

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

**NOTIFICATION**

NEW DELHI, the 5th August 2005

**PRELIMINARY FINDINGS**

**Sub:** Anti-Dumping Investigation concerning imports of Pentaerythritol originating in or exported from China PR and Sweden.

**No.14/16/2004-DGAD** - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995(hereinafter referred to as AD Rules), thereof:

**A. PROCEDURE**

1. The procedure described below has been followed with regard to the investigation:
  - i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application filed by M/s. Kanoria Chemicals and Industries Ltd., on behalf of the domestic industry, alleging dumping of Pentaerythritol(hereinafter referred to as subject goods or Penta) originating in or exported from China PR and Sweden (hereinafter referred to as subject countries).
  - ii. Preliminary scrutiny of the application filed by the applicant revealed certain deficiencies, which were subsequently rectified by the applicant. The application was, therefore, considered as properly documented.
  - iii. The Authority on the basis of evidence submitted by the applicant found it appropriate to initiate the investigation concerning imports of subject goods originating in/or exported from China PR and Sweden. The authority notified the Embassy of China PR and the representative of European Union in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.

- iv. The Authority issued a public notice dated 4.2.2005 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of the subject goods classified under chapter 29 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from China PR and Sweden.
- v. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the applicant) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):
- vi. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by the applicant) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vii. Request were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India for the period of investigation and preceding three years.
- viii. The Authority provided a copies of the non confidential version of the application to the known exporters and the Embassy/territory of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- ix. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
  1. M/s. Hubei Yihua Group Limited Liability Company, China PR
  2. M/s. Guizhou Crystal Chemical Co., Ltd., China PR
  3. M/s. China National Chemicals Construction Corporation, China PR,
  4. M/s. Perstorp Specialty Chemicals, Sweden
  
- x. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
  1. M/s. Vibgyor Paints Pvt. Ltd., Mumbai
  2. M/s. Sanman Trade Impex Pvt. Ltd., Mumbai
  3. M/s. Saraf Chemicals Ltd., Mumbai
  4. M/s. Alcon Enterprises, Kolkata
  5. M/s. A.V.M. Sales Pvt. Ltd., Kolkata
  6. M/s. Ciba Speciality Chemicals (India) Ltd., Mumbai
  7. M/s. Decro Paints, Hyderabad
  8. M/s. Dujodwala Paper Chemicals Ltd., Raigad
  9. M/s. Gargi Industries Prop. Navi Mumbai

- 10.M/s. Mitsu Industries Ltd., Mumbai
- 11.M/s. Resins & Pigmenhts, Pithampur (MP)
- 12.M/s. Chemi Colour Agency, Kolkata
- 13.M/s. Shalimar Paints Ltd., Hawra
- 14.M/s. Dujodwala Paper Chemicals, Mumbai
- 15.M/s. Eastcorp International, Kolkata
- 16.M/s. Garware Polyster Ltd., Mumbai
- 17.M/s. H.R. Trading Co., Pvt. Ltd., Mumbai
- 18.M/s. Leo Chemoplast Pvt., Ltd., Mumbai
- 19.M/s. Samir Dye Chem. Mumbai
- 20.M/s. Berger Paints India Ltd., Mumbai
- 21.M/s. Century Inka Limited, Mumbai
- 22.M/s. Addison Paints & Chemicals, Chennai
- 23.M/s. Coates of India Ltd., Mumbai
- 24.M/s. Hardcastle & Waul Mafg. Co., Ltd., Mumbai
- 25.M/s. Goodlass Nerolac Paints Ltd., Mumbai
- 26.M/s. Hero Dye Chem Industries, Mumbai
- 27.M/s. Hindustan Inks & Resins Ltd., Mumbai
- 28.M/s. IVP Ltd., Thane
- 29.M/s. Jenson & Nicholson (I) Ltd., Kolkata
- 30.M/s. Paras Dyes & Chemicals, Mumbai
- 31.M/s. Perstorp Aegies Chemicals Pvt. Ltd., Valsad

- xii. A market economy questionnaire (MET) was forwarded to all the known exporters and the Bureau of Fair Trade (BOFT),Govt. of China. While for the purpose of initiation the normal value in China PR was considered based on the constructed cost of production of the subject goods in China PR. The Authority inform the known exporters that it proposes to examine the claim of the applicant in the light of para 7 and para 8 of Annexure I of Anti Dumping Rules as amended. The concern exporter/producer of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperative exporter / producers who could demonstrate that they satisfy the criteria stipulated in the said paragraph.
- xii. Response/information to the questionnaire/notification was filed by the following exporters/producers
  1. M/s. Sinochem Jiangsu Import & Export Corporation, China PR(hereinafter referred to as Sinochem)

2. M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR(hereinafter referred to as Hubei)
  3. M/s. Shanxi Sanwei Group Co., Ltd., China PR(hereinafter referred to as Shanxi)
  4. M/s. Perstorp Speciality Chemicals AB, Sweden(hereinafter referred to as Perstorp)
- xiii. Response/information to the questionnaire/notification was filed by the following Importers/user/Associations:-
1. M/s Goodlass Nerolac Paint Ltd.
- xiv. Information regarding injury was sought from the applicant and other domestic producers also .
- xv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xvi. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvii. \*\*\*\*In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.
- xviii. Investigation was carried out for the period starting from 1st October 2003 to 30th September 2004 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2001 - March 2002, April 2002 – March 2003 and April 2003 – March 2004 and the POI;

## **B. Product under consideration AND LIKE ARTICLE:**

2. The product under consideration in the present application is Pentaerythritol originating in or exported from China PR and Sweden. It finds application in manufacture of Alkyd Resin, Rosin Esters, Plasticizers, Printing Inks, Synthetic Rubber, Stabilizers for Plastics, Modified drying oils, Detonators, Explosives, Pharmaceuticals, Core oils and Synthetic Lubricants. It is classified under Customs sub heading No 2905.42 under chapter 29 of the Customs Tariff Act, 1975. The

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

3. It can be produced by electrolysis separation technology or fractional crystallisation technology. There is no difference, however, in the product properties produced through the two technologies. It can be of technical grade or nitration grade. The principal difference in the two grades is in purity, crystal size and uniformity of crystals. Both the grades are produced out of the same process, however, it is only a matter of gradation, after production and at the stage of analytical testing of the product. “**Pentaerythritol**” was derived from “**erythritol**” to indicate the presence of four hydroxyl groups and the prefix “**Penta**” to show that there are five carbon atoms in the molecule. Pentaerythritol is manufactured by the reaction of acetaldehyde and formaldehyde in aqueous phase in presence of an alkaline condensing agent. Technical specifications of the product are described in terms of appearance, content of Mono-pentaerythritol, melting point and ash content etc. The applicant claims that the producers such as Perstorp Aegis do not consciously undertake production of one of the two grades nor such producers can control the production of either grade, however, a producer such as petitioner can regulate the production of nitration grade to some extent, depending upon the demand. Pentaerythritol having purity above 98% and better crystal formation can be used in the explosive industry and therefore, this grade has been designated as “Nitration Grade” in commercial parlance. However, Pentaerythritol considered as “Nitration Grade” can also be used for production of Alkyd Resins and other products (where the other grade “Technical Grade” Pentaerythritol is used). The domestic industry has submitted that the production process, however, largely results in production of “Technical Grade” and less than 2% production results in nitration grade whereas the production of Di-penta is less than 0.5%. As per ISI specifications, Monopentaerythritol must be minimum 92% w/w and it is different from Di-pentaerythritol which is beyond the scope of the present application.

4. The applicant has submitted that product being sold by Perstorp in India is Technical Pentaerythritol 95%, which is nothing but mixture of Pentaerythritol of two different purities, i.e. Technical Pentaerythritol 88% (30%) and Pentaerythritol Mono Grade 98% (70%). They have further argued that different customers require Pentaerythritol of different purities, ingredients and melting points to suit their process requirements and the product of required parameters is being supplied to the customers by mixing the product. Pentaerythritol Technical Grade, which contains Monopentaerythritol 89% is used in the manufacture of the same products as that are manufactured from Pentaerythritol (Mono) Grade containing Monopentaerythritol 98%. The purity of Pentaerythritol (mostly defined in terms of Monopenta) and other ingredients varies depending upon the molar ratio used for manufacture of the product

and other process conditions. The purity of Pentaerythritol varies from min. 92% to max. 98%. Pentaerythritol of different purity are nothing but one like product and are within the scope of the present investigations. The Perstrop has submitted that they are one of the major domestic producer of the subject goods in India and manufacturer of technical Penta 95% by importing raw materials such as mono penta 98% and technical penta 89 – 90% from Sweden. They have also argued that all these three Penta are of different grades and which are covered as product under consideration . They have submitted that raw materials imported are captively consumed to manufacture Penta 95 therefore the import of the said raw material cannot cause prejudice to any other domestic industry.

5. On examination of the submissions filed by the interested party, the Authority notes that the claim of Perstorp Aegis that the imported raw materials are further processed to manufacture the subject goods under investigation was not substantiated with evidence and during the verification of the domestic industry it was found that different purities of Penta ranging from 89%-98% were used by the paint industry. The domestic industry has placed the SION norms for Penta (all grades) which implies the various grades of Penta are one like product and it was supplemented by the response of the user industry also. The technical literature available on this subject distinguishes Pentaerythritol and Dipentaerythritol as two different products not between monopenta and technical penta and none of the interested parties did produce evidence on monopenta and technical penta as two different products. The Authority notes that Pentaerythritol can be of two grades known as technical grade (TG) or nitration grade (NG), however there is no material difference found between technical grade penta and nitration grade penta and both the grades are produced out of same process. It is only a matter of gradation which takes place at the stage of analytical testing of the product. During the course of verification of costing and sales information of the domestic industry it was established from their sales and excise register that Paint Industry is using different purities of Penta in their manufacturing setup. During the verification visit, the domestic industry had shown that during the production process less than 2% of entire production of Penta results into the production of nitration grade whereas more than 97% constitutes as technical grade and they are the like product within the meaning of AD Rules. On the basis of information made available before Authority, it is noted that merely changes in the purity along with name (which varies between 92%-98%), the imported product does not become different from Pentaerythritol, product under consideration. It is also noted, even though the product resold by Perstorp may be different from imported product and may have been processed before selling, the resold product remains Pentaerythritol only and no verifiable evidence was placed by Perstorp, India which could establish that the imported product and resold products are not like products within the meaning of the AD Rules.

6. Rule 2(d) of the AD Rules specifies that "Like Articles" means an article which is identical or alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination. There was no difference found between the subject goods manufactured by the domestic industry and the imported product from subject countries. The subject goods produced by the applicant are commercially and technically substitutable to the imported product and hence conditions of like article are satisfied. The Authority, therefore, held that the goods produced by the domestic industry and those exported from the subject countries are like article within the meaning of the rules 2(d) of AD Rules.

### **C. DOMESTIC INDUSTRY**

7. M/s. Kanoria Chemicals and Industries Limited have filed the application, on behalf of the domestic industry. It is a multi product company and is involved in production of number of products. The applicant has not imported the subject goods in the past three years and exporting the subject goods to number of countries. The petitioner accounts for more than 25% of the total domestic production during the POI of the subject goods in India.

8. The applicant has submitted that M/s Perstorp Aegis is the producer of the subject goods, however, they are the major importer of the subject goods from Sweden and related to the sole producer/exporter in Sweden. As regards the relationship of domestic producer to the exporter/ importer has to be examined in view of the following,

- a. one of them directly or indirectly controls the other; or
- b. both of them are directly or indirectly controlled by a third person; or
- c. together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of relationship is such as to cause the producers behave differently from non related producers and finally
- d. a producer shall deemed to control another producer when the former is legally or operationally in a position to exercise or direction over latter

9. The Authority examined the submissions of the interested parties and notes that Perstorp Aegis, one of the producers of the subject goods, is an importer affiliated to the Perstorp, Sweden, therefore the Authority found it appropriate to exclude Perstorp India from the constituent of the domestic industry. Asian Paints is another producer, who is producing the product substantially for its own captive requirements. The petitioner has requested to exclude the production of Asian Paints since the production

of Asian Paints may not compete in its merchant market and to that extent Asian Paints may not have experienced injury from such dumping of subject goods in Indian market, the Authority has considered appropriate at this stage to exclude production of Asian Paints for determining standing of the petitioner. The Authority notes that Perstorp, Sweden and Perstorp Aegis, India are related to each other in view of Rule 2(b), since Perstorp, India is a subsidiary of Perstorp, Sweden and therefore the later is in a position to control the former and appropriate at this stage to exclude as a constituent of the domestic industry. In view of the above, the Authority holds that the petitioner fulfils the requisite criteria to satisfy standing and constitutes domestic industry, as required under Rule 5(a) and (b) and Rule 2(b) of AD Rules.

## **D. OTHER ISSUES**

### **D.1 WHY SWEDEN NOT THE ENTIRE EU AS SUBJECT COUNTRIES**

10. M/s. Perstorp has argued that the Designated Authority has erred in initiating the anti-dumping investigation against a country instead of entire European Union as a whole. The Authority has examined the arguments of the interested party and notes since the Authority proceeded in this investigation based on a written complaint against a country, therefore, it could not have suo motu added or expanded the scope of the countries. The Authority proceeds in a investigation on the basis of petition filed by the domestic industry and on the basis of prima-facie evidence made available to the Authority, the investigation is initiated. The decision of the Authority is based on the information provided by the applicant becomes the evidence for considering their request for initiating an anti-dumping investigation. The anti-dumping rules and Agreement have used both country and territory at places and both Sweden and EU is the member of WTO, therefore the argument of the interested parties is not justified.

### **D.2 APPEAL AGAINST THE INITIATION**

11. Perstorp Aegis, India has filed an appeal against the initiation of the Authority before Hon'ble Mumbai High Court challenging the anti dumping investigation on the grounds that (a) it is not related to Perstorp, Sweden; (b) the imported product is different from the product resold in India. The Hon'ble High Court is of the view that after considering the material on record, the Authority initiated the anti-dumping investigation in respect of Pentaerythritol originating in or exported from China PR and Sweden after excluding Perstorp as a part of domestic industry. The Hon'ble Court had upheld the action of the Authority that initiation has correctly been made on the basis of information made available to the Authority and stated that it is open to the Perstorp to establish that there is no dumping of Pentaerythritol from Sweden and there is no injury caused to the domestic industry by such imports from Sweden.

## **E. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN AND EXAMINATION OF MARKET ECONOMY**

### **E.1. VIEWS OF THE DOMESTIC INDUSTRY**

12. The views of domestic industry have been summarised below;

- i. The domestic industry submitted that China is a non market economy country and Indian Designated Authority has also treated China as a non market economy country in anti-dumping investigations. Similarly USA and European Commission have also treated China as a non-market economy country in anti-dumping investigations.
- ii. In this investigation three Chinese companies have filed the response to the exporters questionnaire and MET questionnaire for their claim of market economy treatment. M/s. Shanxi, the producer and exporter of the subject goods has filed both the exporters questionnaire and the MET questionnaire. They have further argued that the parent company is having the major share holding of a State owned companies. Since the major share holding is in the hands of State owned companies, the interference and involvement of the State cannot be denied, therefore the market economy treatment should not given and the normal value may be constructed as per para 7 of Annexure I of AD Rules. The second Chinese company M/s. Hubei has also filed the exporter and MET questionnaire response and claimed market economy treatment. They have argued that the parent company is having the share holding of State owned companies, therefore their involvement in the decision making and procurement of raw materials of supplies cannot be denied. The third company M/s. Sinochem Jiangsu Import & Export Co., an exporter of the subject goods has filed the incomplete and insufficient non-confidential submission and also did not file their claim of market economy treatment. They have also submitted that the manufacturer of the subject goods has not filed the exporters response to the Authority, thereby normal value cannot be determined in absence of the domestic sales price or the cost of production of the manufacturer. The domestic industry has argued that these Chinese companies are non market economy companies, therefore, their claim of MET may be rejected and normal value may be constructed as per para 7 of Annexure I of AD Rules.

### **E.2 EXAMINATION BY THE AUTHORITY**

13. The Authority sent copies of the questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A (1)(c). Responses have been received from three producer/exporters and they have claimed MET treatment on the grounds that they are operating under market economy condition irrespective of prevailing economy situation in the country without any direct or indirect State interference or influence in their business activity. Response/information to the questionnaire/notification was filed by the following exporters/producers

- i. M/s. Sinochem Jiangsu Import & Export Corporation, China PR(hereinafter referred to as Sinochem)
- ii. M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR(hereinafter referred to as Hubei)
- iii. M/s. Shanxi Sanwei Group Co., Ltd., China PR(hereinafter referred to as Shanxi)

14. The Designated Authority, as per para 8(2) of Annexure I of the AD Rules for the purpose of assessing the Normal Value, proceeded with a presumption that any country that has been determined to be or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economic country. In the past three years China PR has been treated as a non-market economy country in the anti- dumping investigations by WTO members such as EU and USA. In the instant case, China PR has been proposed to be investigated as a non-market economy Country.

15. In anti-dumping investigations concerning imports originating in China PR, normal value shall be determined in accordance with para 7 & 8 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

*“In case of imports from non-market economy countries, normal value shall be determined on the basis of 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.”*

Further Para 8 of Annexure 1 of the AD Rules (as amended) provides that:

*“8 (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair*

*value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)*

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country;*

*Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).”*

16. It is noted that the responding Chinese Companies furnished information/evidence as mentioned in para 8(3) of Annexure 1 of AD Rules to enable the Designated Authority to consider the following criteria as to whether;

- a. The decision of concerned firms in such country 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;

**M/s. Shanxi Sanwei Group Co., Ltd., China PR**

17. The Chinese exporter has argued that injury has been caused to the domestic industry by the Chinese imports are misconceived and false. They have also claimed that they are operating in market conditions and, therefore, market economy treatment should be accorded to it especially in view of the fact that China is being treated as a market economy by many authorities around the world. The Chinese companies have submitted that they satisfy the requirements of paragraphs 7 and 8 of Annexure –1 to the Rules for grant of market economy status. China has been granted market economy status by the European Union in the case of Anti-Dumping proceeding concerning imports of certain polyester fabrics originating in the People’s Republic of

China AD 481. The exporter has claimed that the principal shareholders of the company are not engaged or related to the production and sales of subject goods. The copies of Chinese and the Provincial Govt. laws are not been provided which are also required to be shown to demonstrate that the company operates in market economy condition and State is not involved in the operation of day to day activity and decision making of the company.

18. On examination of the submissions filed by the Chinese company it was observed that substantial holding of the company is with the State owned companies. M/s. Shanxi Sanwei Hua Bang Group Co. Ltd., M/s. Shanxi Economic Construction and Investing Company and M/s. Shanxi Economic and Trading Asset Management, State owned entities are having major share holding in the main Chinese company who has responded and claimed a market economy treatment in this investigation. The company has claimed that they have started the process of disinvestments of State owned share to the public from June 1997 and more than \*\*\*\* share have been transferred to the public till the POI. On the basis of above information, even if the process of disinvestments, the involvement of a State cannot be denied with regard to significant interference or involvement in the decision making of the company due to the substantial share holdings in the hands os State owned company.

19. As regards the directors in the company it is observed that majority of the directors are appointed from the State owned companies which holds the majority shares, therefore, any kind of State involvement in decision making in the company can not be denied. Since Chief executives in the company are also from State owned companies therefore, the significant interferences of State owned companies in the day to day control over the operation of the company can not be ruled out. M/s. Shanxi Sanwei Hua Bang Group Co., Ltd., is a State owned company which is having the majority shares of State owned assets supervision and administration commission of Shanxi province, thereby the influence or significant interference on their part cannot be denied on the part of claim made by the Chinese company.

20. Regarding the decision of concerned firms in such country 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, the Chinese company could not establish that the cost and pricing structures as market oriented for their claim of MET in view of the share holdings of the State owned companies subject to verification of data/information provided by them.

**M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR**

21. Hubei is a joint stock company limited incorporated and existed under the laws of People's Republic of China. They have claimed that they are operating in market conditions and, therefore, market economy treatment should be accorded to it especially in view of the fact that China is being treated as a market economy by many authorities around the world. The Chinese companies have submitted that they satisfy the requirements of paragraphs 7 and 8 of Annexure –1 to the Rules for grant of market economy status and requested for determination of normal value as per para 1-6 of Annex-I of AD Rules. On examination of the submissions filed by the Chinese company it was observed that substantial holding of the company is with the State owned companies. Two of the major share holders of the company are State owned Chinese companies and they are holding the position of the Chairman, Vice-Chairman and many directors in the Board of directors of the company. It is also observed that the majority of the directors in the Board of directors are related to holding share holder companies which are State owned. It is also noted from the Article of Association that the general body meeting is empowered to elect and remove directors. Since the major share holders in this company are from State owned companies, the significant State interference in the decision making in day to day activity can not be denied. It is also observed that the Chairman of this company acts as the Chairman of holding share holder State owned company, therefore major decision making and significant interference of State can not be ruled out.

22. The name of suppliers of major raw materials and their business licences have not been provided to demonstrate whether the procurement has been made on the market driven prices or State has partially or wholly interfered in the process of procurement of raw materials and other imports. The Chinese company has themselves have claimed that the electricity has been supplied by a State owned entity. The other utilities mainly steam and water are captively produced. The labour is organized as per the requirement of the company and minimal wage provision of the Govt. is respected. The labour force has been divided into different slabs having different wage structure and they get medical care, pension provisions, unemployment insurance, work injury insurance and maternity insurances which are required by Chinese Law.

23. The Chinese company has claimed that there are no special exemptions or derogations whatsoever for the business sector that Hubei operates under the bankruptcy and property laws. They have also claimed that the company is not subjected to any restrictions on distribution or repatriation of profits and repatriation of capital investment.

24. As regards the procurement of raw material it is noted that raw materials are procured by the company on spot market captively and from other companies. It is noted that the company is managed by the share holders of the State owned entity

therefore it is very difficult to exclude the State from any involvement in the social security programme in respect of employees of the companies. It may be argued that the substantial costs are being incurred on account of State undertaking massive social security programme towards the employees of erstwhile State owned companies. It is noted the erstwhile State owned Chinese companies are now acquired the status of limited liability companies even though they continue to be under State control, directly or indirectly.

25. The company has claimed that it has proceeded in the disinvestments process of the State owned share to the general public in a phased manner and claimed that the share of the State owned companies need not be considered for their claim of market economy treatment. On the basis of their submission it was found that the share holding percentage of the State owned companies has declined during the POI, however direct or indirect interference or involvement of the State in the decision making of the management and procurement of raw material and supplies of the company which is directly related with the costs and prices of the product can not be denied. The majority of the directors are from the State owned companies and the Chief executives who have the major decision making powers are from the State owned companies.

26. It is observed from their annual accounts that their parent company M/s. Hubei Yihua Group Ltd., Liability Company, State owned enterprises provided short term loan and long term loan to the company under investigation. M/s. Yichang Finance Bureau also provided a interest free long term loan to the company. These practices are generally not the market oriented practices which is in common parlance a market economy setup will differ in terms of profit oriented practices. The land has been given on lease by the parent State owned company M/s. Hubei Yihua Group Ltd., Liability Company, State owned enterprises and they have not provided the land lease amounts rentals for its claim of independent functioning without any significant interference of the State.

27. Regarding the decision of concerned firms in such country 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, the Chinese company could not demonstrate that the cost and pricing structures as market oriented for their claim of MET in view of the major share holdings of the State owned companies subject to verification of data/information provided by them.

**M/s. Sinochem Jiangsu Import & Export Corporation, China PR**

28. Sinochem Jaingsu Import & Export Corporation, China PR (exporter) has filed the incomplete information but the producer of the subject goods did not file the response. Sinochem did not file the information with regards to cost of production and the domestic selling prices in the home market for determination of normal value. The exporter has not filed the complete information in the exporters questionnaire in the form and manner required by the Authority for the purpose of investigation. As regards their claim of non-market economy, information has not been filed in the questionnaire supplied to them. The exporter has been asked to file the complete information and a detailed deficiencies letter was sent to them. In its reply to the query raised, they have stated since the producer of the subject goods has not provided the information required for the investigation, the relevant information could not be supplied. The responding exporter who is exporting the subject goods manufactured by M/s. Yuan Tian Hua Group has not filed the response which is required to be filed as per the details provided in the questionnaire. The exporter has claimed the market economy treatment but not filed the MET questionnaire response to the Authority for its claim. In view of non submission of complete documents, the Chinese company has been treated non-cooperative.

29. In view of the examination of the responses filed by the Chinese companies, the Authority notes that the Chinese companies could not provide sufficient evidence in support of their claim of MET. It is further noted that the costs and prices would not reflect the correct price of the product and therefore, cannot be accepted for the purpose of preliminary determination subject to without verification of information/data filed by the exporters during the course of investigation. The Authority is ,therefore, unable to apply the principles set out in paragraphs 1 to 6 of Annexure-I for determination of normal value for these Chinese exporters. The normal value in respect of all exporters / producers from China PR is determined as per rules relating to non-market economies as contained in Para 7 of Annexure-1 of AD Rules. The raw materials for manufacturing Pentaerythritol at the international price, the consumption norms of the domestic industry and reasonable profit have been considered for constructing the normal value for all exporters/producers of ChinaPR. The normal value is therefore, constructed as US\$\*\*\*\*/Kg.

## **EXPORT PRICE**

30. Shanxi has provided invoice wise details of exports of subject goods to India during the period of investigation. They have exported 517 MT of Pentaerythritol during the POI and it has been considered for determination of export price. In order to arrive at the ex factory export price the company has claimed adjustments on account of inland freight, handling which has been considered subject to verification of the data. As regards the ocean freight and overseas insurance the Authority has considered the adjustments claimed by the other cooperative exporter subject to

verification, to arrive at ex-factory export price of Pentaerythritol exported to India during the period of investigation. The Authority has determined the ex-factory export price as US\$ \*\*\*\*/Kg.

31. Hubei has provided invoice wise details of exports of subject goods to India during the period of investigation. They have exported 2464 MT of Pentaerythritol during the POI and it has been considered for determination of export price. In order to arrive at the ex factory export price the company has claimed adjustments on account of inland freight, handling, ocean freight and overseas insurance which has been considered for the purpose of preliminary determination subject to verification of the data. The Authority has determined the ex-factory export price as US\$ \*\*\*\*/Kg.

## **OTHER EXPORTERS/PRODUCERS FROM CHINA PR**

### NORMAL VALUE

32. The Authority has constructed the normal value as per para 7 of Annexure-I of AD Rules for all other exporters/producers from China PR as raw materials at the international price, the consumption norms of the industry and reasonable profit. In view of this the normal value is, therefore, constructed as US\$\*\*\*\*/Kg.

### EXPORT PRICE

33. The export price is determined on the basis of import statistics made available by DGCI&S for other exporters/producers from ChinaPR. To arrive at ex-factory export price, adjustments have been considered as best information available with the Authority. The ex-factory export price is determined as US\$\*\*\*\*/Kg for all other exporters/producers from China PR.

## **SWEDEN**

### NORMAL VALUE

34. M/s. Perstorp Speciality Chemicals AB, Sweden has filed the three page response without giving any information or data with regards to exporters questionnaire as devised by the Authority. They have provided the list of corporate office and India office and provided list of subsidiaries and related companies. They have neither provided any information regarding domestic selling price in their home market nor the cost of production for the subject goods. In absence of any information with regards to normal value the Authority has considered this exporter as non-cooperative and constructed the normal value for all exporters/producers from Sweden based on best facts available as per Rule 6(8) of AD Rules. In view of this, the Authority has

constructed the normal value for all exporters/producers from Sweden based on international raw material prices, consumption norms of the industry and reasonable profit margin. In view of this the normal value is, therefore, constructed as US\$\*\*\*\*/Kg.

### EXPORT PRICE

35. The exporter did not file any information regarding the exports of subject goods into India during the POI. In absence of any reply to the exporters questionnaire the Authority is constrained to rely on import statistics made available by DGCI&S . The data made available by DGCI&S has been considered for determination of export price and it has been reported the imports of 2639 MT during the POI. To arrive at ex-factory export price the Authority considered the adjustments claimed by the domestic industry for the purpose of preliminary determination. The ex-factory export price is determined as US\$ \*\*\*\*\*/Kg for all exporters/producers from Sweden.

### DUMPING- MARGIN

36. Based on the normal value and export price as determined above, the Authority assessed the dumping margin as under:

Exporter/Producer	Normal Value (US\$/MT)	Export Price (US\$/MT)	Dumping margin as % of Export Price
M/s. Shanxi Sanwei Group Co., Ltd., China PR	***	****	61.74%
M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR	****	****	27.30%
Other exporters/producers from ChinaPR	****	****	81.55%
All exporters/producers from Sweden	****	****	65.46%

## **F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK**

### **F.1 VIEWS OF THE DOMESTIC INDUSTRY**

37. The views of domestic industry have been summarised below;

- i. The captive production of Asian Paints may be taken for the injury assessment since the company sales some material in the market also. The demand has been assessed on the basis of sales of domestic industry and other producers and the total imports into country.

- ii. The imports from subject countries has increased and it is significant during the POI. The share of dumped imports from the subject countries has increased in total demand and production of the domestic industry.
- iii. The export prices from the subject countries have declined during the entire injury period. The production and capacity utilisation of the domestic industry has increased during the POI, however sales volume has declined during the POI.
- iv. The selling price of the domestic industry has increased but declined during the POI. They have stated that due to the anti-dumping duty from other sources in 2001-02 enabled the domestic industry to realize a better selling price but declined in the POI due to dumping from afresh sources which is being investigated.
- v. The domestic industry lost their sales and the market share due to dumped imports from subject countries.
- vi. The profitability has improved during 2002-03 and started declining and came in loss during the POI. The import price from subject country is undercutting the domestic sales price significantly. Both price undercutting and price underselling are in significant in spite of the reduction in the prices by the domestic industry. The cash flow situation has declined during the POI.
- vii. The productivity of the company has improved during the POI.

## **F.2 VIEWS OF THE EXPORTER / IMPORTER**

38. The views of exporter/importer have been summarised below;

- It is submitted that the decline in the market shares of the domestic industry is very marginal during the period of investigation. In fact the information submitted by the petitioner does not show any surge in imports or a decline in the market share of the domestic industry.
- The petitioner operated at a capacity utilization of 106% during the POI.
- The sales of the petitioners have been increasing, including in the year 2003-2004.
- The production of the petitioner has gone upto to 6316 MT. The stocks available with the company at the end of the period of investigation are quite low.
- The losses incurred by the petitioner are on account of its high cost of production and its inability to compete in local or international markets.
- The petitioner appears to have unduly high cost of production due to which it is claiming under cutting.
- The productivity of the petitioner appears to have been at its highest in the year 2002-2003, declined in the subsequent year and again increased during the period of investigation.

- The cash flow position of the petitioner is positive and does not reflect any injury. The return of investment appears to be healthy and does not reflect any injury.

### F.3 EXAMINATION BY THE AUTHORITY

#### Cumulative assessment of injury:

39. As per annexure-II (iii) of AD Rules, in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the total imports of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic product. The Authority has found that the margin of dumping in respect of subject countries is more than 2%. The volume of imports from these subject countries collectively are more than 84% of total imports.

40. On examination of information, the Authority found that the prices of the subject goods coming from subject countries are almost comparable and do not vary significantly. These have been imported under the same tariff classification. The user industry for the imported product and the domestic product is the same. Imported product and domestically produced subject goods are interchangeable which has been observed from the responses of the importer and users and these goods compete in the same market. The Authority has, therefore, found it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between the imported products and the conditions of competition between the imported products and domestic like product. It is appropriate to examine cumulatively the effect of injury by imports of subject goods from subject countries on the domestic industry in this investigation.

41. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down,

*“A determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.”*

As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states:

“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 utilisation 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.”

### Volume and market share in dumped imports

42. The interested parties have argued that the import volumes have been considered from different sources and the evidence of which has not been disclosed. The arguments of the interested parties have been examined and it is noted that DGCI&S transaction wise data have been considered for the purpose of determination of imports . The volume of dumped imports of subject goods from subject countries has increased from 692 MT during 2001-2002 to 5620 MT during the POI. The share of dumped imports of China has increased from 2.73% during 2000-2001 to 46.21% during POI in the total imports, whereas the share of dumped imports of Sweden has increased from 31.01% to 40.91% during the same period.

<b>Imports (MT)</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>POI</b>
China	56	72	1494	2981
Sweden	636	259	1145	2639
Subject countries	692	331	2639	5620
Countries having AD duty	553	432	699	639
Other countries	806	771	462	192
Total imports	2051	1534	3800	6451
<b>Imports (%)</b>				
China	2.73	4.66	39.31	46.21
Sweden	31.01	16.88	30.13	40.91
Subject countries	33.74	21.54	69.45	87.12
Other countries	66.26	78.46	30.55	12.88
Total imports	100	100	100	100

### Market share in demand

43. The domestic consumption/demand of the subject goods has been arrived on the basis of domestic sales of the domestic industry and total imports of the subject goods into India. The demand of the subject goods including captive consumption has

increased from 16530 MT during 2001-02 to 19173 MT during the POI whereas the demand of the subject goods excluding captive consumption has also increased from 13739 MT to 16233 MT during the same period. The demand has increased by 20% during the POI whereas dumped imports from subject countries have increased by 53% during the same period.

<b>Demand including captive (MT)</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>POI</b>
Total imports	2051	1534	3800	6451
Sales (domestic industry)	5562	5328	5344	4907
Sales (Other producers)	8917	9870	8496	7815
Total demand	16530	16732	17640	19173
<b>Demand excluding captive (MT)</b>				
Total imports	2051	1534	3799	6451
Sales (domestic industry)	5062	5328	5344	4907
Sales (Other producers)	6626	7248	5531	4875
Total demand	13739	14110	14675	16233

44. The market share of dumped imports in demand including captive from subject countries has increased from 4.32% during 2001-02 to 29.31% during the POI. Whereas the market share of domestic industry has decreased from 31.58% to 25.59% during the same period. Similarly the market share of dumped imports in demand excluding captive from subject countries has increased from 5.04% during 2001-02 to 34.62% during the POI whereas the market share of the domestic industry has decreased from 36.84% to 30.23% during the same period.

<b>Demand including captive (%)</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>POI</b>
Subject countries	4.32	1.98	14.96	29.31
Other countries	8.48	7.19	6.58	4.34
domestic industry	31.58	31.84	30.30	25.59
Other producers	55.63	58.99	48.16	42.88
Total demand	100	100	100	100
<b>Demand excluding captive (%)</b>				
Subject countries	5.04	2.34	17.98	34.62
Other countries	9.89	8.53	7.91	5.12
domestic industry	36.84	37.76	36.42	30.23
Other producers	48.23	51.37	37.69	30.03
Total demand	100	100	100	100

#### Market share of dumped imports in production to the domestic industry

45. It has been observed that the dumped imports from subject countries has increased in relation to the production of the domestic industry through out the investigation

period, except declined during 2002-03 since anti-dumping duty was there for dumping from other sources, which may be seen from the following table;

(MT)	2001-02	2002-03	2003-04	POI
China	56	71	1493	2981
Sweden	636	259	1145	2639
Subject countries	692	330	2638	5620
Production of domestic industry	5081	6125	6002	6316
Dumped Imports in relations to production (%)	14	5	44	89

### **Capacity, production & Capacity utilisation**

46. The production of the domestic industry has increased in the increasing demand of the subject goods under consideration. The production has increased from 100 to 124 during the POI in the increasing demand from 100 to 120 during the same period. The capacity utilisation of the domestic industry has also increased from 85% during 2001-02 to 105% during the POI.

	2001-02	2002-03	2003-04	POI
Capacity (MT)	6000	6000	6000	6000
Indexed	100	100	100	100
Production (MT)	5081	6125	6002	6316
Indexed	100	120	117	124
Capacity utilisation (%)	85	102	100	105

### **Growth**

47. It has been observed that there is a growth in production, capacity utilization demand both including and excluding captive consumption. However, it is noted that the market share of the domestic industry has declined during the POI and the return on capital employed has become negative during the POI, when the market share of the dumped imports has increased both in absolute terms and in total demand.

### **Evaluation of price over the period under consideration.**

48. The CIF export price from China has decreased during the POI. This decline in CIF price during the POI has impacted the volume of domestic industry which constitutes 37% of the total imports and roughly 12% market share in the total demand. The CIF export price from Sweden has decreased by 23% during the POI this decline in the share price during the POI has impacted the volume of domestic industry which constitutes 48% of the total imports and roughly 14.5% market share in the total demand.

### Price undercutting

49. A comparison of the domestic selling price of the subject goods was made with the landed value of imported product to understand the phenomenon of undercutting. The net sales realisation was arrived after making adjustments regarding all rebates and taxes. The Authority has compared the landed value of the subject goods with net sales realization of the domestic industry and it was found that the landed value is undercutting the selling price of the domestic industry significantly. The undercutting for cooperative exporter were also examined and found that the landed value of the dumped imports is undercutting the selling prices of the domestic industry. The undercutting margin was within a range of 9% to 18% during the POI.

### Price Underselling

50. Price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared the same 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 order to eliminate inefficiencies, capacity utilisation has been normated. The analysis shows that the landed value of subject goods from subject countries is much below the non-injurious price determined for the domestic industry during the period of investigation. The underselling margin was within a range of 13% to 26% during the POI.

### Sales

51. The sales of the domestic industry in volume terms has increased in 2002-03 and 2003-04 compared to the base year, however it has declined during the POI in the increasing demand of the subject goods. The export sales of the domestic industry has increased during the injury period and the overall sales of the domestic industry has improved. The demand has increased from 100 during 2001-02 to 120 during the POI whereas the domestic sales volume of the domestic industry has declined from 100 to 97 during the same period.

(MT)	2001-02	2002-03	2003-04	POI
Sales(Domestic)	5062	5328	5344	4907
<i>Indexed</i>	100	105	106	97
Sales(Exports)	558	253	752	1288
<i>Indexed</i>	100	45	135	231
Total Sales	5620	5581	6096	6195
<i>Indexed</i>	100	99	108	110

Demand	16030	16732	17640	19173
<i>Indexed</i>	100	104	110	120

### Factors affecting domestic prices

52. The Authority notes that the costs to make and sell have increased from 100 during 2001-02 to 114 during the POI whereas selling prices of the domestic industry has decreased from 100 to 111 during the same period. The Authority notes there is no exterior factor which could have affected the domestic prices rather it is dumped imports which has suppressed the domestic selling price of the domestic industry.

### Magnitude of margin of dumping

53. The magnitude of dumping margin from each of the subject countries is significant as worked out in the dumping examination. These margins established are clearly above diminimis as defined in para iii(a) of the annexure II to rule 11 of the Anti dumping rules.

2003-04 (POI)	China	Sweden
Dumping Margin	27% to 81%	65%

### Evidence of lost contract

54. The domestic industry has claimed that they have lost contracts due to dumped imports from subject countries. The argument was examined and the authority could not find any evidence with regards to injury on account of loss contracts. Hence, the authority could not conclude any findings with regard with injury to the domestic industry on account of this parameter.

### Inventory

55. The total sales volume of the domestic industry has increased during 2002-03 and 2003-04 but declined during the POI. It has been observed that the inventory of the domestic industry has decreased during the POI in absolute numbers. It is also found that in terms of months' sales quantity, the inventory has decreased during the POI as compared to the base year. In view of this the Authority notes that the domestic industry has not been injured on account of this parameter.

	Unit	2001-02	2002-03	2003-04	POI
Quantity	MT	374	376	601	64
Inventory as month's sales	%	0.80	0.81	1.18	0.12
Indexed		100	101	148	15

## Return on capital employed and ability to raise capital

56. The return on capital employed for domestic industry has improved during 2002-03 and 2003-04 due to anti dumping duty from other source, however it has deteriorated and went in negative during the POI. It is observed that the industry which was having negative return on capital employed during 2001-2002, after consolidating and improving its profit during 2002-03 2003-04 and once again went into negative growth on return during the POI due to dumped imports from subject countries.

Capital Employed for KCIL	Rs. Lacs		30275.93		29123.89		27954.33		29722.96		29772.96
<i>Indexed</i>		#DIV/0!	100		100		96		102		102
No. of equity shares	Nos.	16731500		16731500		16731500		16731500		16731500	
<i>Indexed</i>				100		100		100		100	
No. of equity shares allocated to Penta	Nos.	683735		734012		824242		1045983		1132571	
<i>Indexed</i>				100		112		143		154	
Earning per share	Rs.		-21.45		-25.68		37.86		21.34		-27.59
<i>Indexed</i>		#DIV/0!	100		-100		147		83		-107
Profit on Capital Employed	%		-16		-14.43		23.10		14.84		-15.17

Return on Capital employed	Unit	2001-02	2002-03	2003-2004	POI
Return on Capital Employed	%	-4.15	28.13	17.14	-2.13

## Profit/Loss

57. The profitability of the domestic industry has declined when the production has increased during the POI in the increased demand. The cost of production has increased from 100 during 2001-2002 to 114 during the POI due to the increase in raw material prices whereas the selling price did not increase in the same proportion during the POI. It is observed that the cost of production has increased whereas the selling price of the product has declined in the same period and because of this reason the industry which recovered from a loss during a base year to a reasonable profit upto 2003-04, again went in loss during the POI. The Authority also notes that the profitability of the domestic industry improved during 2002-03 and 2003-04 due to

antidumping duty was in force from March,2002 against imports from Taiwan, Canada and Japan.

<b>Net Selling Price (Technical Grade)</b>	<b>Rs./KG</b>			<b>53.34</b>	<b>62.03</b>	<b>66.08</b>	<b>59.55</b>
<i>Indexed</i>		#DIV/0!	#DIV/0!	100	116	124	112
Net Selling Price (Nitration Grade)	Rs./KG			67.02	77.70	74.77	71.98
<i>Indexed</i>		#DIV/0!	#DIV/0!	100	116	112	107
<b>Export Sales</b>							
Cost to make & sell	Rs./KG		56.99	51.41	63.63	60.04	61.35
<i>Indexed</i>		#DIV/0!	100	100	124	117	119
Net Selling Price	Rs./KG		42.68	42.55	50.24	55.87	54.67
<i>Indexed</i>		#DIV/0!	100	100	118	131	128
Profit/Loss	Rs./KG		12.04	-4.03	3.33	-2.46	-5.46
<i>Indexed</i>		#DIV/0!	100	-100	83	-61	-136

<b>Rs/Kg</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>POI</b>
Selling price	****	****	****	****
<i>Indexed</i>	100	116	123	111
Cost of production	****	****	****	****
<i>Indexed</i>	100	99	108	114
Profit / loss	****	****	****	****
<i>Indexed</i>	100	174	138	-150

### Employment

58. The employment level of the domestic industry has improved during the POI and sales volume per employee has also improved during the POI. The volume of sales per employee has also increased from 2001-02 to 2003-04 but declined during the POI. It is noted that the domestic industry is a multi product company therefore employment levels of the company per sale may not be a conclusive indicator of injury to the domestic industry. It is noted that change in level of employment has not caused any injury to the domestic industry.

<b>Employees</b>	<b>Unit</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>POI</b>
No. of employees	Nos.	73	70	72	79
Volumes and sales per employee	MT	77	80	85	78
<i>Indexed</i>		100	104	110	102

### Productivity

59. Productivity of the domestic industry, as reflected in terms of production per employee, has improved during 2002-03 and again deteriorated during the POI. The

productivity per employee has improved from 100 during 2001-02 to 114 during the POI. It cannot, therefore, be said that the domestic industry has suffered injury due to decline in productivity.

Productivity	Unit	2001-02	2002-03	2003-04	POI
No. of employees	Nos.	73	70	72	79
Production	MT	5081	6125	6002	6316
Productivity per employee	MT	70	88	83	80
Indexed		100	125	119	114

### Wages & Salary

60. The Wages and salary per employee of the domestic industry has increased during the period of investigation. It has increased from 100 during 2000-2001 to 135 during the POI whereas wages per unit of production has also increased from 100 during 2001-02 to 109 during the POI. It is noted that the domestic industry has not been injured on account of this parameter.

Wages & Salary	2001-02	2002-03	2003-04	POI
Rs. lacs/annum	****	****	****	****
Indexed	100	110	128	135
Wages per unit of production (Rs./Kg.)	2.99	2.73	3.26	3.26
Indexed	100	91	109	109

### Cash Flow

61. The domestic industry is a multi product company involved in production of other products also. Cash flow of domestic industry is reflective of operations relating to company as a whole. However, the Authority has examined the performance of the domestic industry in terms of cash profit in relation to product under consideration. On examination of the cash profit of the domestic industry it was observed that the cash profit of the company has improved during the 2002-03 when anti-dumping duty was levied on dumped imports from other sources, however it further deteriorated due to dumped imports from other sources and became negative during the period of investigation. The cash profits of the domestic industry in relation to the product under consideration have been given below.

	2001-02	2002-03	2003-04	POI
Cash profits(Rs./Lacs)	****	****	****	****
Index	-100	433	360	-6

## **F.4 Conclusions on Injury**

62. On examination of injury parameters, the following conclusions are made by the Authority regarding injury suffered by the domestic industry;

- i. Imports from the subject countries have increased significantly in absolute terms.
- ii. Imports are significantly undercutting the selling prices of the domestic industry
- iii. The profitability of the domestic industry has deteriorated during the POI after a better performance during 2002-03 and 2003-04 and resulting into financial losses during POI. The return on capital employed and cash profits have also deteriorated during the POI after showing a improvement during 2002-03 and 2003-04 due to dumped imports from subject countries.
- iv. The production, capacity utilization has improved in the increased demand of subject goods, however share of domestic industry in total demand both including and excluding captive has declined.
- v. The petitioner is suffering from price underselling as landed price of the subject goods are below the non injurious price of the domestic industry.
- vi. The domestic industry has suffered material injury.

## **G. Causal Link And Other Factors**

### **(a) Effect of dumped imports**

63. Between 2001-02 and the POI, dumped imports from subject countries have increased significantly in volume by 53% as a proportion of total imports from the subject countries. The market share of the domestic industry has decreased from 31.58% in 2001-02 to 25.59% during the POI in the increasing demand of domestic market by 20% during the same period. In examining the price effect whether the dumped imports have significantly undercut the price of the like product in India, the Authority found that the landed value of the subject goods from subject countries was lower than the selling price of the domestic industry thereby undercuts the selling price of the domestic industry significantly. Moreover, undercutting to the domestic prices did not show the full impact of the dumped imports since the domestic prices were suppressed due to low landed value. It is found that the price undercutting and the pricing behavior of landed value of imports has forced the domestic industry to reduce the prices even less than the cost of production, resulting in financial losses to the domestic industry. The domestic industry could not increase the selling price as a result of increase in the cost of production due to dumped imports and suffered financial losses during the POI. The undercutting along with price suppression in effect eroded the profitability of the domestic industry. The domestic industry has

suffered material injury due to dumped imports of subject goods from subject countries during the POI.

## **EFFECT OF OTHER FACTORS**

### **(a) Performance of Other Domestic producers:**

64. There are two other domestic producers of the subject goods during the period of investigation apart from the applicant. M/s. Asian Paints the producer of the subject goods is mainly consuming and do not compete in the merchant market whereas the other industry M/s. Perstorp Aegis is themselves the importer of the subject goods from Sweden and does not constitute a part of domestic producer. The performance of other products being produced and sold by the domestic industry is not a factor of injury to the domestic industry. Therefore, the performance of other domestic producers could not have any bearing on the performance of the domestic industry .

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

65. The Authority did not find any trade restrictive practices followed by the Indian producers and other competing industries. As regards the Domestic Industry's inability to fill the gap between the domestic demand and their own production, it may be observed that the imposition of anti-dumping duties does not amount to any kind of restriction on suppliers and producers for supplying the subject goods in the domestic market, which could have contributed to the injury to the domestic industry.

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

66. It is noted that there is no contraction in the overall demand during the period under consideration. On the contrary, the overall demand has increased by 20% during the POI. The demand of the subject goods has increased during the POI in both the situation including captive and excluding captive consumption, therefore, the 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, therefore it has not been impacted any injury to the domestic industry.

### **(d) Volume and Prices of imports not sold at the dumped prices**

67. It is noted that the imports from countries other than subject countries are below the de minimis limits except imports from Taiwan which is attracting anti dumping duty since March, 2002. According to the available information, the total import

volumes of subject goods originating in countries other than subject countries decreased by 53% and their market share in demand has come down from 8.48% during 2001-02 to 4.34% during the POI. Therefore, it is noted that imports from non subject countries in the absolute terms has not contributed any injury to the domestic industry.

(e) Developments in Technology, Export performance and productivity of the Domestic Industry

68. None of the interested parties has raised any issue regarding the technology being a factor of injury to the domestic industry. In view of this the Authority believes that the technology used by the domestic industry is also used by the foreign producers of the subject countries, therefore, could not be a cause of injury to the domestic industry.

69. The Domestic Industry has exported the subject goods during the period of investigation as well as during previous years. The Authority notes that the export performance of the domestic industry has improved due to improvement in production and capacity utilization. The profitability of the domestic and exports sales have been segregated for the purpose of the injury examination. Therefore, injury, if any caused due to exports has not been attributed to the performance of the domestic industry in the domestic market.

70. As regards the productivity of the domestic industry, the authority notes that the productivity has improved during the POI. The productivity per se could not be the cause of injury to the domestic industry.

## **H. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

71. The Authority holds 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.

72. The Authority also recognizes that though 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 these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the

decline of the domestic industry and would help in maintaining availability of wider choice of the subject goods to the consumers.

## I. LANDED VALUE

73. The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

## J. CONCLUSIONS:

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

- i. Subject goods originating in or exported from subject countries have been exported to India below its normal value.
- ii. The domestic industry has suffered material injury.
- iii. The injury has been caused to the domestic industry by dumped imports of subject goods originating in or exported from the subject countries.
- iv. The Authority thus considers necessary to recommend provisional anti-dumping duty on imports of subject goods falling under Chapter 29 of Customs Tariff Act originating in or exported from the subject countries.
- v. The Authority proposes to recommend the amount of anti dumping duty not exceeding the margin of dumping or the margin of injury whichever is less and, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the non injurious selling price of the petitioner companies determined for the period of investigation.
- vi. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of issue of notification by the Central Government on all imports of Pentaerythritol falling under chapter 29 of Custom Tariff Classification Act 1975, originating in or exported from China PR and Sweden. The anti dumping duty shall be the difference between amount mentioned in Column No. 9 of the following table and the landed value of imports US\$/MT to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of subject goods falling under Chapter 29 of Customs Tariff Act, originating in or exported from the countries mentioned below,

Sl. No	Sub-headin g	Description of goods	Specificati on	Countr y of origin	Countr y of Export	Producer	Exporter	Amou nt	Unit of Measureme nt	Currenc y
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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	2905	Pentaerythritol	Any	China	China	M/s. Shanxi, China	M/s. Shanxi, China	1419.45	MT	US\$
2.	2905	Pentaerythritol	Any	China	China	M/s. Shanxi, China	Any exporter	1419.45	MT	MT
3.	2905	Pentaerythritol	Any	China	China	M/s. Hubei, China	M/s. Hubei, China	1419.45	MT	US\$
4.	2905	Pentaerythritol	Any	China	China	M/s. Hubei, China	Any exporter	1419.45	MT	US\$
5.	2905	Pentaerythritol	Any	China	China	Any producer	Any exporter	1419.45	MT	US\$
6.	2905	Pentaerythritol	Any	China	Sweden	Any producer	Any exporter	1419.45	MT	US\$
7.	2905	Pentaerythritol	Any	Sweden	China	Any producer	Any exporter	1419.45	MT	US\$
8.	2905	Pentaerythritol	Any	Sweden	Sweden	Any producer	Any exporter	1419.45	MT	US\$
9.	2905	Pentaerythritol	Any	Sweden	China	Any producer	Any exporter	1419.45	MT	US\$
10.	2905	Pentaerythritol	Any	China	Sweden	Any producer	Any exporter	1419.45	MT	US\$

## E. FURTHER PROCEDURE

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

- i. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- ii. 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 forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- iii. The Authority would conduct verifications to the extent deemed necessary;
- iv. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- v. The Authority would disclose essential facts before announcing final findings.

**(Christy Fernandez)**  
Designated Authority