount Special Fund for SMEs by Guangdong Governments
  - g. Special Supporting Fund for Key Projects of “500 Strong Enterprises in Contemporary Industries” by Guangdong Governments
  - h. Fund for Supporting Strategic Emerging Industries by Guangdong Governments
  - i. Special Fund for Export Credit Insurance by Guangdong Governments
  - j. Patent Award of Guangdong Province
  - k. Supporting Fund for the Development from Guangzhou Local Governments
19. Program No.21: Various grants provided to Anhui Province
- a. Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of (Anhui Province)

## II. Programs Identified in form of Tax Incentives and VAT exemption

- 20. Program No.22: Export tax rebate/Tax Refund on Exports
- 21. Program No.23: Tax Policies for the deduction of research and development (R&D) expenses
- 22. Program No.24: Preferential Tax Policies for the Research and Development of FIEs
- 23. Program No.25: Tax Offsets for Research and Development by FIEs
- 24. search and Development by FIEs
- 25. Program No.26: Income tax credit for the purchase of domestically Produced & manufactured production equipment
- 26. Program No.27: Preferential tax policies/ Income Tax Reductions for companies that are recognized as high and new technology companies
- 27. Program No.28: Income tax concessions for the enterprises engaged in comprehensive resource utilization (special raw materials')
- 28. Program No. 29: Tax credit concerning the purchase of special equipment.
- 29. Program No.30: Income Tax credits for domestically owned Companies Purchasing Chinese made Equipment
- 30. Program No.34: Reduced Tax Rate for Productive FIEs Scheduled to operate for a period not Less Than 10 Years
- 31. Program No.35: Preferential Tax Policies for Foreign Invested Export Enterprises

32. Program No.36: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
33. Program No.37: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are engaged in Production or Business Operations Purchasing Domestically Produced Equipment's
34. Program No.38: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
35. Program No.39: Income Tax Reduction for Advanced Technology FIEs
36. Program No.40: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
37. Program No.41: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
38. Program No.42: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
39. Program No.43: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
40. Program No.44: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
41. Program No.45: Preferential income tax policy for the enterprises in the Northeast region
42. Program No.46: Tax concessions for Central and Western Regions

### III. Identified Programs in the Form of Preferential Loans & Lending

43. Program No.48: Preferential Loans to SOE
44. Program No.49: Discounted Loans for Export-Oriented Enterprises and Export Loan Interest Subsidies.

### IV. Identified Programs in the Form of Export Financing and Export Credit

45. Program No.50: Export Seller's Credit.
46. Program No.51: Export Buyer's Credit.
47. Program No.52: Other Export Financing from State-Owned Banks.
48. Program No.53: Export Credit Insurance Subsidies.
49. Program No.54: Export Credit Guarantees.

### V. Identified Programs in the Form of Equity

50. Program No.55: Equity infusions

51. Program No.56: Unpaid dividends.
52. Program No. 57: Dividend exemption between qualified resident enterprises.

VI. Identified Programs in the Form of Provision of Goods and Services

53. Program No. 58: Provision of Electricity for Less Than Adequate Remuneration.
  54. Program No. 60: Land Use Rights in Industrial and Other Special Economic Zone.
  55. Program No. 61: Land Use rights for SOEs.
  56. Program No. 62: Land Use rights for FIEs
37. Post initiation, the GOC and producers/ exporters of Atrazine Technical from China PR were advised to file response to the questionnaire in the form and manner prescribed and were given adequate time and opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.
38. Government of China did not file questionnaire response. The following producers/ exporters of the subject goods, all related with each other, from China PR have filed questionnaire responses:
- i. M/s Zhejiang Zhongshan Chemical Industry Group Co. Ltd.,
  - ii. M/s Anhui Zhongshan Chemical Industry Co. Ltd.
  - iii. M/s Xiangshui Zhongshan Bioscience Co. Ltd.
39. The questionnaire responses filed by the above said three producers/ exporters were verified onsite in China by a verification team from DGTR and the Authority holds that the same cannot be accepted and adopted for the present purposes and for determination of individual CVD margins for the following reasons:
- a. During the course of onsite verification of random sample export documents issued for the PUC by M/s Zhejiang Zhongshan during the POI, it was noticed that two Invoices bearing same Invoice Numbers with different contents mentioned therein (like rate, date) etc have been issued by the company from its accounting software. Following four such sets of invoices were obtained:
    - (i) **Export to Hong Kong**: Two invoices bearing the same Invoice No. \*\*\* dated \*\*\* with same date, Order No.and quantity were found to have two different rates viz. \*\*\* USD/Kg and \*\*\* USD/Kg.
    - (ii) **Export to India (M/s \*\*\*)**: Two invoices bearing the same Invoice No. \*\*\* with same quantity, Order No. and rate were found to have two different dates viz. dated \*\*\* and \*\*\*.

- (iii) **Export to Brazil (M/s \*\*\*):** Two invoices bearing the same Invoice No. \*\*\* with same quantity and Order No. were found to have different dates viz. \*\*\* and \*\*\* and with two different rates viz. \*\*\* USD/Kg and \*\*\* USD/Kg.
  - (iv) **Export to Israel (M/s \*\*\*):** Two invoices bearing the same Invoice No. \*\*\* with same quantity and Order No. were found to have two different dates viz. \*\*\* and \*\*\* and with two different rates viz. \*\*\* USD/Kg and \*\*\* USD/Kg.
- b. Further, the Verification Team also found few more such instances with similar sets of such invoices and asked for the copies thereof from the company, but the companies did not provide the copies thereof. The company was asked to explain the discrepancy. No satisfactory explanation was given by the company for such major discrepancy in its business and accounting records.
  - c. Hence, in the light of above observations of the Verification Team, the accounting software and the books of accounts of these companies cannot be completely relied upon with respect to the recording of transactions. The Authority accordingly holds to not accept the response filed by these foreign producers/exporters.
40. There is no other response from any other Chinese producers/ exporters.

## **G.1. GENERAL OVERVIEW OF THE ALLEGED SUBSIDY PROGRAMS**

### **Submissions made by domestic industry**

41. The following submissions have been made by the domestic industry in the petition and during the course of the present investigations:
- i. The domestic industry has contended that the Government of China PR ("GOC") is providing prohibited and actionable subsidies to its producers/exporters of the subject goods and has provided prima facie evidence of existence of such subsidy schemes in terms of legislation and policy documents. Accordingly, the domestic industry identified existence of certain numbers of countervailable subsidy schemes in China PR, within the meaning of ASCM and Indian Rules and have contended that the producers/exporters of subject goods in China PR have benefited from such subsidies.
  - ii. The Petitioner has submitted that the producers/exporters of subject goods have benefited from actionable subsidies. The Government of China has maintained various programs. Petitioner has considered documents such as relevant Chinese laws and regulations, WTO reports, media sources, government reports, independent reports & studies, countervailing duty investigations analysis and findings of other authorities regarding subsidy programs in China PR. The petitioner has provided elaborate information regarding various subsidy programs

- iii. The programs of the GOC and other Public Bodies in China PR constitute a subsidy because of the following reasons:
  - a. There is a financial contribution by government or a public body, where the government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits), government provides goods or services other than general infrastructure, or purchases goods;
  - b. Benefit is thereby conferred on the Chinese producers/ exporters of the PUC; and
  - c. The program is specific within the meaning of Indian Rules and ASCM.
- iv. Relevant Chinese laws and regulations, WTO reports, various Government reports, media reports and independent studies and analysis, findings of other investigating agencies in their ant-subsidy investigations clearly constitute sufficient evidence of the existence of countervailable subsidy programs in China PR. These evidences were made available by the petitioner to all interested parties, including the GOC and the known producers and exporters in China PR.
- v. For the purpose of this investigation, the "Government of People's Republic of China" covers all levels of government, i.e. Federal, Central, 27 Provincial, Regional or Local Govt. such as Municipal or City or Township Govts. Village or Local legislative, administrative or judicial agencies/bodies; and State-owned enterprises, operating under the direct or indirect control or influence of the GOC which operate as 'public bodies' within the meaning of the term as defined in the ASCM.
- vi. As per the petition the Chinese producers/exporters of the subject goods have received countervailable subsidies under the following programs of various levels of Govts. and they have been classified under 6 broad categories. The various programs classified under these categories are listed below:
  - a. Grants
  - b. Tax and VAT incentives
  - c. Preferential Loans & Lending
  - d. Export Financing and Export Credit
  - e. Equity Infusion
  - f. Provision of Goods and Services
- vii. The Government of China has not filed questionnaire response nor provided any meaningful information with regard to these subsidy programs. In the absence of a

response by GOC, the actionability of the schemes cannot be questioned by the responding exporters.

- viii. The exporters have not contested the actionability of the alleged schemes. The responding exporters have barely mentioned any detail on the benefits received out of the alleged schemes. Therefore, in the absence of a response by the Government of China, the countervailability of the schemes cannot be questioned and shall have to be presumed.
- ix. The questionnaire responses filed by the responding exporters are not consistent with the questionnaire format prescribed by the Directorate. The responding exporters have suppressed vital facts and have filed incomplete questionnaire responses.
- x. In the following subsidy programs, the exporters have admitted receiving the benefit under the alleged schemes/ programs:

<b>SN</b>	<b>Producer/Exporter/Trader</b>	<b>Subsidy Response out of 49 Schemes</b>
1.	Zhejiang Zhongshan Chemical Industry Group Co. Ltd.	Accepted benefit for 7 grants and one tax incentives (P-6,7,9,12,13,16,23,27)
2.	Anhui Zhongshan Chemical Industry Co. Ltd.	Accepted benefit for P-5,14,16,58
3.	Xiangshui Zhingshan Bioscience Co. Ltd.	Accepted benefit for only one tax incentive (i.e. Carrying forward of losses in the form of tax incentives and VAT exemption)

- xi. In the light of absence of Government Questionnaire response and grossly incomplete and inadequate questionnaire responses filed by the responding producers and exporters, the Authority is requested to treat both the GOC and the responding producers-exporters as non-cooperative in this investigation and accordingly to quantify the subsidy margin based on the facts available.
- xii. Due to excessive confidentiality claimed by the exporters, the domestic industry is handicapped in quantifying exporter-specific subsidy margin. However, the subsidy margin has been quantified on the basis of earlier CVD investigations by India and/or investigations by other investigating authorities.
- xiii. There are WTO jurisprudences that suggest that quality and quantity of evidence improves as an investigation progresses and there has been significant improvement in the quality and quantity of evidences that was available in the petition and later submitted by the petitioners at various stages and now available to the Designated Authority for determination.

- xiv. Petition contains the evidence in the form of legal basis, nature of the scheme, financial contribution, and specificity, enterprises that are eligible and that might have availed the benefits under particular scheme, decision of other investigating authorities demonstrating that the schemes actually exist and determined as countervailable with subsidy margins worked out and any other web research. Additional evidences provided by the petitioner during the course of the investigations establish the existence and countervailability of these schemes.
- xv. As regards information concerning availment of benefits by producers/ exporters of the PUC, various schemes identified by the petitioner can be categorized into – (a) enterprise specific programs, (b) sector specific programs and (c) regions specific program..
- xvi. There is no rule which says that anti subsidy duty be imposed only when there is subsidy at the time of imposition. If the existence and availment of subsidy during period of investigation is established, then countervailing duty can be imposed whether or not such subsidy is in existence or availed at the time of imposition of countervailing duty.
- xvii. In the case of subsidy relating to fixed assets, it is not necessary that subsidy should exist at the time of imposition. There may be residual benefit in the POI in respect of benefit availed in earlier years.
- xviii. As regards providing evidence of availment of benefits by individual Chinese producers, domestic industry is not obliged to provide evidence showing availment of benefit by individual producers/exporters. The domestic industry has given sufficient evidences linking the program either with the product under consideration or the enterprise involved in the production or in the region where the exporters are located, and has shown that the subject producers are eligible for benefit under these programs.
- xix. If GOC is non-cooperative, the Designated Authority must apply adverse facts and determine the countervailability of the schemes based on evidences already available on record and proceed further in determining the subsidy margins.

#### **Submissions made by other interested parties**

42. The following submissions have been made by the other interested parties:

- (a) With regard to the absence of sufficient evidence in the Petition regarding the nature and existence of the alleged subsidies, the interested parties submitted that with regard to all the subsidy schemes alleged, the petitioner could not establish the existence of three elements comprising a countervailable subsidy namely:
  - (i) Financial contribution by a government or public body;
  - (ii) Benefit; and

- (iii) Specificity.
- (b) The authority should justify (a) whether it has assessed the adequacy and accuracy of the evidence concerning subsidization; and (b) the basis on which it considers that the petition contains adequate and accurate information for each subsidy alleged.
  - (c) None of the programs identified by the petitioners is substantiated with facts and figures that are benefitting the producer/exporter listed in the petition. In fact, the petitioners have themselves admitted in the petition that they do not have evidence to establish that the subsidies have been received by each producer of the product.
  - (d) When the petitioners are unable to assess the effects of subsidy, the Authority could not have determined, at the time of initiation, that the subsidy margin is above de – minimis.
  - (e) The petitioners cannot keep assessment of subsidy as confidential from the exporter.
  - (f) The related entities who have not filed questionnaire response are not involved in production, marketing or distribution of PUC and therefore it is not necessary that these entities file questionnaire response.
  - (g) All subsidies received by the companies must be clearly shown in the notes of their audited financial statements. It is meaningless for the petitioner to look for unreported subsidies as they have reported all of them in the questionnaire response. So, it is impossible for the companies to hide any subsidies.
  - (h) Non-filing of the response by GOC does affect the response filed by the exporters and their right to seek individual CVD margins.

#### **Examination of Subsidy programs by the Authority**

- 43. Government of China has not filed questionnaire response in the present investigations. The Authority has therefore proceeded on the basis of information provided in the questionnaire response of the participating foreign producer/exporter(s), evidences furnished by the petitioner and other facts available.
- 44. Out of the 55 subsidy programs identified by the petitioners, the responding producers/exporters of the PUC in China, who have been verified onsite by the Authority, have accepted availing the benefit of the following schemes:
  - a. M/s Zhejiang Zhongshan Chemical Industry Group Co., Ltd has accepted availing the benefit under the following schemes/programs-

<b>S.N</b>	<b>P. No</b>	<b>Name of Schemes in Atrazine</b>	<b>Zhejiang Zhongshan Chemical Industry Group Co., Ltd</b>
1	P-6	Grants for Listing Shares	Specific Name of the Program -Supplementary Incentive Fund for the Industrial Economy
2	P-7	Grants provided through the Provincial Fund for Fiscal and Technological Innovation	Specific Name of the Program - Construction Fund For Innovation System Pilot County Special Financial Fund For Provincial Industrial And IT-Based Development
3	P-9	Project funds allowance	Specific Name of the Program- Special Incentive for "Intelligent Safety Production Supervision" Enterprise
4	P-12	State Special Fund for Promoting Key Industries and Innovation Technologies	Specific Name of the Program- Special Financial Incentive Funds for Building A Strong Industrial County
5	P-13	Enterprise Development Funds	Specific Name of the Program-Award For Industrial Investment
6	P-16	Special fund for the development of foreign trade and economic Cooperation	Specific Name of the Program--Special Fund For Development Of Open Economy
7	P-23	Tax Policies for the deduction of research and development (R&D) expenses	Specific Name of the Program--Super-deduction Policy for Research and Development Expenses
8	P-27	Preferential tax policies for companies that are recognized as high and new technology companies/ Enterprise Income Tax Reduction for High and New Technology Enterprises	Specific Name of the Program--High and New Technological Enterprises

b. M/s Anhui Zhongshan Chemical Industry Co., Ltd has accepted availing the benefit under the following schemes/programs-

<b>S.N</b>	<b>P- No</b>	<b>Name of Schemes in Atrazine</b>	<b>Anhui Zhongshan Chemical Industry Co., Ltd</b>
1.	P-5	Export Assistance Grant	Foreign trade subsidy
2.	P-14	The Clean Production Technology Fund	Special fund for environmental protection
3.	P-16	Special fund for the development of foreign trade and economic Cooperation	Specific Name of the Program -Special Fund For Development Of Open Economy

4.	P-58	Provision of Electricity for Less Than Adequate Remuneration	Purchase of Electricity
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- c. M/s Xiangshui Zhongshan Bioscience Co., Ltd. has mentioned that they have not availed any benefit under the initiated subsidy/programs, and have received benefits under “Tax Incentives and VAT exemption relating to carrying forward losses”.

45. The above acceptance in the questionnaire response of the producer shows existence of the above-mentioned schemes/ programs. However, as stated above, the questionnaire response filed by the producers/exporters cannot be adopted for the purpose of determination of individual CVD margin for the responding exporters. The information made available by these producers/ exporters have nonetheless been adopted to the extent found relevant and appropriate.

**G.2. EXAMINATION OF ACTIONABILITY OF SUBSIDIES FOR IMPOSITION OF COUNTERAVAILABLE MEASURES**

**G.3.6.1. Grants**

46. In the questionnaire response, participating producer/exporters have admitted availment of benefit under Program No. 5 6, 7, 9, 12, 13, 14 and 16. The petitioner provided prospectus of the M/s Zhejiang Zhongshan Chemical Industry Group Co., Ltd., which is the parent company of other two responding producers of the PUC, M/s Anhui Zhongshan Chemical Industry Co. Ltd. and M/s Xiangshui Zhongshan Bioscience Co. Ltd. in the present investigation. Analysis of this prospectus shows that the producers/exporters of PUC in China have received various subsidies from the Government Authorities in China for grants related to Asset, Income and Finance in various names such as Advanced Enterprise Award, Company of the Year Award, Financial assistance, Foreign trade and economic development projects Funds, Openness economic development specific fund, Outstanding Contribution Award, land use Tax credits, Special financial incentives funded gold, Technical innovation grants, Technological Equipment investment, Water conservancy construction fund less Free allowance etc.. The Authority determines CVD margin under various grants received by Zhejiang Zhongshan as reported by them. For the purpose, gross amounts reported in annual report of one of the participating companies under the head “Govt. subsidies” has been considered as the benefit conferred. The amount of subsidy margin determined is \*\*\* %.

**G.3.6.2. Tax incentives and VAT**

47. The GOC and its agencies administer a number of tax programs, which provide tax exemption/reduction/remission/rebate to certain categories of enterprises based on their location or nature of the activities such as R &D, technological innovation/ upgradation these enterprises undertake.

48. Zhejiang Zhongshan Chemical Industry Group Co., Ltd in the questionnaire response has reported availing benefit under following programs
- a. Program No. 27- Preferential tax policies/ Income Tax Reductions for companies that are recognized as high and new technology companies/ enterprises.
  - b. Program No. 23: Tax Policies for the deduction of research and development (R&D) expenses.

Zhejiang Zhongshan has provided information with regard to preferential tax policies. Further, Zhejiang Zhongshan has admitted having availed benefit under Program No. 23: Tax Policies for the deduction of research and development (R&D) expenses. The information provided by Zhejiang Zhongshan shows some deduction on account of R&D expenses in the income tax computation. The Authority notes that complete details with regard to the quantum of benefit have not been reported by the company. Considering total benefit received under program number 23 and 27, the Authority determines subsidy margin as \*\*\* %.

#### **G.3.6.3. Preferential Lending**

49. The authority initiated investigations in respect of Program No. 48 and 49. None of the responding exporters have admitted having availed benefit under this program. The Authority has earlier determined that loans are available to Chinese enterprises at discounted rates and such concessional lending results in financial contribution in the form of direct transfer of funds While GOC stated that the state owned banks operate independently, the authority notes that the GOC neither filed questionnaire response, nor provided some evidence to demonstrate absence of direction/control in fixation of landing rates. Loans to the Chinese enterprises (which includes producers of the PUC as well) provides a benefit to these enterprises. The authority considers that the Chinese producers of the PUC have benefited from loans at less than benchmark rates. The Authority quantifies the CVD margin on the basis of loans reported in the annual report of Zhejiang Zhongshan, and benchmark rate of interest. The subsidy margin determined on this account as \*\*\* %.

#### **G.3.6.4. Provision for Goods and Services for less than adequate remuneration (LTAR)**

##### **G.3.6.4.1. Land use right**

50. The authority notes the absence of questionnaire response from GOC. The authority in earlier investigations had established the existence of countervailable subsidies in the form of land use rights. Authority has examined the following programs
- a. Program No. 60: Land Use Rights in Industrial and Other Special Economic Zone,
  - b. Program No. 61: Land Use rights for SOEs

c. Program No. 62: Land Use rights for FIE.

51. In the questionnaire response filed by M/s Zhejiang Zhongshan Chemical Industry Group Co., Ltd., it is seen that the company has obtained land and has paid certain amounts towards land use rights. Zhejiang Zhongshan has provided details of lands acquired from time to time and the amount paid towards land use right. Considering the total amount of land acquired by Zhejiang Zhongshan and amount paid towards land use right, the authority has determined the average amount paid towards land use right. Comparison of this average amount paid towards land use right with the benchmark established by the authority (price prevailing in Thailand), it is seen that Zhejiang Zhongshan has benefited by concessional payments towards land use right.
52. The authority accordingly holds land use right as countervailable subsidy. Further, the Authority on the basis of abovesaid benchmark price determines subsidy margin of \*\*\* % on this account.

**G.3.6.4.2. Utilities (electricity)**

53. Public bodies in China provide electricity to industrial enterprises at less than adequate remuneration. In view of absence of questionnaire response from the Govt. of China, the Authority holds this program as countervailable. Further, while the responding exporters/producers have not provided all relevant details and that their response has not been accepted due to reason mentioned above, the benefit accrued has been worked out based on facts available. The subsidy margin determined on the basis of information provided by the petitioner and other facts available is \*\*\* %.

**G.3.6.4.3. Raw materials**

54. The Authority notes that financial contribution arises if raw materials become available to a business enterprise at less than adequate remuneration in view of a general or specific policy or a program of the government or a public body. In such a situation, benefit is conferred on the recipient of goods by virtue of access to raw materials at less than adequate remuneration. Such subsidy becomes specific because it is limited to certain enterprise using such raw material/goods.
55. The GOC has not filed questionnaire response in the form and manner prescribed. Further, the responses of the participating foreign producers/ exporter have not been accepted due to reasons mentioned above. The petitioner provided information demonstrating that the benefit has accrued to Chinese producer(s)/ exporter(s) considering the benchmark price of three major raw materials and the actual price paid by the company.
56. Raw material used in the production of subject goods include cyanuric chloride, Isopropylamine, Ethylamine, Methylsulfonyl benzoic acid, Caustic soda and Methyl anthranilate. The Authority has considered international prices of Cyanuric chloride and Caustic soda as the benchmark prices. Comparison of this international benchmark price

with the actual raw materials price reported by the responding exporters shows that the responding exporters have received inputs at a price materially below prevailing international prices, resulting in access to inputs at less than adequate remuneration. The subsidy margin accordingly determined on this basis is \*\*\* %.

### **Conclusion on CVD Schemes in China**

57. In view of the foregoing, the Authority finds that the Chinese producers are benefited from countervailable subsidies. On the basis of the investigations conducted, facts on record available, questionnaire response of the participating exporters and considering absence of questionnaire response from the GOC, Authority has quantified margin of subsidies therein as shown in table below.

<b>SN</b>	<b>Program no.</b>	<b>Name of Scheme</b>	<b>CVD margin</b>
<b>1</b>	<b>Program No 1-21 (a)</b>	<b>Grants</b>	<b>0-5%</b>
<b>2</b>	<b>Program No 22-46</b>	<b>Tax and VAT Incentives (a+b+c)</b>	<b>0-5%</b>
	Program No. 23	Tax Policies for R&D	0-5%
	Program No. 27	Preferential tax policies	
<b>3</b>	<b>Program No 48-49</b>	<b>Preferential Lending</b>	<b>0-5%</b>
<b>4</b>	<b>Program No 58-62</b>	<b>Provision for goods and services at LTAR</b>	<b>10-15%</b>
A	Program No 58	Electricity	0-5%
B	Program No 60-62	Land use right	0-5%
c	Non-alleged	Raw Material	5-10%
<b>Total Subsidy Margin (1+2+3+4)</b>			<b>10-20%</b>

## **H. INJURY ASSESSMENT AND CAUSAL LINK**

### **H.1. Submission made by the Domestic Industry**

58. The domestic industry submitted as under with regard to injury and causal link:

- a. As a result of significant subsidies received by the producers in the subject country, there has been a drastic increase in the imports from the subject country.
- b. In the period of investigation, the subject imports have increased to a level of more than 2.5 times of that in 2014-15.
- c. The subject imports have also increased significantly in relation to production and consumption.

- d. The subject imports control major share of the merchant market. . The domestic producers have been pushed into a minority in their own “home market”, whereas the Chinese producers have attained majority.
- e. Despite there being ample demand in the market, more than 30% of the capacity of the domestic industry remains unutilized.
- f. Regarding arguments pertaining to captive consumption, it was submitted that the same is not a factor to be evaluated under Annexure – I to the Countervailing Duty Rules. In any case, increase therein does not show existence or absence of injury to the domestic industry.
- g. The decline in inventories is due to the increasing demand. However, even then, the decline has been possible only because the domestic industry made sales at sub-optimal prices.
- h. The imports are undercutting the prices of the domestic industry, and the price underselling is also positive. There is a tremendous pressure on the prices of the domestic industry.
- i. Contrary to the contention of the interested parties, it is not necessary that price undercutting shall result in losses.
- j. The imports have suppressed and depressed the prices of the domestic industry.
- k. There has been a decline in selling price of the subject goods, despite no decline in cost.
- l. The imported goods are priced below the cost of production of the subject goods.
- m. There is stiff price competition in the market. As a result, in order to maintain its place in the market, the domestic industry has been forced to sell its goods at sub-optimal prices.
- n. While the domestic sales volume has shown an increase over the injury period, the domestic industry has been forced to sacrifice on its profitability in order to achieve this increase.
- o. There has been a steep decline in the profits, cash profits and return on investment of the domestic industry.
- p. The profit margin of the domestic industry is much lower than 9%, as has been claimed by the interested parties. Further, the profit margin earned in the period of investigation is much lower than that earned by the domestic industry historically.
- q. The profits post 2015-16 declined as the landed price fell sharply, without a corresponding reduction in costs. The profits of the domestic industry declined even

in the period of investigation as the gap between cost of production and landed price of imports widened.

- r. While the domestic industry was able to achieve positive growth in terms of production, domestic sales volume, capacity utilisation and market share, its profits, cash profits and return on investment have declined.
- s. In any case the Designated Authority has considered a benchmark of 22% as reasonable return on investment, while other factors such as profitability or capacity utilization may be decided on a case to case basis.
- t. The increase in capital employed is a result of the increased working capital, majorly because of the increasing sales.
- u. As regards arguments that the return on investment is not negative, it was submitted that Countervailing Duty Rules requires examination of whether there is actual and potential decline in return on investments, and not if return on investment is negative. There has been a decline in the return on investment in the present case.
- v. There is threat of further aggravated injury in as much as:
  - a. The rate of increase in imports is almost 2.5 times of the rate of increase in demand.
  - b. There has been an increase in prices of subject goods even post period of investigation.
  - c. Despite the domestic industry reducing its selling price, the price undercutting remains positive, which shows that the imports are likely to further suppress or depress the prices of the domestic industry, if no duties are imposed.
  - d. There are huge capacities of the subject goods in China PR of about 150,000 MT as against domestic demand of only 20,000 MT and exports of 50,000 MT. As against this, the domestic demand in India is very low.
  - e. If the domestic industry is forced to reduce its price to that of the landed price of imports, it would incur losses and its return on investment would become negative.
- w. Injury to the domestic industry has not been caused by any other factor.
- x. There is clear causal link between the subsidized imports from the subject country and the injury to the domestic industry:
  - a. There has been a significant increase in volume of imports.

- b. Imports are undercutting the prices of the domestic industry. Resultantly, the domestic industry has been forced to reduce its prices.
- c. As a result of the price pressure, the prices of the domestic industry have been depressed and suppressed.
- d. Although the domestic industry was able to increase its sales, such an increase came at the cost of reduced profitability, as the domestic industry faced stiff competition from the cheap imports.
- e. Resultantly, the profits, cash profits and return on investment of the domestic industry have declined.

## **H.2. Submission by other interested parties**

59. The submissions made by other interested parties with regard to injury and causal link, are as follows:
- a. While capacity has remained constant, production and capacity utilization has increased during the period of investigation, indicating that imports are not causing any injury.
  - b. The domestic industry has given different figures for sales.
  - c. Domestic sales volume has increased, while exports have become nil. The Designated Authority should critically examine the increase in captive consumption.
  - d. Inventory has declined, indicating that domestic industry is able to sell whatever it is producing.
  - e. Average stock should not be seen in isolation and should be seen in relation to production and consumption.
  - f. The decrease in selling price is on account of the decline in cost of raw materials. The cost declined by 1 index point, which caused the selling price to decline by 18 index points.
  - g. Since landed price is higher than selling price, it has not caused injury to the domestic industry.
  - h. Price undercutting should be seen in light of overall performance of the domestic industry and whether it is resulting in losses.
  - i. The Designated Authority is requested to examine the fact that the average capital employed has increased even when installed capacity has remained constant.

- j. PBIT as percentage of average capital employed remained positive during the period of investigation.
- k. Number of employees remained unchanged whereas productivity increased substantially.
- l. The overall performance of the petitioners is improving and injury to the domestic industry cannot be attributed to imports..
- m. Since production, capacity utilization, merchant sales and captive consumption of the domestic industry have increased, the applicant cannot claim injury on this aspect.
- n. Sales realization is more than cost of sales of the applicant industry, and it is able to earn a mark-up of 9% on cost, which cannot be considered as low.
- o. It must be examined if the exclusion of India Insecticides Ltd. has been done to distort the performance indices of the state of the industry in India.
- p. The sales of other domestic producer has also increased significantly over the period.
- q. Domestic industry has conveniently overlooked the fact that the increase in imports are evidently a result of increase in demand in the country.
- r. The import prices have largely been regulated by the prices offered by the Domestic Industry and the other Indian producer namely, Insecticides India.
- s. The claims of Domestic Industry regarding threat of material injury is baseless and is liable to be rejected as it is purely based on conjectures, surmises and remote possibilities.
- t. If DA decides to consider the claim of "threat of material injury" made by the domestic industry, the responding parties may kindly be intimated about the same and sufficient time and opportunity should be granted to them to address the same orally and in writing.
- u. Domestic industry has suffered injury, if any, on account of the inter se competition between the domestic producers of the subject goods. Other Indian producer namely, Insecticides India Ltd. enjoys around 40- 45% of the market share in the total domestic production.
- v. Data of Insecticides India Ltd should be considered while making injury determination.
- w. Causal link between imports and injury to the domestic industry cannot be established as there is no impact of imports on any of the parameters.
- x. Injury suffered by the Domestic Industry, if any, is clearly on account of other factors which might have impacted the performance of the domestic industry, and the presentation of the data has been done by the applicant in a manner to show injury where none exists.

### H.3. Examination by the Authority

60. In consideration of the various submissions made by the interested parties and the domestic industry in this regard, the Authority has examined injury to the domestic industry on account of subsidized imports from the subject country.
61. Under sub-rule (1) and (2) of Rule 13 to the Countervailing Duty Rules, the Designated Authority is required to examine whether the subsidized imports are causing or threatening material injury to any industry established in India, or materially retarding the establishment of an industry in India.

*“(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.*

*(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the casual link between the subsidised import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.”*

62. The Countervailing Duty Rules require the Authority to examine injury by examining both volume and price effect. A determination of injury involves an objective examination of both:
- (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for the like article and
  - (b) the consequent impact of these imports on domestic industry.

#### **I. Volume effect of subsidized imports and Impact on domestic Industry**

##### **(i) Assessment of demand**

63. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of Indian producers and imports from all countries in the world. It is seen that demand has increased over the injury period.

<b>Particulars</b>	<b>Unit</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>POI</b>
Imports from China	MT	1,036	1,280	3,320	2,776
Imports from other countries	MT	897	67	113	60
Domestic industry sales (excluding captive)	MT	***	***	***	***

Domestic industry sales (excluding captive)	Indexed	100	169	222	210
Sales by Other Indian Producers (excluding captive)	MT	***	***	***	***
Sales by Other Indian Producers (excluding captive)	Indexed	100	443	390	508
Sales by SEZ unit	MT	***	***	***	***
<b>Demand/ Consumption (excluding captive)</b>	<b>MT</b>	<b>2547</b>	<b>2277</b>	<b>4688</b>	<b>4328</b>
Captive Consumption by domestic industry (only DTA unit)	MT	***	***	***	***
Indexed	Indexed	100	160	106	117
Captive Consumption by Other Indian Producers	MT	***	***	***	***
Captive Consumption by Other Indian Producers		100	136	160	113
Captive Consumption by MIL's SEZ	MT	***	***	***	***
Captive Consumption by MIL's SEZ		100	51	172	286
<b>Demand/ Consumption (including captive)</b>	<b>MT</b>	<b>3074</b>	<b>2911</b>	<b>5473</b>	<b>5165</b>

**(ii) Import volumes and share of the imports from subject country**

64. With regard to volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subsidized imports either in absolute terms or in relation to production or consumption in India. The volume of imports of PUC from the subject country has been analysed as under:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Imports from China/ subject country	MT	1,036	1,280	3,320	2,776
Imports from other Non-subject countries	MT	897	67	113	60
Total imports	MT	1,933	1,347	3,432	2,836
Indian Domestic Production	MT	1,055	1,318	1,528	1,533
Indian Domestic Production	Indexed	100	125	145	145
Consumption (excluding captive)	MT	2,547	2,277	4,688	4,328
Consumption (including captive)	MT	3,074	2,911	5,473	5,165
<b><u>Imports from Subject Country in relation to:</u></b>					
Total imports	%	54%	95%	97%	98%
Total Indian Domestic Production	%	98%	97%	217%	181%
Consumption (excluding captive)	%	41%	56%	71%	64%
Consumption (including captive)	%	34%	44%	61%	54%

65. It is seen that
- The volume of subject imports from the subject country has increased over the injury period substantially showing an increase of 168%.
  - The imports are almost exclusively from the subject country, with a 98% of share in imports during the period of investigation.
  - The imports from the subject country in relation to Indian production has increased from 98% to 181%.
  - The imports from the subject country in relation to Indian consumption (including captive) has increased from 34% to 54%.
  - The imports from the subject country hold a major share in the domestic merchant market to the extent of about two-thirds of the Indian merchant market.
66. It is thus seen that imports have increased both in absolute terms as well as in relation to production and consumption in India.

## **II. Price effect of subject imports and impact on domestic industry**

67. With regard to the effect of subsidized imports on prices, the Authority is required to examine whether there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in India, or whether the effect of such subsidized imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree. The impact of subsidized imports on the prices of the domestic industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

### **(i) Price undercutting**

68. Price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry during the investigation period. The net sales realization has been arrived after deducting outward freight and taxes. Landed value of imports has been calculated by adding landing charge and applicable basic customs duty including applicable cess to the CIF value of subject imports.

<b>Particulars</b>	<b>Unit</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>POI</b>
Landed price of imports	Rs/MT	241,204	229,123	199,701	210,922
Net Sales Realization	Rs/MT	***	***	***	***
Trend	Indexed	100	86	79	82
Price undercutting	Rs/MT	***	***	***	***
Trend	Indexed	100	39	61	52
Price undercutting	%	***	***	***	***
Price undercutting	Range	10-20%	0-10%	10-20%	5-15%

69. It is seen that the landed value of imports is below the net sales realization of the domestic industry. Imports are undercutting the prices of the domestic industry in the market.

**(ii) Price underselling**

70. The Authority has worked out non-injurious prices of the subject goods and compared the same with the landed values of the imported goods from the subject country to arrive at the extent of price underselling.

Name of the producer/exporter	Landed Value (Rs./MT)	Non-Injurious Price (Rs./MT)	Price underselling Rs./MT	Price underselling %	Price underselling range
China PR	2,10,922	***	***	***	5-15%

71. It is seen that price underselling is positive. The subject imports are entering the market at prices below the non-injurious price.

**(iii) Price suppression or depression**

72. In order to determine whether the subsidized imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period. The position is shown as per the table below:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Cost of Sales	Rs./MT	***	***	***	***
		100	85	92	99
Net Sales Realization	Rs./MT	***	***	***	***
		100	86	79	82
Landed Price from China	Rs./MT	2,41,204	2,29,123	1,99,701	2,10,922

73. It is noted that the cost of sales of the domestic industry has reduced by 1% over the injury period, whereas its selling price has reduced by 17% during the same period. The landed price of imports from the subject country has also reduced over the same period and is below the cost of production of the domestic industry. Thus, it is seen that the imports from the subject country are depressing the prices of the domestic industry and also causing price suppression.

**III. Economic parameters relating to the domestic industry**

74. The Rules require that the determination of injury shall involve an objective examination of the consequent impact of these imports on the domestic producers of such products. With regard to this, the Rules further provide that the examination of the impact of the subsidized 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, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, performance of the domestic industry has been examined over the injury period.

**(i) Production, capacity, capacity utilization and sales**

75. Position of the domestic industry over the injury period with regard to production, capacity, capacity utilization and sales was as follows:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Capacity	MT	***	***	***	***
	Indexed	100	100	100	100
Production	MT	***	***	***	***
	Indexed	100	101	122	126
Capacity utilization	%	***	***	***	***
	Indexed	100	101	122	126
Sales (excluding captive)	MT	***	***	***	***
	Indexed	100	169	222	210

76. It is seen that:

- a. Capacity of the domestic industry has remained constant throughout the injury period.
- b. Production of the domestic industry has increased throughout the period, with a commensurate increase in capacity utilization.
- c. The sales of the domestic industry have improved over the period. However, sales declined in the period of investigation.

**(ii) Market share**

Particulars	Unit	2014-15	2015-16	2016-17	POI
<b><u>Share in demand (including captive)</u></b>					
Imports from Subject Country	%	34%	44%	61%	54%
Imports from Non-subject Countries	%	29%	2%	2%	1%
Domestic industry Sales (including captive)	%	***	***	***	***
Sales of Other Indian Producers	%	***	***	***	***
SEZ sales	%	***	***	***	***

Total	%	100%	100%	100%	100%
<b>Share in demand (excluding captive)</b>					
Imports from Subject Country	%	41%	56%	71%	64%
Imports from Non-subject Countries	%	35%	3%	2%	1%
Domestic industry Sales( excluding captive)	%	***	***	***	***
Sales of Other Indian Producers	%	***	***	***	***
SEZ sales	%	***	***	***	***
Total	%	100%	100%	100%	100%

77. It is seen that the market share of domestic industry increased in 2015-16 and declined thereafter, whereas the market share of China increased. It is also seen that subject imports are now commanding majority share.

**(iii) Inventories**

Particulars	Unit	2014-15	2015-16	2016-17	POI
Opening inventory	MT	***	***	***	***
	Indexed	100	687	352	140
Closing inventory	MT	***	***	***	***
	Indexed	100	51	20	12
Average inventory	MT	***	***	***	***
	Indexed	100	132	62	28

78. The inventories with the domestic industry have increased in 2015-16 and thereafter decreased in 2016-17 and the period of investigation.

**(iv) Profitability, return on investment and cash profits**

79. The profits, cash profits and return on investment of the domestic industry are as follows:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Profits Before Tax	Rs./MT	***	***	***	***
	Indexed	100	89	32	25
Profits Before Tax	Rs. Lacs	***	***	***	***
	Indexed	100	149	72	53
Cash profits	Rs. Lacs	***	***	***	***
	Indexed	100	143	70	52
Return on capital employed	%	***	***	***	***
	Indexed	100	116	54	35

80. It is seen that:

- a. The profits of the domestic industry have reduced significantly over the injury period. The per unit profits declined significantly over the injury period with the rising imports.
- b. Cash profits and return of investment of the domestic industry increased in 2015-16, but have reduced significantly thereafter including the POI.

**(v) Employment, wages and productivity**

Particulars	Unit	2014-15	2015-16	2016-17	POI
No of Employees	Nos.	***	***	***	***
	Indexed	100	100	100	100
Wages	Rs Lacs	***	***	***	***
	Indexed	100	91	96	135
Wages per Unit	Rs./MT	***	***	***	***
	Indexed	100	90	79	107
Productivity Per Employee	MT/Nos	***	***	***	***
	Indexed	100	101	122	126
Productivity Per Day	MT/day	***	***	***	***
	Indexed	100	101	122	126

81. The number of employees has remained at the same levels over the injury period. The wages paid and wages per unit declined initially and then increased. The productivity per employee and productivity per day have increased over the injury period, with the increasing production.

**(vi) Ability to raise capital investment**

82. The Authority notes that the profits of the domestic industry have declined and that the imports are creating a pressure on the prices of the domestic industry. Continued price pressure may impact the ability of the domestic industry to raise capital investment.

**(vii) Growth**

Particulars	Unit	2014-15	2015-16	2016-17	POI
Production	%	-	1%	20%	3%
Domestic Sales Volume	%	-	69%	32%	-5%
Profit/( Loss) per unit	%	-	-11%	-63%	-22%
Cash Profit	%	-	43%	-51%	-26%
Return on Capital Employed	%	-	16%	-54%	-34%

83. While the production has shown a positive growth, growth on account of sales is declining in the POI. Further, the growth is negative in respect of profits, cash profits and return on investment.

**(viii) Factors affecting prices**

84. The Authority notes that the imports from the subject country accounts for about two-thirds of the Indian merchant market. Furthermore, such imports are undercutting the prices of the domestic industry. The prices of the domestic industry are depressed by the landed price of such imports. Even though the domestic industry may also face competition from other Indian producers, the market share held by such other Indian producers is lower when compared to the market share held by the imports. Market share of Chinese imports increased significantly over the injury period. This shows that the imports from the subject country are in a position to influence the prices of the domestic industry. This is also evident from the fact that the domestic industry had to reduce its prices in response to the decline in landed price of the subject goods, even though there was no significant decline in the cost.

**(ix) Conclusions on material injury**

85. Based on above, the Authority concludes as under with regard to injury suffered by the domestic industry
- a. Imports from the subject country have substantially increased in absolute terms as well as in relation to production and consumption.
  - b. Imports from subject country account for about two-thirds of the Indian merchant market.
  - c. Imports from subject country are undercutting the prices of the domestic industry.
  - d. Imports from subject country have had a depressing effect on the prices of the Domestic industry.
  - e. The landed price of the imports from subject country is below the NIP of the subject goods.
  - f. The production, and capacity utilization of the domestic industry have increased over the injury period.
  - g. Sales of the domestic industry increased till 2016-17, but declined in POI.
  - h. The profitability of the domestic industry has declined drastically over the injury period.
  - i. There has been a significant decline in the return on investment and cash profits as well.
  - j. The prices of the domestic industry are impacted by the price of imports from the subject country.

86. The Authority, therefore, concludes that the domestic industry has suffered material injury.

#### **IV. Threat of material injury**

87. Petitioner has also claimed threat of material injury. Since Authority holds that the domestic industry has suffered material injury, the threat of material injury is not being analysed.

#### **V. Causal Link**

88. The Authority examined whether other known factors could have caused injury to the domestic industry as follows:

##### **(i) Volume and prices of imports from third countries**

89. During the period of investigation, the imports from subject country account for 98% of the total imports and the imports from other non-subject countries are insignificant in volume.

##### **(ii) Changes in the pattern of consumption**

90. There have been no changes in the pattern of consumption of the subject goods, which could have caused injury to the domestic industry.

##### **(iii) Contraction in demand**

91. There is no contraction in the demand during injury period. Demand for the product has increased over the injury period, although there has been a slight decline during the period of investigation as compared to the preceding year. However, in essence, the demand in the POI has increased by 68% over the base year 2014-15.

##### **(iv) Trade restrictive practices of and competition between the foreign and domestic producers**

92. There is no known trade restrictive practice which could have contributed to the injury to the domestic industry. Further, as the imports from the subject country command almost two-thirds of the Indian domestic/ merchant market, the injury caused to the domestic industry cannot be attributed to inter-se competition between domestic producers.

##### **(v) Developments in technology**

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

**(vi) Export performance of the domestic industry**

94. Since the domestic industry (i.e. only DTA unit) has not exported the subject goods, the injury suffered by the domestic industry cannot be attributed to poor export performance.

**(vii) Performance of other products being produced and sold by the domestic industry**

95. The Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The injury considered by the Authority is with respect to the product under consideration only.

**(viii) Productivity of the domestic industry**

96. Since the productivity of the domestic industry has improved, the injury to the domestic industry is not on this account.

**VI. Factors showing causal link**

97. While the other known factors as listed above do not appear to have caused the injury determined, the following parameters show that injury to the domestic industry is caused by the subsidized imports:

- a. There has been a significant increase in imports at cheap subsidized prices.
- b. Imports are undercutting the prices of the domestic industry.
- c. The selling price of the domestic industry has declined. The imports are depressing the prices of the domestic industry.
- d. Price undercutting being caused by the subsidized imports is resulting in increase in market share of imports.
- e. Although the production, sales of the domestic industry have increased over the injury period, the profits, cash profits and return on capital employed have declined significantly over the injury period, due to stiff price competition from the subject country.

98. The Authority therefore holds that there is causal link between the subsidization of the subject goods and the injury suffered by the domestic industry.

**I. MAGNITUDE OF INJURY MARGIN**

99. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed price of the exports from the subject country for determination of injury margin during the period of investigation. The injury margin thus determined is as under

<b>Name of the producer/exporter</b>	<b>Landed Value (Rs./MT)</b>	<b>Non-Injurious Price (Rs./MT)</b>	<b>Injury margin Rs./MT</b>	<b>Injury margin %</b>	<b>Injury margin range</b>
China PR	2,10,922	***	***	***	5-15%

## **J. POST DISCLOSURE COMMENTS**

100. The post disclosure submissions have been received from the interested parties. Majority of the issues raised have already been raised earlier and also addressed appropriately. Additional submissions have been analysed as under

### **J.1.Submission made by the domestic industry**

101. The domestic industry reiterated its submissions regarding scope of domestic industry, subsidies received by the exporters, material injury and threat of material injury. In addition, the domestic industry submitted as under:

- a. The essential facts with regard to countervailability of indirect tax exemptions or export tax rebates, export financing and export credit and equity have not been disclosed, as also the quantum of benefits received under such schemes.
- b. The injury parameters have been treated as confidential qua the domestic industry.
- c. The exclusion of SEZ unit of the petitioner is not appropriate in light of numerous decisions of High Courts in this regard.
- d. The impact of duties, considering the injury margin determined, on the farmers would be negligible.
- e. In the absence of cooperation by Government of China, the countervailability of schemes must be assumed. Since exporters have not cooperated, benefit should be quantified for all programs which were considered at the stage of initiation.
- f. All grants tied to capital assets received over the average useful life of assets should be considered.
- g. Export tax rebate is a refund of taxes paid on inputs used for exported goods, similar to duty drawback. It must, therefore, be held countervailable.
- h. Export financing and export credit, as well as equity programs should be considered.
- i. There is a need for re-quantification of subsidy margin.

- j. The threat of material injury should also be examined, as different forms of injury may co-exist.
- k. The non-injurious price should not be determined as per Annexure – III, as it ignores actual cost and does not address injury suffered by the domestic industry.
- l. There is a need for re-determination of non-injurious price after considering raw material consumption adjusted for work-in-progress, re-allocation of expenses and consideration of selling expenses.

## **J.2.Submission made by other interested parties**

102. The other interested parties reiterated their submissions with regard to injury parameters of the domestic industry. Additionally, the interested parties submitted as under:
- a. Since the domestic industry is already recovering a higher price than the non-injurious price determined by the Authority, there is no question of additional protection to the domestic industry. This is also in line with consistent practice of the Authority.
  - b. The substitutes of atrazine technical are (a) Loudis by Bayer (b) Tynzer by BASF and (c) Sempra by Dhanuka; which have been listed in the importers' questionnaire filed and also mentioned on the website of Department of Agriculture, Cooperation & Farmers Welfare
  - c. The domestic industry has intentionally excluded names of users to avoid resistance. Since Atrazine Technical is a restricted use pesticide, and its import and sale are restricted to certain importers registered with CIB, the domestic industry cannot plead ignorance.
  - d. There is a need for disclosure with regard to imports from subject countries in SEZ, sales of domestic industry in SEZ and demand of subject goods excluding sales and imports made in SEZ, as such information had formed basis of conclusions in Textured Tempered Glass.
  - e. Imports have increased in line with increase in demand. Further, the sales of domestic industry, captive consumption and sales of other domestic producer have increased significantly.
  - f. If there was any deficiency in information required, the Authority ought to have called for additional information. The Authority is required to give ample opportunity to all interested parties to provide all evidence they consider relevant, in line with the ASCM and findings of Appellate Body. Rejection of response, without providing such an opportunity, is in violation of principles of natural justice.

- g. The discrepancy in documents was due to the negligence of sales manager and by mistake, the invoices provided were not the final ones.
- h. It is not reasonable to reject the whole response of Zhongshan Group due to the reason mentioned in the Disclosure Statement, especially as the verification report mentioned that the team verified relevant records for all transactions of exports.

### **J.3.Examination by the Authority**

- 103. With regard to inclusion of SEZ unit within subject imports, the Authority notes that the SEZ unit of the petitioner has been excluded from the scope of domestic industry, in line with the consistent practice of the Authority.
- 104. As regards the arguments on countervailability of export credit and equity infusion programs, the Authority notes that sufficient evidence is not available to conclude that the exporters have benefitted under these programs.
- 105. With regard to the argument that threat of injury must be examined, the Authority finds that it has already concluded that the domestic industry has suffered material injury and therefore there is no need to examine threat of injury.
- 106. With regard to the argument that the non-injurious price is higher than the net sales realization, it is noted that for appropriate comparison of NIP with NSR, the comparison has to be made at the same level. It is noted that the net sales realization after same level of adjustment (i.e. Rs. \*\*\* per MT), as made in the NIP, is less than the Non-Injurious price and therefore the entire argument for termination of the investigation on this ground loses its merit.
- 107. With regard to the argument of other interested parties that there are substitutes of the product under consideration, the Authority finds that the interested parties have not adduced any evidence to demonstrate that the products listed are viable substitutes. For a product to be considered as a viable substitute, it must not only be technically substitutable, but also should be readily available at comparable prices and capable of being used in the same manner.
- 108. Regarding the argument that the domestic industry had not given names of importers/users, the Authority notes that the domestic industry has indeed furnished names of some importers in the petition and these importers have been found to be listed in the public domain as importers of Atrazine. These entities are also shown in the public domain as producers of atrazine formulations and can, therefore, be reasonably construed as users of the subject goods. Furthermore, the importers other than the ones listed in the petition have also participated in the investigation. Moreover, the initiation notification is also published on the DGTR website and notified in the Gazette for information of all concerned. Therefore, the Authority does not find any merit in the argument that the names of importers/users were suppressed with mala-fide intention.

109. As regards the argument that imports by all SEZ units must be segregated for analysis of volume and price injury, the Authority finds no basis for such a request. The Authority notes that the facts of the case relied upon by the interested parties, that is, Textured Tempered Glass, were different from the present case. In the investigation into Textured Tempered Glass, majority of imports were found to be made by SEZ units, prompting the need for segregated analysis of injury. However, such is not the case in the facts of the present investigation.
110. The opposing interested parties have argued that the imports have increased in line with increase in demand. However, the Authority finds that the imports increased by 168%, while the demand increased by only 68%. Therefore, the increase in imports cannot be considered to be in line with the increase in demand.
111. As regards the discrepancies in the responses, the Authority notes that the invoices presented by the exporter during the verification had been provided to the officers by the sales manager of the company. It cannot be considered that the sales manager was not a competent person to provide the sales invoices. The documents provided clearly showed that the information submitted by the Zhongshan Group was unreliable and the exporter was maintaining multiple invoices, bearing the same invoice number. Furthermore, no explanation was provided by the exporter, when called upon by the verification team to explain the discrepancy. Therefore, the argument of the exporter cannot be accepted.
112. As regards to the contention of not being provided adequate opportunity it is noted that it was not only a case of discrepancy in the information submitted. Rather, the information filed itself was found to be misleading and unreliable. Further, the Authority had provided ample opportunity to the exporter to explain the issuance of multiple invoices with the same number. Therefore, the rejection of response is justified and does not violate the obligations of Authority under ASCM or the principles of natural justice.

## **K. CONCLUSIONS**

113. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that
  - i. The product under consideration has been exported to India from China PR at subsidized value, thus resulting in subsidization of the product.
  - ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.
  - iii. The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

## **L. INDIAN INDUSTRY'S INTERESTS AND OTHER ISSUES**

114. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization 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 countervailing duty would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.
115. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

## **M. RECOMMENDATION**

116. The Authority notes that the investigation was initiated and notified to all interested parties including the Government of China PR and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal links in favour or against thereof. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from China PR in the form and manner described hereunder.
117. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of 5 years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, the definitive countervailing duty as mentioned in Col 7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods, originating in or exported from China PR.

## DUTY TABLE

S. No.	Heading/sub heading	Description of goods	Country of origin	Country of export	Producer	Duty amount as a % of CIF Value
1	38089199, 38089390 and 38089990	Atrazine Technical*	China PR	Any other country, including China PR	Any	9.52
2	-do-	-do-	Any country other than China PR	China PR	Any	9.52

\*The product is also known under the following names:

6-Chloro-N-Ethyl-N'-(1-Methylethyl)-Triazine-2,4-Diamine;  
2-Chloro-4-Ethylamino-6-Isopropylamine-S-Triazine;  
2-Chloro-4-(Ethylamino)-6-(Isopropylamino)-S-Triazine;  
2-Chloro-4-(Ethylamino)-6-(Isopropylamino)-Triazine;  
Chloro-4-(Propylamino)-6-Ethylamino-S-Triazine;  
Chloro-4-(Propylamino)-6-Ethylamino-S-Triazine, etc.

118. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(Sunil Kumar)**  
**Additional Secretary & Designated Authority**