

**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**  
**(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

NOTIFICATION

New Delhi,

the 25th May, 2009

**Preliminary Findings**

**Subject:- Anti-Dumping Investigations concerning imports of Diethyl Thio Phosphoryl Chloride originating in or exported from China PR.**

No. 14/18/2008-DGAD:- Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules,1995 thereof, as amended from time to time (hereinafter referred as the AD Rules);

**A. PROCEDURE**

2. The procedure described herein below has been followed:

- i. The Designated Authority (hereinafter referred to as the Authority), under the above Rules, received a written application from M/s Cheminova India Limited, Mumbai and supported by M/s Excel Industries Ltd., Mumbai for and on behalf of the domestic industry, alleging dumping of Diethyl Thio Phosphoryl Chloride (DETPC) (hereinafter also referred to as the subject goods); originating in or exported from China PR (hereinafter referred to as the subject country);

- ii. The Authority notified the Embassy of China PR in India about the receipt of the anti-dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 17<sup>th</sup> November, 2008 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Diethyl Thio Phosphoryl Chloride originating in or exported from China PR, in accordance with the sub-Rule 6(1) of the AD Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
- iv. The Designated Authority sent a copy of Initiation Notification dated 17<sup>th</sup> November 2008 to the Embassy of China PR in India, known exporters from China PR, importers, consumers and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the Initiation Notification.
- v. Request for extension of time to file the questionnaires' response was received from some interested parties. The Authority granted the time extension, keeping in view the time constraints.
- vi. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Embassy of China PR in India in accordance with Rule 6(3) supra;
- vii. The Embassy of China PR in India was informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.

- viii. The Authority sent questionnaires to elicit relevant information to the known exporters in the subject country in accordance with Rules 6(4) of the AD Rules.
- ix. In response to the above notification, the following exporters have responded.

S.N.	Company's Name
1.	Yangxin Chentian Chemical Industry Co., Ltd.
2.	Lianyungang Liben Agro-chemical Co., Ltd.
3.	Xingtai Pesticide Co., Ltd.
4.	Zhejiang Xinnong Chemical Co., Ltd.
5.	China Crop Protection Industry Association

- ix. Questionnaire was sent to the known importers and/or consumers of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules;
- x. In response, information has been received from the following importers/ users;

S.N.	Company's Name
1.	Meghmani Organics Ltd.
2.	Bhagiratha Chemicals & Industries Ltd
3.	Gharda Chemicals Ltd.
4.	P. I. Industries
5.	SIRIS Crop Science Ltd.

- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation. Information has been received from the DGCI&S, which has been used to the extent deemed necessary;
- xiii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP)

was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.

- xiv. Investigation was carried out for the period starting from 1<sup>st</sup> April 2007 to 31<sup>st</sup> Mar, 2008 (POI). The examination of trends, in the context of injury analysis, covered the periods April 2004-March 2005, April 2005-March 2006, April 2006-March 2007 and the POI.
- xv. \*\*\* in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

## **B. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE**

3. The product under consideration in the present investigation is Diethyl Thio Phosphoryl Chloride (DETPC), a colourless or light yellow/amber organic liquid having disagreeable odor. It has density of 1.196 g/cm<sup>3</sup>. Diethyl Thio Phosphoryl Chloride is insoluble in water, but soluble in organic solvents. It is a highly toxic chemic which may irritate eyes and lungs. It is used as an intermediate for pesticides. It is also known as O,O-Diethyl Phosphorochloridothioate or DETPC in the market place, Diethyl Thio Phosphoryl Chloride is having chemical formula C<sub>4</sub>H<sub>10</sub>ClO<sub>2</sub>PS. It is an intermediates used in production of pesticides.

4. Petitioner has claimed that Diethyl Thio Phosphoryl Chloride is being imported under different synonyms and different Custom Classifications such as;

- CHLORURE DE DIÉTHYLTHIOPHOSPHORYLE (DOT FRENCH)
- O,O-DIETHYL THIONOPHOSPHORIC CHLORIDE

- CLORURO DE DIETILTIOFOSFORILO (DOT SPANISH)
- DIETHOXYTHIOPHOSPHORYL CHLORIDE
- DIETHYL CHLOROTHIOPHOSPHATE
- DIETHYL PHOSPHOROCHLORIDOTHIOATE
- ETHYL PHOSPHOROCHLORIDOTHIOATE ((ETO) 2CLPS)
- O,O-DIETHYL PHOSPHOROTHIONOCHLORIDATE
- PHOSPHOROCHLORIDOTHIOIC ACID, O,O-DIETHYL ESTER .

Since these are common synonyms of the product under consideration, petitioner has requested for inclusion of all these synonyms within the scope of the product under consideration.

5. The product is classified under Chapter 29 in the Custom Tariff Act. But as per available information the product under consideration is being imported under several customs classifications as indicated below:

		Imports in Mt			
S.No.	ITC-CODE	2004-05	2005-06	2006-07	2007-08
1	28121090	-	-	-	1,160
2	28129000	180	-	-	20
3	28273990	320	210	160	-
4	29051100	-	120	160	380
5	29091900	40	-	-	-
6	29095090	20	-	-	-
7	29190090	460	40	240	-
8	29199010	-	-	80	560
9	29199090	-	-	-	600
10	29201000	7,523	6,989	3,220	-
11	29201010	-	-	400	-
12	29201020	-	-	920	-

13	29201100	-	-	80	100
14	29201910	-	-	-	2,078
15	29201920	-	-	160	220
16	29201990	-	-	40	2,175
17	29209010	-	140	40	-
18	29209020	-	-	440	596
19	29209030	-	-	240	760
20	29209090	480	-	-	-
21	29209099	-	-	1,990	3,553
22	29241900	-	-	138	254
23	29310090	270	100	10	140
24	29420011	700	360	-	20
25	29420090	300	95	440	-
26	38089010	178	-	-	-

Since the product under consideration has been imported under Chapter 28, 29 and 38, the investigation extends to imports of the product under consideration in all the three chapters. However, the customs classification is indicative only and is in no way binding on the scope of the present investigation.

### **EXAMINATION BY THE AUTHORITY**

6. With regard to like article, Rule 2(d) of the AD Rules provides as under: -

*"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

With regard to the possible difference between the product sold by the exporters in the Indian market and the product sold by the domestic industry, the Authority notes that there is no known difference in product under consideration produced by the Indian industry and exported from subject country. Product under consideration produced by the Indian industry and imported from subject country are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any objection in this regard. Subject goods produced by the petitioner is being treated as like article to the subject goods imported from subject country in accordance with the AD Rules.

### **C. SCOPE OF DOMESTIC INDUSTRY & STANDING**

7. Rule 2(b) of the AD Rules defines domestic industry as under:-

*(b) "Domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are*

*themselves importers thereof in which case such producers may be deemed not to form part of domestic industry.*

The Application has been filed by M/s Cheminova India Limited and has been supported by M/s Excel Industries Ltd. Both these domestic producers have provided injury information.

#### **D. OTHER ISSUES RAISED BY INTERESTED PARTIES**

8. The initiation notification was challenged by M/s. Meghmani Organics Ltd., Ahmedabad before the Hon'ble Gujarat High Court vide Special Civil Application No. 2201/2009. The matter was heard by the Hon'ble Division Bench of Gujarat High Court on 8.4.2009 disposed of with the following orders:

*"Mr. Harin P. Raval, Learned Assistant Solicitor General of India, upon instructions of the Designated Authority, states that the preliminary objection raised by the petitioners as to jurisdiction of the Designated Authority shall be dealt with and decided by the Designated Authority within a period of four weeks i.e on or before 07.05.2009, after hearing the petitioner in this regard in accordance with law.*

*In light of the statement made by the learned counsel for respondent No.2 authority, learned advocate for petitioners seeks permission to withdraw the petition, under instructions. Permission granted. The petition stands disposed of accordingly."*

9. As per the directions of the Hon'ble Division Bench of the Gujarat High Court dated 8.4.2009 in the Special Civil Application No. 2201/2009 filed by M/s. Meghmani Organics Ltd., Ahmedabad against the initiation of anti-dumping investigations in respect of Di-ethyl Thio Phosphoryl Chloride(DETPC) the hearing was granted by the Designated Authority on 24.4.2009 at 3.00 PM. M/s. Meghmani Organics Ltd., along with domestic industry, their consultants and other interested parties were invited for the hearing.

10. The representatives of M/s. Meghmani Organics Ltd., domestic industry and exporters attended the hearing. The representatives of M/s Meghmani Organics and domestic Industry along with other interested parties

were given opportunity to present their arguments before the Designated Authority. After hearing the interested parties and their representatives, the Designated Authority instructed to submit written submissions by 28.4.2009 and rejoinders by 1.5.2009.

11. The submissions and rejoinders made by various parties in pursuance of the hearing by the Designated Authority are summarized below:

a). **By M/s. Meghmani Organics Ltd. And Exporters from China PR**

- (i) Section 5(1) contemplates filing of application “by or on behalf of the Domestic Industry”. The term “Domestic Industry” referred to in Section 5(1) has been defined in Section 2(b). The application has been filed by M/s. Cheminova who does not qualify to be referred to as “Domestic Industry” as defined under Rule 2(b). The applicant accounts for a mere 28% of the domestic production, which cannot be considered as a major or significant proportion of the domestic production.
- (ii) Prior to the initiation, the Designated Authority was informed by the applicant that there were three producers of the subject goods in India. At the time of initiation, the Designated Authority did not resort to polling, as has been done in other cases, to ascertain total production in India, despite the fact that the applicant constituted only 28% of the domestic production. Without information about the third producer, the Designated Authority would not have examined whether the application was filed by domestic industry as he could not have reached any conclusion on “major proportion” of the total domestic production.
- (iii) Rule 2(b) excludes producers who have relationship with exporters of product under consideration (alleged dumped article). Fact of relationship of M/s. Cheminova with their related entity in Denmark has been suppressed in the non-confidential version of the application. In the absence of such information, the Designated Authority can not take a view whether to include or exclude such producers in terms of Rule 2(b).
- (iv) The initiation notification does not indicate in any manner, whatsoever that the Designated Authority had exercised its discretion and the reasons in support thereof to allow the applicant as an eligible domestic industry despite its relationship with the Denmark entity exporting the subject goods to India.
- (v) The Authority ignored the production of M/s Sabero Organics Gujrat Ltd. despite having the information that there were three producers of the subject goods in India.
- (vi) As per settled law, captive consumption cannot be included while reaching pre-initiation determination as mandated under law. M/s. Cheminova failed to disclose the details of any captive consumption of goods in the non-confidential version of application and further, there is no determination in respect thereto reflected in the initiation notification.

- (vii) Subsequent filing of information by M/s. Excel, who was not the applicant at the time of initiation, cannot be permitted at this stage as it seriously jeopardizes the interest of the interested parties.
- (viii) The antidumping investigations in the present case may be quashed by the Designated Authority as the same are without jurisdiction and against statutory law.
- (ix) There is no case for retrospective imposition of duty since none of the requirements of Section 9A(3) of Customs Tariff Act, 1975 have been met.
- (x) The copy of index to the public file, copies of the submissions etc should be provided.

b). **By the Domestic Industry**

- (i) There is no merit in the objections raised by the interested parties which are based on incorrect and misplaced legal understanding. The application satisfied the requirement of the standing under Rule 5(3) read with Rule 2(b). Hence, the applicant constituted domestic industry within the meaning of Anti-Dumping Rules.
- (ii) Standing and scope of domestic industry are two different requirements. In the name of jurisdiction, M/s. Meghmani has raised the issue of "scope of domestic industry" and has not referred to how the standing is not established in this case. Hence the argument of M/s. Meghmani with regard to standing requirement does not hold good.
- (iii) As per Anti-Dumping Rules, M/s. Cheminova qualifies as Domestic Industry whose production constitutes a major proportion. The interested parties repeatedly stating "major proportion" whereas the requirement is "a major proportion". Hence, omission of "a" is not accidental but it is deliberate on the part of these interested parties.
- (iv) There is no prescribed legal requirement to resort to polling at pre- initiation of investigation.
- (v) Exports made by M/s. Cheminova's affiliated Company in Denmark are from a country other than the subject country (China PR) and does not come within the definition of Rule 2(b).
- (vi) Regarding exclusion of M/s. Sabero Organics, the same was excluded on the grounds that (a) the Company curtailed or stopped production substantially and resorted to imports and (b) the Company substantially captively consumed the Product Under Consideration.
- (vii) Regarding non-consideration of captive consumption, it would be seen that if such captive consumption is excluded, the production of M/s. Cheminova still remains much higher than the minimum threshold limit. Moreover, M/s. Sabero Organics does not sell DETPC in the market and consume entire production captively. Hence, on this ground, the production of M/s. Sabero could not have been included.
- (viii) As per Anti-Dumping Rules, the application would satisfy standing requirement if the applicant makes more than 25% of Indian production. In the instant case, the production

of the applicant is more than 28% of Indian production and the application has been supported by M/s. Excel Industries whose production accounts for about 71%.

- (ix) There are massive imports in a relatively short period which is established by the fact that at least 1,500 MT DETPC was imported during March, 2009 and approximately 2,000 MT imports are to be cleared in the current month which are being imported at a price below normal value.
- x) Due to substantial imports, both the domestic industries have been forced to reduce their production and suffering injury due to massive dumping at a price much below their cost of production.
- xi) DETPC is used for manufacturing agro-chemicals (insecticides) which are seasonal products largely consumed in Kharif Season. Delaying the imposition of duty by another two months, the importer would get advantage for one full year. The whole purpose for approaching the High Court at pre-mature stage is to delay the imposition of antidumping duty and thereby gaining the period of seasonal consumption of the product concerned.
- xii) M/s. Excel Industries has not only supported the application for imposition of anti-dumping duty but also provided costing and injury information to the Authority.
- xiii) As there is no merit in the submissions made by other interested parties with regard to standing of the application or scope of the domestic industry, there is full justification in imposition of anti-dumping duties on retrospective basis.

## 12. **Examination by the Authority**

The views/submissions expressed by the interested parties pursuant to the hearing are examined hereunder:

- a) Regarding qualification of M/s Cheminova India Ltd. as Domestic Industry, it is observed that in terms of Rule 2(b) read with Rule 5(3) of the Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination Of Injury) Rules, 1995 (hereinafter referred to as the Anti-Dumping Rules), the Authority needs to be satisfied whether the application has been filed by or on behalf of the domestic industry.

Rule 2(b) of the Anti-Dumping Rules provides as follows:

*“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 may be deemed not to form part of domestic industry ;*

Rule 5(3) of the Anti-Dumping Rules provides as follows:

*“The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –*

*it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :*  
a)

*Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and*

*it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding – (b)*

*dumping, (i)*

*injury, where applicable; and (ii)*

*where applicable, a causal link between such dumped imports and (iii)*

*the alleged injury, to justify the initiation of an investigation.*

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic

producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.”

It is observed that in the instant case the applicant accounts for 28.83% of the domestic production, while excluding production of M/s Sabero Organics, if any, being an importer of the subject goods. Moreover, the application was supported by M/s Excel Industries Limited, a major producer, whose collective production constitutes more than 50% of the domestic production.

- b) Regarding requirement of polling before initiation it is stated that there is no prescribed legal requirement to resort to Polling before initiation of investigation. At the stage of initiation of investigation, the Authority is not required to hold a detailed enquiry but to satisfy the requirements prescribed under the Rule 5(3). To confirm about the domestic producers and their production the concerned administrative department was requested to provide relevant details.
- c) The contention that the Authority ignored the production of M/s. Sabero Organics, despite the information to the Authority that there were three producers of the subject goods in India does not hold good. The concerned Administrative Department was requested to provide details about the domestic producers and their production including M/s. Sabero Organics. Department of Chemicals & Petrochemicals provided information about M/s. Cheminova and M/s. Excel Industries only. This information further reinforced the information submitted by the applicant in their application in this regard. After initiation of the investigation, M/s. Sabero Organics was also requested to submit their response, but there is no response till date. It is further observed from the submissions made by the Domestic Industry that M/s. Sabero Organics curtailed or stopped production substantially and resorted to imports and also consumed the product captively.
- d) The contention that M/s. Cheminova suppressed their relationship with their parent Company in Denmark in the non-confidential version of the application does not hold good. In fact there was no suppression of facts regarding relationship with the parent Company in Denmark. The Authority had specifically called for information in

this regard before initiation and the facts were submitted by the applicant.

- e) The submission that the exports made by M/s Cheminova Denmark, the parent company of M/s Cheminova India Ltd., to India, disqualify the status of the later as domestic industry, is not correct. The exports made by the parent Company were not from the subject country i.e. China PR and hence, the same cannot be treated as dumped article. Hon'ble CESTAT in its various judgements has clearly indicated that the relationship between the domestic industry and related exporters must be examined in the context of subject countries only. In the matter of Birla Ericsson Ltd. Versus Designated Authority [2001 (127) E.L.T. 363 (Tri. - Del.)] Hon'ble CESTAT held as under:

*“The above argument of Counsel representing the appellants is solely based on the exclusion contained in Rule 2(b) of the Rules, which defines domestic industry. After stating that domestic industry means domestic producers whose collective output of the article constitutes a major proportion of the total domestic production, certain categories are excluded there from. The categories excluded are those domestic producers who are related to exporters of the alleged dumped article, those who are related to importers of the alleged dumped article or those who themselves are importers thereof. What is the scope of the words “importers thereof?” This group of domestic producers who are importers thereof are to be grouped along with domestic producers related to exporters of the alleged dumped article and domestic producers related to importers of the alleged dumped article. So taken, the domestic producers who are themselves importers should mean domestic producers who are themselves importers of alleged dumped article. In other words, domestic producers who are not importers of alleged dumped article from the subject country are not to be excluded from the definition of “domestic industry.”*

- f) It has been alleged that M/s Cheminova has got captive consumption of the subject goods and as per settled law captive consumption cannot be included while reaching pre-initiation determination. Failure of M/s Cheminova to disclose the details of their captive consumption of the subject goods in the non-confidential version of the application makes them ineligible to become domestic

industry. It is observed that M/s Cheminova has declared its captive consumption in its petition under Proforma IV A at Sl. No. 1 under the heading sales, however it is very nominal. Further, if the quantity of captive consumption is excluded, the balance quantity still remains 28.01% which is higher than the prescribed threshold limit of 25% under the Anti-Dumping Rules.

- g) The argument that subsequent submission of information by M/s Excel Industries Ltd., who was not the applicant at the time of initiation of investigation, cannot be permitted does not hold good. It is observed that M/s Excel Industries Ltd., a major producer having more than 71% of the domestic production, supported the petition from initial stage along with relevant information/data to the Authority regarding their production and domestic sales during the entire injury period and POI.
- h) As prescribed under the Rules 6(7), a public file containing non - confidential copies of submissions made by various interested parties have been maintained. The same have been visited by other interested parties who have collected copies of the submissions, whichever required. The petitioner is fully aware of this practice of maintenance of Public file and could have inspected the Public file for obtaining requisite copies of the submissions required by them.

13. After detailed examination and careful consideration of the submissions made on behalf of M/s. Meghmani Organics Ltd., Ahmedabad and other interested parties against the initiation of anti-dumping investigations in respect of Diethyl Thio Phosphoryl Chloride(DETPC) and the submissions made on behalf of the domestic industry in support of the initiation of anti-dumping investigations in the instant case and relying upon relevant Rules and Judgements, it is observed that M/s Cheminova India Ltd., supported by M/s Excel Industries Ltd., constitutes Domestic Industry and the

initiation of the anti-dumping investigations by the Authority is well within its jurisdiction under Anti-Dumping Rules and Law in this regard.

#### **D. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

14. The Authority sent questionnaire to the known Chinese exporters, advising them to provide information in the form and manner prescribed. Response to the questionnaires were received from the following companies –

S.N.	Company's Name
1.	Yangxin Chentian Chemical Industry Co., Ltd.
2.	Lianyungang Liben Agro-chemical Co., Ltd.
3.	Xingtai Pesticide Co., Ltd.
4.	Zhejiang Xinnong Chemical Co., Ltd.

For the responding exporters, Authority has determined individual dumping margin and examined market economy status in accordance with the AD Rules.

#### **NORMAL VALUE**

##### **Examination of Market economy claims**

15. The Authority, notes that in the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by India and other WTO Members. Therefore, in terms of para 8(2) of the annexure 1 of AD rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the AD Rules.

16. As per Paragraph 8, Annexure I to the AD Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the

criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and ,\*
- d) the exchange rate conversions are carried out at the market rate.

17. The Authority notes that several producers and exporters of the subject goods from the subject country have submitted their questionnaire responses and market economy questionnaire responses, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. The questionnaire responses and the Market economy responses of the responding producers and exporters have been examined for determination of normal value of the responding producers/exporter of the subject goods from the subject country as follows:

- (i) The Authority notes that in a situation where one of the shareholders in the company is a State owned/controlled entity having significant share in the company, possibilities of State interference cannot be ruled out, requiring further investigation, including spot verification. Further, the exporters have not provided any evidence to establish that prices of basic inputs substantially reflect market values. The producers have named the raw materials suppliers and identified their legal status. The companies have not provided any evidence to establish that the inputs have been procured at prevailing

international prices. It is noted that the Chinese producers have identified phosphorus pentasulphide as the key raw material. The Authority notes that yellow phosphorus constitutes approx. 20-25 % of the costs in DETPC. Domestic industry contended that, in fact, price of yellow phosphorus in China does not substantially reflect market values. This also calls for further investigations, including spot verification.

(ii) In view of the above, pending examination of the above issues regarding ownership & control, its impact on the costs & prices and business decisions of the enterprise and a determination whether the prices of inputs substantially reflect market value, the Authority is of the view that the responding producers - exporters from China PR cannot be granted market economy status for the preliminary determination, pending further investigations, including spot verification.

18. Pending examination of the above issues regarding ownership and control, its impact on the cost and prices and business decisions of the company, and verification of the same, the Authority is of the view that this producer- exporter from China cannot be granted market economy status for the preliminary determination of its Normal Value.

#### **E. Determination of normal value**

19. As recorded above there are significant issues of market economy determination in respect of the responding exporters from the subject country, which requires further examination and verification. Therefore, pending further examination and verification of the claims made by the responding exporters and producers from China PR, in respect of their market economy claims and individual treatment claims, for the purpose of the preliminary finding, the Authority has provisionally estimated the normal value in China on the basis of Para-7 to Annexure-I to the AD Rules.

20. In this connection Para 7 of Annexure I of the AD Rule provides that

*In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a*

*reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

21. The Authority indicated, in the initiation notification, that the applicant claimed that China PR is a non market economy and that India, China and Denmark are the only known producers of the product under consideration in the World. Petitioner had determined normal value based on cost of product in India, including selling general & administration expenses and profit. Authority invited comments from all interested parties in accordance to para 7 of Annexure I. However, none of the interested parties, including the applicants and Chinese producers have placed any material fact before

the Authority to select an appropriate market economy third country for the purpose. The domestic industry has submitted that India should be treated as an appropriate surrogate country for China in this matter and the normal value should be determined accordingly. None of the opposing parties have disputed the claim of the domestic industry with regard to production facilities being only in three countries – China, India and Denmark. The Authority also notes that Denmark is a developed country and may not be an appropriate third country for the Chinese producers.

22. Pending further examination of the issues, for the purpose of preliminary determination, the Authority proceeds to provisionally determine the normal value in China on available reasonable basis, in terms of /para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the product under consideration for all exporters from China has been provisionally constructed based on facts available. The Normal Value has been constructed taking into account international prices of all the major inputs. Consumption norms has been considered as per claims made by the responding exporters, conversion cost and SGA expenses have been adopted on the basis of the domestic industry.. After adding a reasonable profit margin

of \*\*\*% of ex-factory cost excluding interest, constructed normal value works out as under:

<b>US\$ per Kg</b>	
Cost of raw materials	***
Conversion Cost	***
SGA Expenses and Finance cost	***
Profit margin	***
Constructed Normal Value	***

**F. EXPORT PRICE**

**a) CO-OPERATIVE EXPORTERS**

23. The Authority has considered all exports made by the responding exporters for determination of their export price. In some cases, goods have been sold to direct customers in India as well as through unaffiliated traders in China. The sales to Indian customers are in CIF term and the sales through Chinese unaffiliated traders are at ex-factory terms. The exporters have claimed adjustments towards ocean freight, insurance, commission, inland freight, other auxiliary fees, bank charges and credit cost to arrive at ex-factory export price. However, it is noticed that no adjustment has been disclosed by the responding exporters towards VAT paid and refund; though an exporter is required to pay VAT @\*\*\* of the invoice value and is entitled for a refund of a part of the VAT paid on export. Pending further clarification and verification of the claims made, including the VAT adjustments, the Authority has determined the export price after deduction for these expenses.

	<i>Unit</i>	Yangxin Chentain	Lianyungang Liben	Xingtai	Zhejiang
--	-------------	---------------------	----------------------	---------	----------

Export volume	Kg	***	***	***	***
CIF export price per unit	US\$/Kg	***	***	***	***
<b>Price adjustments</b>		***	***	***	***
• Ocean freight	US\$/Kg	***	***	***	***
• Insurance	US\$/Kg	***	***	***	***
• Commission	US\$/Kg	***	***	***	***
• Inland freight	US\$/Kg	***	***	***	***
• Other Auxiliary Fees	US\$/Kg	***	***	***	***
• Credit Cost	US\$/Kg	***	***	***	***
• Bank charges	US\$/Kg	***	***	***	***
• VAT differential	US\$/Kg	***	***	***	***
• Total adjustment	US\$/Kg	***	***	***	***
Ex-factory export price	US\$/Kg	***	***	***	***

**b) NON -COOPERATIVE EXPORTERS**

24. In respect of non-cooperating exporters, the lowest import price based on the data of co-operating exporters has been taken into account. Adjustments like ocean freight etc. has been allowed at par with the ones allowed in co-operating exporters as above for arriving at export price at ex-factory level. By adopting this method the export price at ex-factory level in respect of non-cooperating exporters for subject goods worked out by the Authority is US\$ \*\*\* per kg.

**G. DUMPING MARGIN**

25. Considering the normal value and export price determined, as explained above, the Authority has determined dumping margin as follows;

	Unit	Yangxin Chentain	Lianyungang Liben	Xingtai	Zhejiang	Non- cooperative
Normal value	US\$/Kg	***	***	***	***	***
Export price	US\$/Kg	***	***	***	***	***
Dumping margin	US\$/Kg	***	***	***	***	***
Dumping margin %	Range%	80-90	55-65	45-55	60-70	100-110

## H. INJURY AND CAUSAL LINK

26. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

27. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows.

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

The Authority has taken note of arguments of interested parties on injury and causal link and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.

**a) Demand and market share**

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

Demand	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Total Imports	MT	10,470	8,055	8,758	12,616
Sales – domestic industry	MT	7,378	6,154	4,622	7,669
Demand	MT	17,848	14,209	13,380	20,285
Trend	Indexed	100	79.61	74.97	113.66

It is seen that the demand for the product declined significantly between 2005-06 and 2006-07 and thereafter shown a significant increase.

**b) Import volume and market share**

29. The Authority has examined the volume of imports of the subject goods as provided by (a) the petitioner (which is based on secondary source import data), (b) information procured by the Authority from the DGCI&S and (c) the responding exporter. It is noted that the volume of imports reported in the DGCI&S is not exhaustive, which appears to be due to the fact that the imports have been cleared in a number of customs classification, as seen from the secondary source data. This was further established from all the imports relating to one particular importer procured from DGCI&S. Therefore, the Authority has relied upon the information received from

the secondary sources. On the basis of various import data on record, the import volume from China PR are found to be above the de-minimis levels.

Imports volume from subject country and other countries has been as under:-

Imports in MT	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
China PR	MT	10,470	8,055	8,620	12,361
Other Countries	MT	-	-	138	254
Total Imports	MT	10,470	8,055	8,758	12,616

It is observed that Chinese imports declined in 2005-06, but increased thereafter. Increase was very significant in the period of investigation. It is also noted that imports from China PR account for very significant proportion of total imports of product under consideration in India.

**c) Market share in demand**

30. Considering imports from various sources and sales of the Indian Producers, market share of subject imports in demand in India was examined. Factual position is as follows.

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Domestic industry	%	41.34	43.31	34.55	37.81
China PR	%	58.66	56.69	64.42	60.94
Other Countries	%	0.00	0.00	1.03	1.25

It is observed that the market share of dumped imports in demand from China PR increased from 58.66% during base year to 60.94% during the POI, whereas the market share of domestic industry declined from 41.34% to 37.81% during the corresponding period. Even though the market share of the domestic industry increased and that of imports declined in POI as compared with preceding year, the market share of the domestic industry in POI was lower than the levels achieved earlier.

**d) Share of dumped imports in relation to production**

31. Authority observes that the dumped imports from subject country have increased in relation to the production of the domestic industry, as is evident from the following table:

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Imports from China	MT	10,470	8,055	8,620	12,361
Production of domestic industry	MT	9003	7938	6200	9533
Dumped Imports in relation to production of domestic industry.	%	116.29	101.46	139.02	129.67

**e) Capacity & capacity utilization**

32. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table:-

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Capacity MT	MT	11,500	11,500	11,500	12,000
Capacity utilization %	%	78	69	54	79

It is observed that capacity utilization of the domestic industry declined upto 2006-07, but increased thereafter in POI. Domestic industry claimed that lower production in 2006-07 was due to other factors. Though, production of the domestic industry increased again in POI, the same is still low considering that there is significant demand for the product in the Country.

**f) Production**

33. Production of the domestic industry is given in the following table:-

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Production MT	MT	9003	7938	6200	9533
Trend	Indexed	100	88.173	68.87	105.88
Demand	MT	17,847	14,208	13,380	20,285
Trend	Indexed	100	79.61	74.97	113.66
Production in relation to Demand	%	50.45	55.87	46.34	46.99

It is observed that production of the domestic industry declined upto 2006-07. However, decline in production was more than decline in demand, which shows that dumped imports led to higher loss of market for the domestic industry in the past. during POI, even when demand increased sharply, the dumped imports prevented the domestic industry to increase its production. Whereas demand increased by about 14%, production increased only by about 6%.

g) **Sales volume**

34. Sales volume of the domestic industry is given in the following table:

	Unit	2004-05	2005-06	2006-07	POI
Domestic sales	MT	7378	6154	4622	7669
Trend	Indexed	100	83.41	62.65	103.95
Demand	MT	17,847	14,208	13,380	20,285
Trend	Indexed	100	79.61	74.97	113.66
Market Share of domestic industry in Demand	%	41.34	43.31	34.55	37.81

It is observed that sales of the domestic industry declined steeply till 2006-07. While the demand for the product also declined, the decline in sales was far more than decline in demand. Resultantly, the domestic industry lost

significant market share. Demand for the product increased significantly in POI. However, inspite of the same, the domestic industry has not been able to increase its sales volumes to the extent it could produce and sell. In fact, even market share had not gone back to the levels established earlier. Dumped imports are impacting the sales of the domestic industry.

**h) Price Effect of the Dumped imports on the Domestic Industry**

35. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

36. The net sales realization was arrived after deducting all rebates and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the dumped imports are undercutting the prices of the domestic industry.

Particulars	Units	2004-05	2005-06	2006-07	2007-08 (POI)
CIF Import Price	Rs./kg	76.98	72.18	67.22	78.49
Landed price of imports	Rs./kg	93.30	83.84	76.38	87.20
Selling price	Rs./kg	***	***	***	***
Price undercutting	Rs./kg	***	***	***	***
Price undercutting %	% range	10 to 15	20 to 25	20 to 25	5 to 10
Cost of sales	Rs./kg	***	***	***	***

It is observed that imports are undercutting prices of domestic industry. Wherever the costs were increasing, the Chinese producers were reducing their prices. It is also noted that having lost significant market share in 2006-07, the domestic industry reduced the price difference between the imported product and domestic product in order to regain its market share. Resultantly, the market share of the domestic industry improved in POI.

i) **Price Underselling**

37. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI in accordance with the practice of the Authority as also taking account the decision of Supreme Court. The analysis shows that the landed value of subject imports was significantly below the non-injurious price determined as follows;

Price in Rs/Mt	Rs/Kg
CIF price	78.49
Landed Price	87.20
Non-injurious price	***
Price underselling	***
% underselling (Range)	35 to 40

j) **Price suppression/depression**

38. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred. For the purpose, the Authority examined the trends in cost to make & sell and compared the same with selling price & landed price of imports. It is noted that whereas the cost of

production increased consistently over the years, selling price of the domestic industry have increased till 2006-07, but declined in POI. It is also noted that the price increases for the domestic industry in each of the years were significantly lower than the increase in the cost of production. The imports were thus suppressing the prices of the domestic industry in the market.

**k) Profit/Loss**

39. The profitability of the domestic industry is given in the following table

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
<b>Profit before tax</b>	<b>Indexed</b>	<b>100</b>	<b>28</b>	<b>(55)</b>	<b>(143)</b>
<b>Profit before interest &amp; tax</b>	<b>Indexed</b>	<b>100</b>	<b>46</b>	<b>(22)</b>	<b>(85)</b>
<b>Profit per unit of sales</b>					
<b>Before interest</b>	<b>Indexed</b>	<b>100</b>	<b>56</b>	<b>(35)</b>	<b>(82)</b>
<b>After interest</b>	<b>Indexed</b>	<b>100</b>	<b>36</b>	<b>(85)</b>	<b>(136)</b>

Profitability of the domestic industry declined significantly. Whereas the domestic industry was earlier earning profits (albeit low level of profits), it started suffering financial losses from 2006-07. While petitioner conceded that its losses in 2006-07 were due to an additional factor of low level of production (due to decline in demand), if this factor is adjusted, it would be seen that the profitability declined too steeply in POI.

**l) Examination of other Injury Parameters**

40. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments, other economic parameters which could indicate existence of injury to the domestic industry have been analyzed by the Authority as follows;

i) Return on capital employed

41. Information regarding return on capital employed is given in the table below.

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Return on Capital Employed - NFA basis	%	***	***	***	***
Trend	Indexed	100	49.58	-29.38	-86.00

The Authority notes that return on capital employed for domestic industry has been deteriorated significantly over the injury period to such an extent that the same became negative during 2006-07 and in the POI.

ii) Cash Flow

42. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table.

	Unit	2004-05	2005-06	2006-07	2007-08 (POI)
Cash profits	Rs.Lacs	***	***	***	***
Trend	Indexed	<b>100</b>	<b>57</b>	<b>10</b>	<b>(27)</b>

It is seen that the cash profits of the domestic industry steeply declined over the injury period. The decline was consistently occurring every year to such an extent that the domestic industry suffered cash losses in POI.

iii) Factors affecting domestic prices:

43. Change in cost structure, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. The landed price of subject imports is below the selling price of the domestic industry. It could not be concluded that inter-se competition is to

such an extent that the same led to decline in the prices by the domestic industry.

iv) Inventories

44. Inventories with the domestic industry moved as follows –

	Units	2004-05	2005-06	2006-07	2007-08 (POI)
Closing stock	MT	502	403	369	314
Inventory for no. of days sales	Days	25	28	3	28

It is noted that inventories with the domestic industry were declined during 2006-07, but increased in the POI.

v) Productivity

45. Authority notes that productivity of the domestic industry shows same trend as that of production. Productivity was declining till 2006-07, but increased in POI.

	Unit	2004-05	2005-06	2006-07	POI
<b>Productivity per employee</b>	<b>Indexed</b>	<b>100</b>	<b>86</b>	<b>73</b>	<b>114</b>
<b>Productivity per day</b>	<b>Indexed</b>	<b>100</b>	<b>88</b>	<b>69</b>	<b>104</b>

vi) Employment and Wages

46. Authority notes that employment with the domestic industry declined, while wage paid shows increasing trend.

	Unit	2004-05	2005-06	2006-07	POI
<b>Employment</b>	<b>Indexed</b>	<b>100</b>	<b>103</b>	<b>95</b>	<b>94</b>
<b>Wages</b>	<b>Indexed</b>	<b>100</b>	<b>101</b>	<b>94</b>	<b>110</b>

vii) Growth

47. The Authority notes that growth of the domestic industry was negative in a number of parameters till 2006-07, which was partly due to decline in demand. Even though growth in volume parameters was positive in POI, the same was still below the growth in demand. In any case, growth in price parameters continued to be negative all along.

viii) Ability to raise capital investment

48. Authority notes that no significant investments were made by the domestic industry. Further, both the companies are multi product companies. However, continued dumping of the product would certainly have adverse impact on the ability of the domestic industry to raise capital investment.

**I. Examination of other issues raised by various interested parties**

49. With regard to information concerning a number of parameters in the petition, the Authority notes that the petition filed contains separate information with regard to various injury parameters. In any case captive consumption by the petitioner is not very significant. Further, the petition includes information on indexed basis with regard to inventories, profits, employment and capital investment for expansion.

50. The Authority notes that demand for the product has substantially increased in the investigation period as compared to previous year. In fact, in its application, the petitioner alleged that there was a significant decline in demand in 2006-07 leading to decline in sales volumes.

51. It is, however, noted that imports have increased in absolute terms and in relation to production and consumption over the injury period. Even though market share of imports declined in the period of investigation as

compared to preceding year, the same is still higher as compared to earlier years.

52. With regard to increase in prices in the period of investigation, the Authority notes that there has been significant change in the prices over the injury period. Even within the period of investigation, the prices moved significantly from a low of Rs \*\*\* per Kg. to as high as Rs.\*\*\* per Kg. The increase of \*\*\*% in overall import price does not imply that imports are not having any adverse price effect on the domestic industry.

53. With regard to production, sales and capacity utilization, the Authority notes that the level of capacity utilization is significantly lower than what could have been achieved by the domestic industry in the absence of dumped imports. Further, the volume achieved by the domestic industry has to be seen along with the price at which the goods have been sold. It is noted that the profitability of the domestic industry steeply deteriorated over the injury period.

54. While it is appreciated that demand for the product has increased, it is noted that the domestic industry could have produced and sold significantly higher volumes, by using unutilized capacities, in the absence of dumped imports. It is noted that the increase in imports between 2004-05 and POI was 2438 MT, whereas the unutilized capacity with the domestic industry in the POI was 2467 MT. In other words, had the dumped imports not increased over the period, the domestic industry could have utilized its full capacity. It could not therefore be accepted that the entire increase in imports was due to shortfall in the Country. In any case, the performance of the domestic industry deteriorated in terms of parameters such as profit/loss, return on investment and cash profits.

55. With regard to alleged unfair advantage to the domestic industry in production of Pesticides as a result of imposition of proposed anti dumping duties, the Authority is of the view that the purpose of anti dumping duties is to

eliminate unfair pricing. Contrary to what has been argued by the interested parties, it can be said that access to unfairly priced import to other Pesticides manufacturers is giving undue advantage as compared to those manufacturers who are having their own captive production of DETPC.

56. Reduction in price undercutting in 2007-08 as compared to 2006-07 is because of significant increase in imports in 2006-07 when the demand increased and the domestic industry lost their market share. Domestic industry argued that as a result of this loss of market share in 2006-07, the domestic industry took corrective action in reducing the price gap between the domestic and imported product, results of which could be seen in the market share in the investigation period increasing in favour of domestic industry. However, it is evident that while the demand increased by 2438 MT over the injury period, sales of the domestic industry increased only by 291 MT, whereas the imports increased by 2146 MT. At the same time, the domestic industry had unutilized capacity of 2467 MT in investigation period. It is thus evident that practically entire increase in demand was taken away by the dumped imports in a situation where the domestic industry had unutilized capacities to the extent of increase in demand.

57. While arguing that the petitioner could have suffered losses or low profits due to “other factors”, no such “other factors” have been brought to the notice of the Authority. The investigation so far has also not shown any other factor, which could have adversely impacted profitability of the domestic industry.

#### **J. Conclusions on Injury**

58. On examination of various injury parameters, the Authority finds that imports from China increased in absolute terms as also in relation to production and consumption in India. Imports of the product were undercutting the prices of the domestic industry in the market. Further, whereas cost of production kept increasing over the injury period, even though the selling prices also increased, the increase in selling price was significantly lower than

increase in the cost of production. The imports were thus suppressing the prices of the domestic industry and preventing the price increases that would have otherwise occurred in the absence of dumped imports. With regard to consequent impact of the dumped imports on the domestic industry, it is found that demand for the product declined very significantly upto 2006-07 and consequently production and sales of the domestic industry declined upto 2006-07. However, the decline in production and sales of the domestic industry was more than the decline in demand. Resultantly, the domestic industry lost market share significantly upto 2006-07. Even though the domestic industry regained some market share in POI, the same was much lower than the levels registered earlier.

59. The domestic industry was faced with significant unutilized capacities in a situation where the demand for the product is quite significant in the market. Profitability of the domestic industry declined continuously and so steeply that the domestic industry started suffering financial losses from 2006-07, which increased further in POI. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits became negative in POI. Growth of the domestic industry was negative in a number of parameters till 2006-07, which became positive thereafter in respect of volume parameters (even though the domestic industry could have gained higher volumes in the absence of dumping). However, growth in price parameters continued to remain negative all along. It is thus provisionally concluded that the domestic industry has suffered material injury.

#### **K. Causal Link and Other Factors**

60. The Authority has examined existence of causal link between the dumped imports and injury suffered by the domestic industry in the light of the arguments of the interested parties and having regard to the Rules in this regard.

#### **L. Effect of other known listed parameters**

61. The Authority examined the issue of causal link and other non-attributive factors as laid down in the AD Rules to segregate injury, if any,

caused by other factors. In this regard, the following indicative factors as laid down in the AD Rules have been examined.

(a) Volume and Prices of imports from third country

The Authority notes that there are negligible imports of the product under consideration from other countries. Imports from third countries could not have caused injury to the domestic industry.

(b) Trade restrictive practice and competition between the foreign and domestic producers

The Authority has not found any trade restrictive practice followed by the domestic industry and other Indian producers. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market.

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

The Authority notes that demand for the product showed significant decline during 2005-06 and 2006-07. Consequently, sales volumes of the domestic industry and resultantly production & capacity utilization of the domestic industry suffered upto this period. However, it is also noted that the decline in sales volumes of the domestic industry was more than the decline in demand for the product. In the POI, the demand registered significant increase once again. Even though the domestic industry was able to regain part of its market share, the same still significantly lower than earlier years. Further, the profitability of the domestic industry continuously declined over the injury period. The Authority thus concludes that injury to the domestic industry was not due to contraction in demand.

(d) Development in Technology

There is no development in technology for production of the product. Possible development in technology therefore, is not a reason for any injury to the domestic industry.

(e) Export performance of Domestic Industry;

Period	2004-05	2005-06	2006-07	POI
Volume in Mt	***	***	***	***
Indexed	100	96	96	122

Domestic industry does not have significant exports activities for the product. However, export performance has declined during 2005-06 and 2006-07 and improved during POI as compared to base year. Therefore, any possible decline in export performance is not a cause of any injury. In any case, the Authority has considered only domestic operations in order to ascertain impact on price parameters.

(f) Productivity of the Domestic Industry

Productivity of the domestic industry declined upto 2006-07, but increased thereafter in POI. However, regardless of changes in productivity levels, the profitability of the domestic industry showed continued decline.

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

**M. Factors establishing causal link**

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

- a) Imports were resulting in price undercutting in the market. Consequently, the volume of imports kept increasing even in a situation where the domestic industry was having unutilized capacities.
- b) The price undercutting being caused by the domestic industry resulted in a situation where the domestic industry was unable to increase its selling prices in proportion to increase in the cost of production.
- c) Price suppression caused by the dumped imports resulted in deterioration in profitability to such an extent that whereas the domestic industry was earning profits till 2005-06, it started suffering financial losses in 2006-07, which increased further in POI.
- d) Deterioration in profitability caused by the dumped imports led to deterioration in performance of the domestic industry in terms of return on capital employed, cash profits and consequently cash flow.

The Authority is of the view that the above grounds clearly establish existence of causal link between the dumped imports and injury to the domestic industry.

**N. Magnitude of injury and injury margin**

63. The Authority has determined non-injurious prices for the domestic industry taking into cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the weighted average landed values of the subject imports to determine injury margin. The injury margins have been worked out as follows:

	Unit	Yangxin Chentian	Lianyungang Liben	Xingtai	Zhejiang	Non- cooperative
Non-injurious price	US\$/Kg	***	***	***	***	***
Landed price of imports	US\$/Kg	***	***	***	***	***
Injury margin	US\$/Kg	***	***	***	***	***
Injury margin	% Range	40 to 50	30 to 40	15 to 25	30 to 40	80 to 90

**O. Conclusions:**

64. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority provisionally concludes that:

- (a) The product under consideration has been exported to India from China PR below its normal value, thus resulting in dumping of the product.
- (b) The domestic industry has suffered material injury due to dumping of the product under consideration.
- (c) The material injury has been caused by the dumped imports from China PR.

**P. Indian industry's interest & other issues**

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

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

#### **Q. Recommendations**

67. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links in terms of the AD Rules laid down and having provisionally established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury, pending completion of the investigation. Therefore, Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder;

68. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount mentioned in Col 8 of the table below is recommended to be imposed from the date of this notification, in the event of acceptance of these recommendations by the Central Government, on all imports of subject goods originating in or exported from the China PR.

SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Yangxin Chentian Chemical Industry Co., Ltd.	Yangxin Chentian Chemical Industry Co., Ltd.	0.925	Per Kg	US\$
2	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Lianyungang Liben Agro- chemical Co., Ltd.	Lianyungang Liben Agro- chemical Co., Ltd.	0.734	Per Kg	US\$
3	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Xingtai Pesticide Co., Ltd.	Xingtai Pesticide Co., Ltd.	0.478	Per Kg	US\$
4	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Zhejiang Xinnong Chemical Co., Ltd.	Zhejiang Xinnong Chemical Co., Ltd.	0.770	Per Kg	US\$
5	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Any combination other than the above		1.362		Per Kg
6	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	Any country other than China PR	Any	Any	1.362	Per Kg	US\$
7	29.30	Diethyl Thio Phosphoryl	Any country	China PR	Any	Any		Per Kg	US\$

		Chloride (DETPC	other than China PR			1.362		
--	--	--------------------	------------------------	--	--	-------	--	--

**R. Further Procedure**

69. The following procedure would be followed subsequent to notifying the preliminary findings:-

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- (b) Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of these preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- (c) The Authority would hold a hearing to hear the views of various interested parties orally;
- (d) The Authority would conduct further verification to the extent deemed necessary;
- (e) The Authority would disclose essential facts as per the AD Rules before announcing final findings.

(R. Gopalan)  
Designated Authority