

Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

Dated the 13th
February, 2009

INITIATION NOTIFICATION

Subject: Initiation of Anti-Dumping investigation concerning imports of ‘Certain Phosphorous based chemical compounds’ originating in or exported from China PR & European Union

No. 14/3/2009-DGAD: The Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai has filed an application before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on dumped articles and for determination of injury) Rules, as amended from time to time (hereinafter referred to as the Rules) alleging dumping of ‘**Certain Phosphorous based chemical compounds’ namely PCL3, PCL5, TMP and TPPI** (hereinafter referred to as the subject goods) **originating in or exported from China PR**(hereinafter referred to as subject country) **and POCL3** (hereinafter referred to as the subject goods) **originating in or exported from China PR and European Union** (hereinafter referred to as subject countries) and requested for initiation of anti dumping investigation for levy of anti dumping duties on the subject goods.

2. AND WHEREAS, the Authority finds that sufficient evidence of dumping of subject goods from the subject country(ies), ‘injury’ to the domestic industry and causal link between the dumping and injury exist to justify initiation of an investigation in terms of the Rules; the Authority hereby initiates an investigation into the alleged dumping of the products under consideration, and consequent ‘injury’ to the domestic industry in terms of Rule 5 of the said Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied, would be adequate to remove the ‘injury’ to the domestic industry.

3. Domestic Industry

The Application has been filed by Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai on behalf of the domestic industry. M/s.

United Phosphorus Limited has provided injury information, whereas M/s. Punjab Chemicals and Crop Protection Ltd, M/s. Sandhya Industrial Chemicals, M/s. Sandhya Dyes & Chemicals, M/s. S.M. Chemicals, M/s. Excel Industries Limited, M/s. Cheminova India Ltd and M/s. Pharma Chemicals Industries have supported the application. As per the evidence available on record, production of United Phosphorus Limited accounts for a major proportion of the total domestic production and production of United Phosphorus Limited along-with supporters is more than 50% of Indian production. The application thus satisfies the requirements of Rule 2(b) and Rule 5(3) of the Rules. Further, United Phosphorus Limited is being treated as “domestic industry” within the meaning of Rule 2(b) supra.

4. Products under consideration

The products under consideration are ‘Certain Phosphorous based chemical compounds’, viz:

- (1) Phosphorous trichloride (PCL₃)
- (2) Phosphorous pentachloride (PCL₅)
- (3) Phosphorous oxychloride (POCL₃)
- (4) Triphenyl phosphite (TPPI)
- (5) Trimethyl phosphite (TMP)

The applicant states that these products have the following synonyms as tabulated:

Product name	Synonym name
Phosphorus Trichloride (Pcl ₃)	Phosphorus(III) chloride, Phosphorus Chloride
Phosphorus Oxychloride (Pocl ₃)	Phosphoryl chloride
Phosphorus Pentachloride (Pcl ₅)	Phosphorus(V) chloride
Triphenyl Phosphite (TPPI)	Phosphorus acid triphenyl ester, TPP
Trimethyl Phosphite (TMP)	Phosphorus acid trimethyl ester, Phosphonic acid trimethyl ester, Methyl Phosphite

PCL5, POCL3 and PCL3 are inorganic chemicals, classifiable under Chapter 28, whereas, TMP and TPPI are organic chemicals, classifiable under Chapter 29.

Customs classification of each of the subject goods is as follows:

Subject Product	Customs Classification
PCL3	28121021
PCL5	28121022
POCL3	28121030
TMP	29209041
Other (TPPI)	29209099

The Customs classification is indicative only and is in no way binding on the scope of the present investigation.

Products under consideration are extensively used in production of various pesticides, insecticides and pharmaceuticals.

5. Like Articles

The Applicant has claimed that each of the subject goods produced by the domestic industry are like article to the respective subject goods originating in or exported from the subject country(ies) in terms of the definition of 'like article' under Rule 2 (d). It has been stated that there is no significant difference in each of the subject goods produced by the applicant and the respective subject goods exported from the subject country (ies). The applicant claims that the two are technically and commercially substitutable. For the purpose of present investigation, each of the subject goods produced by the domestic industry are being treated as like articles of the respective subject goods imported from the subject country(ies) within the meaning of the Rules supra.

6. Country(ies) involved

In terms of Rule 2(f) of the AD Rules, the country(ies) involved in the present investigation are China PR for **Phosphorous based chemical compounds' namely PCL3, PCL5, TMP and TPPI** and China PR & European Union for **POCL3**.

7. Normal value

The applicant has claimed that China PR should be treated as Non Market Economy and therefore Normal value in case of China PR should be determined in accordance with Para 7 and 8 of Annex-I of the Rules. The applicant has submitted that India can be considered as an appropriate market economy third country for determination of normal value in China PR, pleading that information for market economy third country is not available to them. The Normal value has been determined accordingly on the basis of cost of production in India, duly adjusted, to include selling, general & administrative expenses and reasonable profit margin.

Further, in view of significant change in the price of yellow phosphorus within the period of investigation, the applicant has considered price of yellow phosphorus at the time of exports, considering the month in which the subject product was imported. It has been contended that even if a time lag of one month or so is considered, the conclusion will be the same.

In respect of European Union, selling price in EU has been considered as Normal value. This selling price in EU has been determined based on the price at which an importer/ consumer in EU has imported the product. Alternatively, Normal value in EU has been determined on the basis of constructed value, considering estimates of cost of production, duly adjusted, to include selling, general & administrative expenses and reasonable profit margin.

There is sufficient evidence with regard to Normal Value to justify initiation of an anti dumping investigation in terms of the rules.

8. Export Price

The applicant has claimed export price based on the transaction wise data provided by **IBIS**. Adjustments have been claimed on account of inland freight, ocean freight, marine insurance, commission and port expenses to arrive at net export price at ex-factory level. Export price has been determined separately for each of the products under consideration. The applicant's claim to determine the export price on the basis of offers is not being relied upon for the purposes of the initiation.

There is sufficient evidence with regard to export price to justify initiation of an investigation.

9. Dumping margin

There is sufficient evidence that the Normal value of each of the subject goods in the subject country(ies) is significantly higher than their net export price, prima-facie indicating that the subject goods are being dumped by the exporters from the subject country(ies). The applicant has claimed that in view of significant change in the prices of major input within the period of investigation, the price of the major raw material at the time of export, considering the month in which the subject product was imported may be considered. The applicant has considered price of yellow phosphorous at the time of exports by considering the same month for product price and raw material price. However, the applicant has additionally computed the dumping margin by considering one-month time lag. Even if a time lag of one month or so is considered, the dumping margins remain significant.

The applicant's claim to determine the export price on the basis of offers is not being relied upon for the purposes of determining the Dumping margin at this stage.

10. Injury and Causal Link

The applicant has furnished information on various parameters relating to injury to the domestic industry as prescribed under para (iv) of Annexure – II of the Rules. The evaluation of the information shows that:

(a) In case of **PCL5**, imports have increased significantly in absolute terms and in relation to production & consumption in India. Imports are significantly undercutting the prices of the domestic industry. Imports are suppressing the prices in the market. As regards consequent impact of imports on the domestic industry, domestic sales, production, capacity utilization deteriorated over the injury period. The domestic industry continued to suffer financial losses (even though the losses reduced over the injury period). Return on capital employed was negligible and cash profit continued to remain adverse.

(b) In case of **PCL3**, even when some goods have been customs cleared during the relevant period, a number of offers for supply of material at significantly low prices were also being made. The prices being offered were

materially lower than the selling prices of the domestic industry. Imports are suppressing the prices in the market. As regards consequent impact of imports on the domestic industry; production and capacity utilization declined over the injury period, the domestic sales declined within the investigation period because of presence of offers for imports. Further, the domestic industry was forced to reduce the prices substantially after June, 2008 because of offers for Chinese material. The prices declined by about 55% between June and Dec., 2008 [from over Rs. 197 per kg. to about Rs. 89 per kg]. Though, the domestic industry was able to improve its performance and earn profits in the absence of imports in the period prior to the POI but the same deteriorated in presence of imports thereafter. Profitability, which was improving till June, 2008, also started declining thereafter. The cost adjusted prices saw significant erosion over the injury period, which appears to be on account of offers for supplies being made by the Chinese suppliers.

(c) In case of **POCL3**, significant imports were reported from subject countries in the POI, prices of which were materially lower than the prices offered by the domestic industry. Imports are significantly undercutting the prices of the domestic industry. Imports are suppressing the prices in the market. As regards consequent impact of imports on the domestic industry, though production increased but capacity utilization declined over the injury period. However, the domestic industry was suffering financial losses, which increased over the injury period. Further, sales volumes declined significantly within the investigation period even when the domestic industry reduced prices significantly after July, 2008. Consequently, the return on capital employed and cash profits also deteriorated.

(d) In case of **TPPI**, some material has been customs cleared during the relevant period; however, a number of offers for supply of material at significantly low prices were also being made. The prices being offered were materially lower than the selling prices of the domestic industry. Imports are suppressing the prices in the market. As regards consequent impact of imports on the domestic industry, domestic sales, production, capacity utilization deteriorated over the injury period. The domestic industry continued to suffer financial losses, which increased during the injury period. Return on capital employed was negligible, whereas cash flow continued to remain adverse. Further, sales volumes declined significantly within the investigation period even when the domestic industry reduced prices significantly after July, 2008.

(e) In case of **TMP**, significant imports were reported in the POI, prices of which were materially lower than the prices offered by the domestic industry. Imports are significantly undercutting the prices of the domestic industry. Imports are suppressing the prices in the market. As regards consequent impact of imports on the domestic industry, domestic sales, deteriorated over the injury period. Though there were marginal improvement in production and capacity utilization but the inventory has increased. Profitability and

consequently return on capital employed and cash profits deteriorated over the injury period. Further, sales volumes declined significantly within the investigation period even when the domestic industry reduced prices significantly after July, 2008.

(f) It has been contended that the domestic industry is threatened with material injury in respect of each of the products under consideration. The price differences between the domestic and imported products are too significantly high. Resultantly, the domestic industry was forced to reduce the prices substantially in/after June/July, 2008, even when the costs were going up due to global increase in the prices of yellow phosphorus.

There is sufficient evidence that the 'injury' to the domestic industry has been caused by dumped imports of the subject goods from the subject country (ies) to justify initiation of an investigation.

11. Period of investigation

The period of investigation for the purpose of present investigation is **1st October 2007 to 31st December 2008**. However, the injury investigation period will cover the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the Period of Investigation (POI). For threat of injury, the data beyond the POI would also be examined.

12. Imposition of anti dumping duties on Retrospective basis

The applicant has requested for retrospective imposition of duty on the grounds that there is history of dumping, the exporters are well aware that they are resorting to dumping; importers are, or should have been, well aware that the exporters are practicing dumping; there is significant price difference between the domestic and imported products, which is likely to increase further in future. On the basis of information submitted, the Authority proposes to consider the claim of the applicant in this regard and invites the interested parties to make their submissions in this regard as well.

13. Submission of information

The exporters in the subject country(ies) and their Governments through their Embassy/ Office of the Delegation of European Union in India, importers and users in India known to be concerned and the domestic industry are being informed separately to enable them to file all information relevant in the form and manner prescribed. Any other party interested to participate in the present investigation may write to:

The Designated Authority,
Directorate General of Anti-Dumping & Allied Duties,
Ministry of Commerce & Industry,
Department of Commerce
Room No.240, Udyog Bhavan,
New Delhi-110107.

As per Rule 6(5) of Rules supra, the Designated Authority is also providing opportunity to the industrial users of the articles under investigation, and to representative consumer organizations that can furnish information, which is relevant to the investigation regarding dumping, injury and causal link. Any other interested party may also make its submissions relevant to the investigation within the time-limit set out below.

14. Time-limit

Any information relating to this investigation should be sent in writing so as to reach the Authority at the above address not later than 40 days from the date of publication of this notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record their findings on the basis of the facts available on record in accordance with the Rules supra.

15. Submission of Information on Non-Confidential basis

All interested parties shall provide a confidential and non-confidential summary in terms of Rule 7 (2), for the confidential information provided as per Rule 7 (1) of the Rules supra. The non-confidential version or non-confidential summary of the confidential information should be in sufficient detail to provide a meaningful understanding of the information to the other interested parties. If in the opinion of the party providing such information, such information is not susceptible to summary; a statement of reason thereof is required to be provided.

Notwithstanding anything contained in para above, if the Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.

16. Inspection of Public File

In terms of Rule 6(7), any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

17. Non-cooperation

In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(R. Gopalan)
The Designated Authority