

Government of India
Ministry Of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
NOTIFICATION

New Delhi, dated the 31st March, 2009

Preliminary Findings

Sub: Anti-Dumping Investigation involving imports of Thionyl Chloride originating in or exported from the European Union.

F.NO. 14/1/2008-DGAD:- Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

1. WHEREAS M/s Gwalior Chemicals & Industries Ltd., Nagda and M/s. Transpek Industry Ltd., Vadodara (herein after referred to as the applicants) have filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act, and the Rules, alleging dumping of Thionyl Chloride (hereinafter referred to as the subject goods), originating in or exported from the European Union (hereinafter referred to as subject country) and requested for initiation of an investigation for levy of anti dumping duties on the subject goods.

2. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicants issued a public notice dated 23rd June, 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, in accordance with the sub-Rule 5(5) of the 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.

A. Procedure

3. Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the initiation of the above investigation by the Authority :

- (i) The Authority notified the Embassies/Representatives of the European Union in India about the receipt of dumping application

made by the petitioners before initiating the investigation in accordance with sub-Rule (5) of Rule 5 supra.

(ii) The Embassies/Representatives of the subject country in New Delhi were informed about the initiation of the investigation in accordance with Rule 6(2).

(iii) The Designated Authority sent copies of initiation notifications dated 23rd June, 2008 to the Embassies/Representatives of the subject country in India, known exporters from the subject country, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within prescribed time limit. Copies of the letter, petition and questionnaire sent to the exporter were also sent to the Embassy of subject country along with a list of known exporters/ producers with a request to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time.

(iv) Copy of the non-confidential version of the petition filed by the domestic industry was made available to the known exporters and the Embassies of the subject country in accordance with Rules 6(3) supra.

(v) Questionnaires were sent to the following known exporters from subject country in accordance with the rule 6(4) to elicit relevant information:

S.N.	Company's Name	Country
1.	Lanxess AG	Germany
2.	NV Sepulchre Chemical Distribution	Belgium

(vi) In response to the above notification, the following exporters filed their response to the exporters questionnaire .

S.N.	Company's Name	Country
1.	1. Lanxess Deutschland GmbH (holding	Germany

company of Lanxess AG)

(vii) Questionnaire was sent to the following known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).

S.N.	Company's Name
1.	Hindustan Insecticides Ltd
2.	Bilag Industries P Ltd
3.	Coromandel Fertilisers Ltd
4.	Punjab Chemicals & Crop Protection Ltd
5.	Excel Crop Care Ltd.
6.	Gharda Chemicals Ltd.
7.	Gujarat Agrochem Ltd.
8.	Heranba Industries Ltd.
9.	Kutch Chemical Industries Ltd.
10.	Nagarjuna Agrichem Ltd.
11.	Shree Pushkar Petro Products Pvt. Ltd.
12.	Unichem Laboratories Ltd.
13.	Isagro (Asia) Agrochemicals Pvt. Ltd.
14.	Shiva Pharmachem Pvt. Ltd.

15. Medilux Laboratories Pvt. Ltd.
16. Prasad And Company Pharmachem Ltd.
17. Tagros Chemicals India Ltd
18. Mahur Dye Chem Ind. Ltd.
19. Bodal Chemicals
20. Novodigm Limited
21. Supriya Chemicals
22. United Phosphorous Limited

(viii) In response, information has been received only from M/s Hindusthan Insceticides Ltd., New Delhi. The company has stated in their response that they are getting competitive price for the subject goods from EU and the subject goods are used for the manufacture of "Endosulfan Technical" formulation and further apprised that the imposition of anti-dumping duty would not be advisable for such industries which are involved in the manufacture of the formulation.

(ix) 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, including the period of investigations .

(x) 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.

(xi) The Non-Injurious Price based on the optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) was worked out provisionally so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry .

(xii) The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential . *** in this finding represents information furnished by the domestic industry on confidential basis and so considered by the Authority under the Rules.

(xiii) Investigation was carried out for the period starting from 1.01.2007 to 31.12.2007 (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.

B. Product under Consideration and Like Article

4. The Product under consideration in the present petition is Thionyl Chloride, having chemical formula SOCl_2 , also known as Sulfurous Oxychloride, Sulfurous Dichloride, Sulfinyl Chloride, Sulfinyl Dichloride, Dichlorosulfoxide etc. It is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act. It is a reactive chemical used in Chlorination reactions. It is a colorless liquid distillable at room temperature and pressure and decomposes at above 140°C.

5. Thionyl chloride is used inside lithium-thionyl chloride batteries as the positive active material with [lithium](#) as the negative active material. It is also used as a reagent for the production of other chemical compounds or materials. In military usage, thionyl chloride is used in the "di-di" method of producing G-series [nerve agents](#). It is widely used to convert carboxylic acids to [acyl chlorides](#) and [alcohols](#) to the corresponding alkyl chlorides via an internal nucleophilic substitution.

6. Thionyl Chloride is classified under Chapter 28 of the Customs Tariff Act, 1975 Subheading no. 28.12 of Indian Trade Classification (Based on Harmonized Commodity Description and Coding system). Custom heading is however, for reference purpose only and not binding upon the product scope.

7. With regard to like article, Rule 2(d) 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."

8. The applicant has claimed that there is no known difference between the products manufactured by them and the subject goods imported from the subject country, which can have any impact on price, usage, quality etc. The applicant also claims that the technology and primary production process employed by them and the foreign producers are comparable; however, producers fine-tune their production process based on available facilities and necessities.

9. No argument has been received from any interested party on the scope of product under consideration or like article. Examination of the product and import data submitted by the applicant indicates that there is no difference between subject goods produced by the Domestic Industry and imported from the European Union. Product under consideration produced by the Indian industry and imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. In view of the similarity in manufacturing process and substitutability, the Authority provisionally holds that the two are required to be treated as alike and one product for the purpose of defining the 'product under consideration' in this case.

C. Domestic Industry and Standing

10. The petition for imposition of anti dumping duty was jointly filed by M/S Transpek Industry Ltd. and M/s Gwalior Chemicals Industries Ltd. The Authority notes that there are three other companies which are known to have created capacities to produce the subject goods in India i.e., M/s Emarco Chemicals Pvt. Ltd., Gujarat, M/s Meenakshi Chemicals Pvt. Ltd., Baroda and M/s Shree Sulphuric Limited, Ahmedabad. The Authority has assessed the production volumes of these producers and their support and opposition to the petition. M/s Shree Sulphurics and M/s Meenakshi Chemicals have provided their production information and supported the application. M/s Emarco Chemicals Pvt. Ltd., Gujarat has apparently stopped production and has not responded to the Authorities request for information. On the basis of the information received, the Authority notes that the applicant companies constitute a major proportion in Indian production. Therefore, the Authority holds that for the purpose of this investigation the petitioners command the standing in terms of Rule 5(3) and constitute the domestic industry in terms of Rule 2(b).

11. The exporters, producers, importers, consumers and other interested parties who have not supplied information in this investigation have been treated as non-cooperating interested parties.

12. After taking into account the production of all the known producers of the subject goods in the Country, the Authority is of the opinion that the applicant's command a major proportion of the production of the subject goods in India and holds that for the purpose of this investigation the applicants command the standing in terms of Rule 5(3) and constitutes the domestic industry in terms of Rule 2(b).

D. De Minimis Limits

13. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources, as well as the data furnished by the cooperating exporters from the subject country, the imports of the subject goods from the subject country are above the de minimis level.

E. Other submissions and issues raised

14. Followings are the issues raised by the domestic industries:

(i) The product under consideration in this case is Thionyl Chloride, which is sold in loose and packed conditions. In view of significant difference in the price of these two products, the price comparisons may be done separately and anti dumping duties may be recommended separately for the two forms.

(ii) The goods produced by the domestic industry are like articles to the goods imported.

(iii) Production of the petitioner companies is significantly beyond 50% of Indian production. The two companies constitute domestic industry within the meaning of the Rules.

(iv) The goods are being exported from Europe at dumping price and the same is established by the estimates of normal value and export price. The dumping margin has been determined by the petitioners separately for the two firms and thereafter cumulated for determining dumping margin for the product under consideration.

(v) The domestic industry has suffered material injury as a result of dumped imports which is established by (i) increase in the volume of dumped imports in absolute terms as also relative to production and consumption in India, (ii) imports are undercutting the prices of the domestic industry which led to significant price depression in the market; (iii) as a consequence of price undercutting and increase in imports, performance of the domestic industry suffered on account of production, sale, capacity utilization, profit/loss, return on investment, cash flow, etc.

(vi) The authority may kindly recommend imposition of interim anti dumping duties at the earliest in order to check dumping being caused during the investigation.

15. Following are the issues raised by M/s. Lanxess AG;

(i) The market of Thionyl Chloride in India is highly unusual market, which was dominated by two producers upto end of 2007, who enjoy 77.74% market share as per their own admission.

(ii) The two producers in tandem started cutting prices coupled with the new producer M/s. Shree Sulphuric, who back fired on Transpek Industry and the company was out of production.

- (iii) Market share of domestic industry fallen from 85.17% to 77.74%, which has been gained by other Indian producer i.e. Shri Sulphuric.
- (iv) Exports volume from EU remained static due to high level of customs duty as also inability of the exporter to compete with the domestic producers in general and Gwalior Chemicals in particular.
- (v) Low price offered by Gwalior Chemical is intended to eliminate competition and to eliminate co-producer itself.
- (vi) This process of anti dumping is an effort by Gwalior Chemical to make monopoly in the domestic market.
- (vii) Domestic producers are forcing the exporter to reduce and match the prices.
- (viii) Capacity is in excess of demand in India and further capacities are being added by the producers.
- (ix) There is no causal link between the alleged injury, if any and exports from European Union.
- (x) Production and sales of Gwalior Chemicals increased and inventory declined.
- (xi) There is no whisper in the published annual report of Gwalior Chemicals regarding alleged injury from dumping, barring some price effect, which is also created by Gwalior Chemicals itself.
- (xii) Excel Cropcare is a related company of Transpek and is a known importer of the product.
- (xiii) Transpek had earlier approached agent of Lanxess and enquired about the importation of product.
- (xiv) Quality of material exported by Lanxess is superior.
- (xv) Increase in imports from European Union is just marginal.
- (xvi) No injury to Gwalior Chemicals and injury to Transpek, if any, is due to Gwalior Chemicals.
- (xvii) Reduction in profits cannot be basis of anti dumping application.
- (xviii) Exporter cannot lead the price by just 8% share in total demand of the product in India.
- (xix) Injury should be examined separately to each producer and not in consolidated manner.

16. The above arguments have been taken into account while notifying the present findings and have been addressed at appropriate places in these findings.

Examination by the Authority

17. The submissions made are examined as under:

18. As per the evidence available on record, production of M/s Gwalior Chemicals Industries Ltd., Nagda and Transpek Industries Ltd., Vadodara account for a major proportion of the total domestic production. The Applicants thus satisfy the requirements of rule 2(b) and rule 5(3) of Anti dumping rules.

19. The Authority therefore holds the Applicant as 'Domestic Industry' within the meaning of Rule 2(b) of Anti dumping rules.

20. The confidentiality claims of the domestic industry in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis, along with non-confidential summary thereof, has been treated confidential.

21. The Authority has determined the injury to domestic industry and a causal link between the dumped imports and injury, taking into account all relevant facts in accordance with rule 11 of Anti-dumping rules.

F. Determination of Dumping Margin

22. The Authority sent questionnaire to following known exporters from subject territory, advising them to provide information in the form and manner prescribed:

a) Lanxess Deutschland GmbH (holding company of Lanxess AG)

b) NV Sepulchre Chemical Distribution

23. Lanxess responded to the Authority and has provided detailed questionnaire response and submissions. In its submissions, following issues have been raised by the exporter with regard to determination of dumping and dumping margin.

(i) Normal value cannot be determined as per sales in the domestic market, as European Union is an unusual market, whereas India is a big market. Domestic prices in European Union are distorted and inapplicable.

(ii) There is difference in production process. Lanxess has continuous process and getting liquid sulphur through pipeline, whereas Indian producers do not have continuous process and are getting dried sulphur and incurring additional freight cost.

(iii) There is no need to compare domestic price in European Union with cost of production.

(iv) Domestic industry has determined normal value as per estimates of cost, details of which have not been disclosed.

(v) Lanxess is selling 80% of its exports to India under advance license. Because majority of its exports are under advance license, duty draw back should be adjusted in export price.

24. Since Lanxess has responded to the Authority, individual dumping margin has been determined in respect of Lanxess.

F.1 Examination of Market economy claims

25. The European Union being a market economy area, the procedural formalities with regard to Non-Market Economy presumptions in terms of para 8 of Annexure I to the Rules was not taken resort to .

Examination by the Authority

26. In response to the anti-dumping investigation initiated by the Designated Authority, questionnaire response has been filed by Lanxess, examination of which showed that the same was deficient. The deficiencies were pointed out to the exporter and certain additional information was also called. The exporter replied to the letter of deficiency as well. However, full information in the form and manner has not been provided. In particular, the exporter has not provided vital information relating to the cost of production. Therefore, for the purpose of preliminary finding, best available information of the exporter has been taken into account.

F.2 Determination of normal value

Normal Value in case of Lanxess and other non-cooperating exporters

27. With regard to the argument of Lanxess that normal value should not be determined on the basis of domestic price in the EU, the Authority notes that the Rules provide for the methodology to be adopted for determining normal value and does not envisage any situation stated by the exporter warranting discarding of the price in the domestic price. The prescribed methodology in fact provides for a sequence in which the normal value should be determined. In a situation where the exporter has representative viable domestic sales, the only option for determination of the normal value is the price in the domestic market. The Rules also list certain factors which affect price comparability and also provides for any other factor which is demonstrated to have affected price comparability. The exporter has not identified or quantified any factor which is demonstrated to have affected price comparability. In view of the same, the Authority holds that the normal value in EU is required to be determined on the basis of the price in the domestic market in the EU.

28. The information provided by the exporter was analyzed for the period for which the information was provided and the same shows as follows

(EURO/MT)

	2005	2006	2007
Bulk shipments			
Domestic market	***	***	***
Exports to India	***	***	***
Exports to third countries	***	***	***
Packed shipments			
Domestic market	***	***	***
Exports to India	***	***	***
Exports to third countries	***	***	***

29. The Authority notes that whereas the price of the exporter in the domestic market was quite stable, its export price to India and third countries declined sharply.

30. Company has provided separate information of unit price in respect of loose and packed form of the product. The company has exported both the forms in the Indian market. In view of significant price and cost difference in the loose and packed form of the product, the Authority has determined separate normal value for the two forms for purpose of comparison only and determined one normal value of the subject goods on weighted average basis for dumping margin calculation. Price adjustments have been claimed on account of packing, freight and handling charges, which have been allowed, provisionally, pending further investigations. Since the domestic sales information is in Euro, the Authority has determined normal value, export price and dumping margin in Euro. Normal value on this basis , as per the data provided by the exporter , comes to Euro *** for loose and Euro *** for packed Thionyl Chloride and on weighted average basis the same has been determined as Euro ***.

F.3 Export Price

31. During the POI, Lanxess has exported *** MT of the subject goods to India through *** transactions. Out of which, *** MT was in loose and *** MT was in packed conditions. Export price has been determined considering all export transactions and separately for the loose and packed conditions. Price adjustments have been claimed on account of packing, inland freight, handling and overseas freight, which have been allowed, provisionally, pending further investigations. Since the domestic sales information is in Euro, the Authority has determined export price also in Euro. The exporter has claimed average exchange rate of 1 Euro = 57.01 INR, which has been adopted for the purpose of the present preliminary determination. Export price on this basis comes to Euro *** for loose goods and Euro *** for packed goods and on weighted average basis the same has been determined as Euro ***.

F.4 Dumping Margins

Dumping Margin in case of M/s. Lanxess and other non-cooperating exporters

32. Considering the normal value and export price determined, as explained above, the Authority has determined weighted average dumping margin considering the associated volume of exports.

33. The Authority notes that only Lanxess has responded to the Authority and has provided questionnaire response. No other exporter from EU has responded to the Authority. Normal value in case of other non cooperating exporters has been determined at the same level as has been determined in case of Lanxess. In case of non co-operating exporters, ex factory export price has been determined by considering the lower value of export separately for both the loose and packed forms. Therefore, separate net export price has been determined in case of other exporters from EU.

(EURO/MT)

	<i>Lanxess</i>			<i>Others</i>		
	Loose	Packed	Wt. Avg.	Loose	Packed	Wt. Avg.
Normal value						
Ex-factory price	***	***	***	***	***	***
Export price						

Net ex-factory price	***	***	***	***	***	***
Dumping margin amount	***	***	***	***	***	***
Dumping margin %	200-215	285-310	225-235	340-350	540-550	380-390

G. INJURY DETERMINATION

INJURY AND CAUSAL LINK

34. Article 3.1 of the WTO Agreement and Annexure-II of the 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.

35. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping 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.”

36. The Authority has taken note of the arguments of the interested parties on injury examination 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.

Views of domestic industry

37 The domestic industry has submitted the following to claim that they have suffered material injury as a result of dumping from the European Union:

(i) Performance of the domestic industry improved in terms of production and sales. However, capacity utilization was not at optimal level.

(ii) There is price difference between the imported and domestic product. As a direct consequence, the domestic industry is forced to reduce the prices.

(iii) Landed price of imports has been lower than selling price of domestic industry all along except for Bulk product in base year. The imports have been undercutting the prices of domestic industry throughout the injury period.

(iv) Selling prices of the domestic industry has declined very steeply. The imports are thus causing significant price depression in the market.

(v) As a consequence, imports have led to deterioration in the performance of the domestic industry on account of decline in per unit profit of the domestic industry.

(vi) Return on investment severely deteriorated. Thus, deterioration in ROI was direct consequence of reduction in the selling prices, triggered as a result of decline in the import prices.

(vii) The market for the subject goods has seen significant growth and imports from EU maintained significant market share in total consumption in India.

(viii) Imports increased significantly in absolute terms. As a direct consequence, market share of the subject imports increased and that of domestic industry declined.

(ix) The product is sold in bulk and packed condition and the packing cost is very significant. Therefore, the consideration of average data will not show the correct position.

Examination by the Authority

38. The following are the essential facts before the Authority in respect of alleged injury to the domestic industry caused by dumped imports from European Union, which will form the basis for the preliminary determination by the Authority.

39. Having examined the degree and extent of dumping from the European Union the Authority has examined the injury caused to the domestic industry, if any, and the causal link between the dumped imports and injury so suffered by the domestic industry. The Authority holds that the applicant Companies, constitute a major proportion of Indian production of the subject goods during the period of investigation under Rule 2(b) of Anti-dumping Rules. Therefore, for the purpose of injury determination the applicant company has been held to constitute the domestic industry within the meaning of the Rules.

40. In the spirit of Supreme Court Judgment in Reliance Industries Vs Designated Authority matter, all the known producers of the subject goods have been requested to file their cost and injury information for the purpose of injury determination and determination of non-injurious price for the domestic industry as a whole. However, these producers have not filed any relevant information so far. Therefore, for the purpose of preliminary determination the cost and injury information of the applicant domestic producer, constituting the domestic industry as defined in Rule 2(b), has been examined.

41. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

42. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

43. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume etc. have been examined as under:

G.1 Volume Effects of Dumped Imports: Import volumes and market share

(A) VOLUME EFFECT: Volume Effect of dumped imports and Impact on domestic Industry

Volume and market share in dumped imports

44. Imports volume from subject territory and other countries, as per the DGCI&S data has been as under:-

Imports in MT	Unit	2004-05	2005-06	2006-07	POI
European Union	MT	1930	4459	3136	3717
Trend	Indexed	100	231	162	193
Other Countries	MT	1536	1013	0	0
Total Imports	MT	3417	5471	3136	3717
Market Share in Imports					
European Union	%	56.48	81.50	100.00	100.00
Other Countries	%	43.52	18.50	0.00	0.00

It is observed that imports in absolute terms has increased from 2004-05 to 2005-06, thereafter declined in 2006-07 and once again increased in period of investigation. The imports in the investigation period were almost two times of the import volumes in 2004-05. It is also noted that whereas share of EU in total imports was about 56% in 2004-05, the same increased to 100% in the year 2006-07 and POI.

Assessment of demand

45. 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	POI
Sales – domestic industry	MT	***	***	***	***
Sales – Other Producers	MT	***	***	***	***
Imports - European Union	MT	1930	4459	3136	3717
Imports - Other Countries	MT	1536	1013	0	0

Total Imports	MT	3417	5471	3136	3717
Demand	MT	***	***	***	***
Trend	Indexed	100	113	119	147

It is seen that the demand for the product under consideration has shown an increase consistently.

Market share in demand

46. Considering imports from various sources and sales of the Indian Producers, market share of subject territory in demand in India comes as shown in table below.

Demand	Unit	2004-05	2005-06	2006-07	POI
Domestic industry	%	88.01	84.41	85.96	79.82
Other Indian Producers	%	2.72	2.41	6.86	13.31
European Union	%	5.24	10.74	7.18	6.87
Other Countries	%	4.03	2.44	0.00	0.00

It is observed that the market share of dumped imports in demand from European Union increased from 5.24% during base year to 6.87% during the POI, whereas the market share of domestic industry declined from *** to *** during the corresponding period. It is also observed that the market share of other Indian Producers has also increased significantly over the period. It may be seen from the data that decreased share of import of other countries have shifted to EU and decreased share of domestic industry has been shifted in favor of other domestic producers and in fact other domestic producers have captured the market share by ***% whereas EU has captured the market share by 1.5%. Their increased share in demand of the domestic market may be due to their desperate effort to stay afloat in the market by reducing prices even at the cost of undercutting the profit margin. However, in absence of detailed facts at this preliminary stage, no plausible conclusion can be drawn and the same shall be found out in the due course of investigation.

Share of dumped imports in relation to production:

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

		2004-05	2005-06	2006-07	POI
Imports from EU	MT	1930	4459	3136	3717
Production of domestic industry	MT	***	***	***	***
Imports in relation to production of domestic industry.	%	***	***	***	***

Capacity & Capacity utilization

48. 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	POI
Capacity MT	MT	***	***	***	***
Capacity Utilization %	%	82.71	71.66	68.26	78.08

It is observed that domestic industry has enhanced capacities in 2005-06 and thereafter in 2006-07. Capacity utilization declined from 2004-05 to 2006-07, which could be partly due to fresh capacities being added. However, the capacity utilization increased during POI in comparison to immediate previous year and slightly reduced in comparison to base year. The reduction in capacity utilization during POI indicates that increased capacity could not be utilized by domestic industry.

Production

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

	Unit	2004-05	2005-06	2006-07	POI
Production MT	MT	***	***	***	***
Trend		100	107	116	133
Demand	MT	36,825	41515	43708	54109
Trend		100	113	119	147
Production in relation to Demand	%	***	***	***	***

It is observed that production of the domestic industry shows positive trend. However, whereas the demand grew by 47% over the injury period, the production of the domestic industry grew only by 33% and capacity utilization declined. It is thus observed that even though production increased in absolute term, the same has declined in relation to demand in India.

Sales

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

	Unit	2004-05	2005-06	2006-07	POI
Sales in MT	MT	***	***	***	***

Trend		100	108	116	133
Demand	MT	36,825	41515	43708	54109
Trend		100	113	119	147
Market Share of domestic industry in Demand		***	***	***	***
	%				

It is observed that sales of the domestic industry increased in absolute term. However, the increase in sales volume has fallen short of the increase in demand. Further, increase in sale and production is at the same level.

51. As the import volumes are available on segmented basis, the Authority examined sales volumes of the domestic industry also on segmented basis. The following table shows the factual position.

	Unit	2004-05	2005-06	2006-07	POI
Sales total	MT	***	***	***	***
Trend	Index	100	108	116	133
Loose	MT	***	***	***	***
Trend	Index	100	105	110	127
Packed	MT	***	***	***	***
Trend	Index	100	108	120	115
Captive	MT	***	***	***	***
Imports from EU	MT				
Loose	MT	270	833	1015	2121
Trend	Index	100	307	374	783
Packed	MT	1660	3626	2121	1595
Trend	Index	100	218	128	96

The Authority notes from the above that whereas the sales volume of domestic industry in loose form increased consistently, the imports from EU were also in similar band. However, in case of packed form of the product, the volume of imports increased significantly during 2005-06 and thereafter decreased during 2006-07 and POI . On the contrary, the packed sales of the domestic industry consistently increased except during POI.

B) Price Effect of the Dumped imports on the Domestic Industry

52. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. 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.

53. The product under consideration is sold in India in two forms – loose (also called bulk) and packed. It is noted that the packing cost forms a very substantial part of the cost of production. Loose form however has to be transported in dedicated tankers and extra precautions are required in its handling & transportation, given extremely hazardous nature of the product. In view of significant price difference between bulk and packed form of the product, the Authority has done comparison of the domestic selling price with the landed value, calculated on the basis of total imports as declared by the exporter, separately for the bulk and packed form of the product. 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. Huge difference is observed in the packing cost of exporter and domestic industry. Therefore, for the purpose of calculation of price undercutting of packed goods, the packing cost has been removed from net sales realization of packed goods as well as from the landed cost of packed material of the exporter. 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 as follows :

	Units	As per Exporters data
CIF price of total import		
➤ Loose	Rs/MT	***
➤ Packed	Rs/MT	***
Landed price of imports		
➤ Loose	Rs/MT	***
➤ Packed	Rs/MT	***
➤ Average	Rs/MT	***
Net sales realization		
➤ Loose	Rs/MT	***
➤ Packed	Rs/MT	***
➤ Average	Rs/MT	***
Price undercutting		
➤ Loose	Rs/MT	***
➤ Packed	Rs/MT	***
➤ Average	Rs/MT	***
Price undercutting %		
➤ Loose	%	5-10
➤ Packed	%	80-90
➤ Average	%	10-20

Price Underselling

54. Designated 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. Non-injurious price has been determined separately for the loose and packed form of the product .

55. The analysis of POI data shows that the landed value of subject imports were significantly below the non-injurious price determined. Huge difference is observed in the packing cost of exporter and domestic industry. Therefore, for the purpose of calculation of price underselling of packed goods, the packing cost has been removed from non-injurious price of packed goods as well as from the landed cost of packed material of the exporter.

	Units	As per exporters data
Landed price of imports		
➤.Loose	Rs/MT	***
➤.Packed	Rs/MT	***
➤.Wt. Avg.	Rs/MT	***
Non Injurious Price		
➤.Loose	Rs/MT	***
➤.Packed	Rs/MT	***
➤.Wt. Average	Rs/MT	***
Price underselling		
➤.Loose	Rs/MT	***
➤.Packed	Rs/MT	***
➤.Wt. Avg.	Rs/MT	***
Price underselling %		
➤.Loose	%	1-10
➤.Packed	%	30-40
➤.Wt.Avg.	%	1-15

Price suppression/depression

56. 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.

	Unit	2004-05	2005-06	2006-07	POI
Selling price of the domestic industry					
➤.Bulk	Rs./MT	***	***	***	***
➤.Packed	Rs./MT	***	***	***	***
➤.Average	Rs./MT	***	***	***	***
➤.Trend	Index	100	95.68	83.74	64.61

Cost of production of the domestic industry

➤Bulk	Rs./MT	***	***	***	***
➤Packed	Rs./MT	***	***	***	***
➤Average	Rs./MT	***	***	***	***
➤Trend	Index	100	101.54	83.86	79.59
Profit/loss					
➤Bulk	Rs./MT	***	***	***	***
➤Packed	Rs./MT	***	***	***	***
➤Average	Rs./MT	***	***	***	***
➤Trend	Index	100	79.12	83.89	21.15

It is noted that whereas the cost of production increased between 2004-05 and 2005-06, the same declined thereafter. Selling prices of the domestic industry have however shown consistent decline throughout the injury period. Thus, between 2005-06 and POI, whereas both cost of production and selling price declined, the decline in the selling price was far more pronounced than decline in the cost of production. The imports were thus depressing the prices of the domestic industry in the market.

Profit/Loss

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

	Unit	2004-05	2005-06	2006-07	Jan'07-Dec'07
Profit/ (Loss) before tax	Rs. Lacs	***	***	***	***
Interest expense	Rs. Lacs	***	***	***	***
Profit/(Loss) before interest & tax	Rs. Lacs	***	***	***	***
Trend	Index	100	87.22	95.52	31.38
Profit per unit of sales					
Before interest	Rs./MT	***	***	***	***
Trend	Index	100	79.11	83.89	21.16
After interest	Rs./MT	***	***	***	***
Trend	Index	100	80.66	82.39	23.55

The Authority observes that profits of the domestic industry declined significantly over the injury period. The decline in profits is inspite of continued significant increase in the sales volumes. The Authority determined profits per unit of sale earned by the domestic industry and noted that there is significant decline in the profitability in the POI. In view of very significant fall in profitability in the POI, the Authority noted that landed price of imports from EU declined significantly over the injury period, which directly impacted the profitability of domestic industry. The Authority thus notes that profitability of the domestic industry is directly linked with the import prices.

Examination of other Injury Parameters

58. 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:

a) Profits/Loss and Return on investments

59. Profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows: -

	Unit	2004-05	2005-06	2006-07	Jan'07-Dec'07
Profit before tax	Rs. Lacs	***	***	***	***
Trend	Index	100	85.03	96.63	28.02
Interest expense	Rs. Lacs	***	***	***	***
Profit before interest & tax	Rs. Lacs	***	***	***	***
Trend	Index	100	87.22	95.52	31.38
Capital Employed	Rs. Lacs	***	***	***	***
Return on Capital Employed	%	***	***	***	***
Trend	Index	100	77.83	86.47	27.52

60. The above data shows that the profitability of the domestic industry has declined over the injury investigation period. The return on the Capital Employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the base year.

Inventories

61. Inventories with the domestic industry moved as follows –

	Unit	2004-05	2005-06	2006-07	Jan'07-Dec'07
Opening Inventories	MT	***	***	***	***
Closing Inventories	MT	***	***	***	***
Average Inventories	MT	***	***	***	***
Trend	Indexed	100	99	102	118

It is noted that inventories with the domestic industry have shown substantial increase.

Productivity

62. Authority notes that productivity of the domestic industry has increased with the increase in capacity and production in absolute term.

	Unit	2004-05	2005-06	2006-07	POI
Productivity per day	MT/Day	***	***	***	***

Employment and Wages

•□63. Authority notes that employment and wages show material injury.

	Unit	2004-05	2005-06	2006-07	POI
Wages	Rs.Lacs	***	***	***	***
Trend	Indexed	100	101	108	86

Cash Flow

64. Information regarding cash profit of the domestic industry is given in the following table.

	2004-05	2005-06	2006-07	2007-08
Cash profits (Rs. Lacs)	***	***	***	***
Trend		88.19	96.12	35.06
Cash profit per unit of sale	***	***	***	***

Authority notes that both the constituents of the domestic industry are multi product companies. Therefore, it would be more appropriate to assess the effect of dumped imports on cash flow by considering the trends in cash profits. It is seen that the cash profits of the domestic industry steeply declined over the injury period.

Factors affecting domestic prices:

65. 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 Authority notes that the domestic market for the product under consideration is growing. The landed price of subject imports is below the selling price of both the constituents of the domestic industry. It could not therefore be concluded that inter-se competition is to such an extent that the same led to decline in the prices by the domestic industry.

Growth

66. It is observed that there is a growth in volume parameters viz. in production, capacity utilization sales, and demand etc in absolute term. However, it is noted that the market share of the domestic industry has declined during the POI and the return on capital employed has deteriorated significantly, market share of the dumped imports has increased both in absolute terms and in total demand.

Ability to raise capital investment

67. Authority notes that fresh investments were made up to 2006-07. However, the domestic industry was having much better profitability till that stage. 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.

Factors establishing causal link

68. 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:

- (i) Imports were resulting in price undercutting in the market. Further, the dumped import prices and consequently the landed price of imports declined significantly during the POI over the injury period. As a direct consequence, the domestic industry was forced to reduce the prices significantly;
- (ii) Decline in prices by the domestic industry resulted in significant price depression faced by the domestic industry;
- (iii) Reduction in the selling prices by the domestic industry has adversely affected its profits, cash flow and return on investments of the company;
- (iv) Even when the domestic industry responded to decline in import prices, by reducing its selling prices, volume of imports increased, resulting in decline in its market share;
- (v) Pattern of imports and sales of the domestic industry in loose and packed form clearly show that the domestic industry was able to improve its sales volumes in loose form with low price undercutting and lesser degree of increase in import volumes; whereas the domestic industry was faced with stagnated sales volumes in packed form with significantly higher undercutting and consequence increase in imports.

The above clearly establish existence of causal link between the dumped imports and injury to the domestic industry.

Conclusions on Injury

69. On examination of various injury parameters, the Authority comes to following preliminary conclusions with regard to injury to the domestic industry.

- (i) Imports from EU have increased in absolute terms as also in relation to production and consumption in India. Increase in volume of imports is far more pronounced in packed form, where the price undercutting was quite high, as compared to the loose form of the product.
- (ii) Dumped imports are significantly undercutting the selling prices of the domestic industry, especially in packed form.

(iii) Selling price of the domestic industry declined. Even when there was a decline in the cost of production, the decline in the selling price was far more pronounced than decline in the cost of production. \

(iv) Sales volumes of the domestic industry improved. However, segmented sales volumes show that the captive consumption and merchant loose sales volumes increased significantly, whereas packed sales volumes stagnated. By contrast, import volumes in loose category were in the same region, while that in packed form increased significantly.

(v) The profitability of the domestic industry has deteriorated over the injury period. The decline was most pronounced in the POI. In spite of much higher sales volumes, profits earned by the domestic industry were much lower. Further, the decline in profitability in packed sales was far more pronounced than the decline in profitability in loose sales.

(vi) The return on capital employed and cash profits have deteriorated and shows the same trend as that of profits.

It is thus provisionally concluded that the domestic industry has suffered material injury.

Causal Link and Other Factors

70. 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.

Effect of other known listed parameters

71. The Authority examined the issue of causal link and other non-attributive factors as laid down in the Rules to segregate injury, if any, caused by other factors. In this regard, the following indicative factors as laid down in the Rules have been examined.

(a) Volume and Prices of imports not sold at the dumped prices

The Authority notes that there are no imports of the product under consideration from any other country during the POI. In fact, share of imports from subject countries has significantly increased over the injury period and reached 100% during the POI. Imports from third countries could not have therefore 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. M/s Lanxess has alleged that domestic producers started cutting the prices of the product in the market. The Authority however notes that the landed price of imports is materially lower than the selling price of the domestic industry. Further, the landed price of imports declined very significantly over the injury period. In a situation where the import prices are substantially lower than the selling prices of the Indian Producers, it cannot be concluded that the price reduction in the market were triggered by the domestic producers.

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

There is no contraction in the overall demand during the period under consideration. On the contrary, the demand has increased by 39% over the injury period. Therefore, any possible decline in demand is not a factor which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor it appears that changes in the pattern of consumption could have inflicted the injury to the domestic industry.

(d) **Developments in Technology.**

While the sole responding exporter from EU has alleged difference in technology employed by them and the technology employed by the domestic industry, there is no argument on developments in technology causing injury to the domestic industry. The investigation has not shown that technology for production of the subject goods has undergone any significant change. With regard to the difference in technology, the Authority notes that the domestic industry and the Foreign Producers were producing and selling the goods with the same technology over the injury period and the profitability of the domestic industry was much better in earlier years and declined sharply in the POI. Moreover, the information provided by the exporter itself shows existence of significant dumping, which establishes that the exporter is selling the product at much higher prices in its home market as compared to the price at which goods are being exported to India. Had the exporter been selling the goods in the Indian market at prices comparable to its domestic market, the domestic industry in fact would have made much higher level of profits than what it was making in base year. Such being the case, the Authority holds that the difference in technology has not caused injury to the domestic industry. Therefore, it is provisionally concluded that possible developments in technology has not caused injury to the domestic industry.

(e) **Export performance**

Export sales of the domestic industry have gone up. Possible decline in exports is not a possible cause of injury to the domestic industry.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Exports Sales	MT	***	***	***	***

(f) **Productivity of the Domestic Industry**

Productivity of the domestic industry has improved. Possible decline in productivity is not a possible cause of injury to the domestic industry.

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

Overall assessment

72. The above analysis of various injury and causal link factors show that in spite of improvement in some parameters during the injury period, the performance of the domestic industry has materially deteriorated and the industry suffered injury in terms of sales volumes, capacity utilization, market share, profitability, cash flow and return on investment, while there was a healthy demand for the product in the domestic market. The injury suffered is material and significant. Therefore, the Authority provisionally concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the EU. Injury, if any, caused due to other factors is not significant.

Magnitude of injury and injury margin

73. The Authority has determined non-injurious for the domestic industry taking into cost of production of the domestic industry. The non-injurious price has been determined separately for the loose and packed form of the product under consideration. 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. Huge difference is observed in the packing cost of exporter and domestic industry. Therefore, for the purpose of calculation of injury margin of packed goods, the packing cost has been removed from non-injurious price of packed goods as well as from the landed cost of packed material of the exporter. The injury margins have been worked out as follows:

Injury margin Calculation

(Rs/MT)

	Loose	Packed	Wt. Avg.
Lanxess			
Non-injurious price	***	***	***
Landed price of imports	***	***	***
Injury margin	***	***	***
Others			
Non-injurious price	***	***	***
Landed price of imports	***	***	***
Injury margin	***	***	***

Conclusions:

74. 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 the EU below its normal value.
- (b) The domestic industry has suffered material injury.
- (c) The injury has been caused by the dumped imports from the European Union.

Indian industry's interest & other issues

75. 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 countries in any way, and, therefore, would not affect the availability of the products to the consumers.

76. 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 countries in any way, and therefore, would not affect the availability of the product to the consumers.

Recommendations

77. 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 between dumping and injury to the domestic industry in terms of the 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 territory in the form and manner described hereunder.

78. 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 margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty on imports of Thionyl Chloride originating in or exported from the European Union equal to the amount indicated in Col 9 of the table below is recommended to be imposed from the date of issue of this Notification.

SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
1.	28121040	Thionyl Chloride	European Union	European Union	Lanxess	Lanxess Deutschland GmbH AG	33	Per MT.	US\$
2.	28121040	Thionyl Chloride	European Union	European Union	Any combination of producer and exporter other than the sl. No. 1		84	Per MT.	US\$
3.	28121040	Thionyl Chloride	European Union	Any country other than European Union	Any	Any	84	Per MT.	US\$
7.	28121040	Thionyl Chloride	Any country other than European Union	European Union	Any	Any	84	Per MT.	US\$

Rate of exchange; Rs. 41.92 per US\$.

79. The Authority has determined the injury margin basing on the data provided by the exporter, subject to verification of the same at the time of final findings .

80. The following procedure would be followed subsequent to notification of the preliminary findings: -

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
- (b) Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within 40 days from the date of dispatch of the letter. Any other interested party may also make known its views within forty (40) days from the date of publication of these findings;
- (c) The Authority would conduct further verification to the extent deemed necessary;
- (d) The Authority would hold hearing to hear the views of various interested parties orally;
- (e) The Authority would disclose essential facts before announcing final findings.

R. Gopalan
Designated Authority