

**TO BE PUBLISHED IN PART 1 SECTION 1 OF THE GAZETTE OF INDIA,  
EXTRAORDINARY**

**Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Anti-Dumping & Allied Duties  
Udyog Bhawan,**

**NOTIFICATION**

New Delhi, the 10th August, 2001

**Subject:** Anti dumping investigation concerning imports of Phosphoric Acid (Technical Grade) originating in or exported from PR China – Final Findings.

**No. 11/1/2001-DGAD** – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

**A. PROCEDURE:**

2. The procedure described below has been followed with regard to the investigations:-
  - i. The Designated Authority(hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Gujarat Alkalies & Chemicals Ltd., and M/s Bilt Chemicals Limited, on behalf of the domestic industry, alleging dumping of Phosphoric Acid(Technical grade) (hereinafter referred to as subject goods) originating in or exported from China (hereinafter referred to as subject country);
  - ii. The Authority notified the Embassy of China in India about the receipt of petition made by the petitioners before proceeding to initiate the investigation in accordance with sub rule(5) of Rule 5 supra;
  - iii. The Authority on the basis of information and evidence available before it decided to initiate anti dumping investigations against imports of subject goods from the subject country;
  - iv. The Authority issued a Public Notice dated the 7th February, 2001 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of subject goods from subject country, falling under

Chapter 28 of Schedule I of the Customs Tariff Act, relating to 'inorganic chemicals'. Customs sub-heading 2809.20 relates to Phosphoric Acid but includes all grades of Phosphoric Acid.

- v. The Authority notified preliminary findings vide notification dated 9.4.2001 on anti-dumping investigation concerning imports of subject goods from China and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- vi. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days from the date of its publication;
- vii. The Authority also forwarded a copy of the preliminary findings to the Embassy of China in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (v) and (vi) above.
- viii. The Authority provided an opportunity to the interested parties to present their views orally on 30.5.2001. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- ix. The Authority made available the public file to all interested parties containing non-confidential version of evidence submitted by various interested parties for inspection, upon request;
- x. Arguments made by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in these findings;
- xi. In accordance with Rule 16 of the Rules *supra*, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
- xii. The investigation covered the period from 1st April, 2000 to 31st December, 2000(nine months).
- xiii. \*\*\*\*\* in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;

## **B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY.**

3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below. The Authority confirms, the absence of any response from the exporters in the form and manner prescribed and having made the findings on the basis of the best information available to it as per rule 6(8) supra. Some of importers such M/s M/s Bhavita Chemicals Pvt. Ltd., Mumbai, Mumbai, M/s Chembond Chemicals Ltd., Navi Mumbai, M/s Protochem Industries, Mumbai etc., have made submissions which have been considered by the Authority.

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

4. The product under consideration is "Phosphoric Acid (Technical grade)" falling under Chapter 28 of Schedule I of Custom Tariff Act relating to 'inorganic chemicals'. Custom sub-heading 2809.20 relates to Phosphoric Acid but includes all grades of Phosphoric Acid. However, it is only the technical grade of Phosphoric Acid which is the subject matter of the present investigation. The technical grade of Phosphoric Acid has a purity level of 85% or above and is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, etc. Though Phosphoric Acid is produced in various grades, however, it is only the technical grade which is the subject matter of this petition. Other grades of Phosphoric Acid which have lower purity level are not the subject matter of present investigation. Further, the custom classification is only indicative and not binding on the scope of present investigation.
5. As stated above, phosphoric acid (technical grade) should have purity level of 85% or above. Impurities are in the form of arsenic, fluoride, heavy metals and lead. The impurity in the form of arsenic etc., should be 15 ppm or below. To make the description of the product under consideration more specific, the detailed specifications of the phosphoric acid (technical grade) are as follows:-

<b>Sl.No.</b>	<b>Characteristics</b>	<b>Limit</b>	<b>Requirement</b>
1	Purity as H3 PO4, percent By mass, Min	Minimum	85
2	Arsenic (as As), mg/kg Max	Maximum	Ppm 15

6. **Like Article:** The subject goods produced by the domestic industry and imported from China closely resemble in terms of characteristics such as physical and chemical characteristics, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The Indian consumers have used the two interchangeably. Goods produced by the petitioners are 'like article' to the subject goods imported from China within the meaning of the Rules.

## **D. DOMESTIC INDUSTRY:**

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

The definition of domestic industry given above is further clarified by Article 5.4 of WTO Anti Dumping Agreement which reads as follows:

*".....The application shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of the total production of the like product produced by the domestic industry. "*

The petition has been filed by M/s. Gujarat Alkalies & Chemicals Limited, Baroda and M/s. Bilt Chemicals Limited, Secundrabad on behalf of the domestic industry and supported by M/s. Star Chemicals (Bombay) Ltd., Mumbai. The petitioners account for a major proportion of total Indian production and therefore have a standing to file the petition on behalf of domestic industry under the Rules above said.

## **E. DUMPING**

8. **Normal Value :** As brought out in the preliminary findings, the Designated Authority sent questionnaires to known exporters of the subject goods in China. However, none of the exporters have responded to the Designated Authority.

Thus the exporters from China have preferred non cooperation with the Designated Authority in this case. Thus Rule 6(8) is attracted and the Designated Authority is fully justified in proceeding with the best information available. The Authority, therefore, holds that none of the exporters from China have cooperated with the Authority as envisaged under the Rules. The domestic industry has furnished information with regard to the normal value in China based on the constructed cost of production. In view of non-cooperation from the exporters from China, the Authority has determined normal value in China on the basis of the constructed cost of production.

9. **Export Price:** As has been stated above, it is only the technical grade of Phosphoric Acid which is the subject grade for investigation whereas the data compiled by DGCI&S relate to import of all the grades of Phosphoric Acid. In view of above, the data has been compiled from secondary sources based on Customs Daily Lists. Further adjustments have been given on account of freight, marine insurance, commission, port handling etc., to arrive at net export price on the basis of evidence provided by domestic industry.
10. **Dumping Margin:** Since none of the exporters from the subject country has responded to the Authority's request for information, the Authority has not determined dumping margin for individual exporters. The Authority took into account the best information available for the purpose of fair comparison between the normal value and the export price and compared weighted average normal value with weighted average export price. The comparison shows dumping margin of 61% of net export price.

## **F. INJURY AND CAUSAL LINK**

11. The Authority has taken into account all indices regarding injury while doing the final determination. This involves all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. While determining the non-injurious price for the like article for the domestic industry, the Authority has considered the optimum cost of production for the domestic industry which takes into account the normated best consumption norms and would takes into account the actual price of the raw materials during the POI which go into the production of the product under consideration. Also, while arriving at the injury margin, the Designated Authority takes into account optimum capacity utilisation for arriving at a fair selling or non-injurious price.
12. On the basis of the evidence available, the following parameters show existence of injury to the domestic industry caused by dumped imports from China :-

1. Export price from subject country has declined significantly;
  2. Production and capacity utilisation of the domestic industry have declined in the investigation period;
  3. The price at which the domestic industry has been forced to sell its produce does not permit recovery of full cost of production causing severe financial losses to the domestic industry;
  4. The landed value of the imported material is significantly below the selling prices of the domestic industry causing severe price undercutting in the Indian market;
  5. The landed value of the imported material in the period of investigation was significantly below the cost of production and fair selling price of the domestic industry causing price underselling in the Indian market;
  6. Profitability of the domestic industry has been severely eroded.
13. The substantial and steady increase in import of subject goods from China at low price which is not sufficient even to recover the cost of the domestic industry resulting in severe price undercutting clearly establishes the causal link between the injury already suffered as well as threat of further injury being faced by the domestic industry with the phenomena of dumping of subject goods from China. The Authority, therefore, confirms its conclusion in preliminary findings that there is an obvious causal link between the dumping of subject goods from China and the injury being caused to the domestic industry during the period of investigation.

## **G. INTEREST OF INDIAN INDUSTRY AND OTHER ISSUES**

14. It has been argued by some of the importers and users that the interest of the industrial users of phosphoric acid (technical grade) should be taken into account while imposing anti dumping duty. They have requested to reconsider the imposition of anti dumping duty on Chinese phosphoric acid since the threat of imports serves as a check on the prices of the local producers.
15. In this context the Authority reiterates paragraphs 18 and 19 of its preliminary findings wherein it is stated that "the purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using phosphoric acid (technical grade) and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping

measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from China in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply. "

16. Evidently, imposition of anti dumping duty would not adversely affect the consumers/users of technical grade phosphoric acid in India in the long run. It would rather lead to survival of domestic industry and keep wider choice to the consumers in India. The very purpose of the imposition of anti dumping duty is to create situation of fair competition in the Indian market in which both domestic producers and foreign producers can compete. Imposition of anti dumping duty would not lead to restriction on imports.

## **H. FINAL FINDINGS**

17. The Authority has, after considering the foregoing, come to the conclusion that :

- i. Phosphoric Acid (technical grade) has been exported to India from China below its normal value
- ii. The Indian industry has suffered injury;
- iii. The injury has been caused by the dumped imports from China;

The detailed description of Phosphoric Acid(Technical Grade) is given in paras 4 & 5 above.

18. The Authority proposes to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed price of imports is proposed to be compared with the non injurious selling price of the petitioner companies determined for the period of investigation. Landed value of imports for the purpose has been determined as the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

19. The Authority recommends imposition of definitive anti dumping duty of US \$ 121 per MT on all imports from Peoples' Republic of China of Phosphoric Acid (Technical grade) described in paras 4 & 5 above

20. Subject to the above, the Authority confirms the preliminary findings dated 9th April, 2001.
21. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, *supra*.

**L V SAPTHARISHI,**  
Designated Authority