

**No. 14/3/2009 - DGAD**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**(DEPARTMENT OF COMMERCE)**  
**DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES**

New Delhi, the 7<sup>th</sup> April 2010

**Notification**

**Final Findings**

**Subject: Anti-Dumping investigations concerning imports of ‘Certain Phosphorous based chemical compounds’ originating in or exported from China PR & European Union - Final Findings.**

No. 14/3/2009 -DGAD: - Whereas the Designated authority, having regard to the Customs Tariff Act, 1975, as amended from time to time (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, as amended from time to time, (hereinafter referred to as the AD Rules); recommended imposition of provisional Anti Dumping duty on the imports of ‘Certain Phosphorous based chemical compounds’ (hereinafter also referred to as the subject goods) originating in or exported from China PR & European Union (hereinafter also referred to as the subject countries);

**A. Background of the Case**

2. The Designated Authority (hereinafter referred to as the Authority) received a written application from the Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai on behalf of the domestic industry, alleging dumping of ‘Certain Phosphorous based chemical compounds’ namely PCL<sub>3</sub>, PCL<sub>5</sub>, TMP and TPPI originating in or exported from China PR and POCL<sub>3</sub> originating in or exported from China PR and European Union.

3. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry issued a public notice dated 13<sup>th</sup> February, 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of subject goods originating in or exported from subject countries, in accordance with the sub-rule 6(1) of the AD Rules to determine the existence, degree and

effect of alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

4. The Authority recommended imposition of provisional Anti-Dumping duties concerning PCL<sub>5</sub> originating in or exported from China PR (falling under ITC HS sub-heading 28121022 vide its Preliminary findings Notification No 14/3/2009-DGAD dated 18<sup>th</sup> August 2009 and provisional anti dumping duty was imposed by the Govt. of India vide Notification No. 119/2009-Customs dated 16<sup>th</sup> October 2009.

## **B. PROCEDURE**

5. In these proceedings, the procedure described herein below has been followed:

- i. The Authority notified the Chinese Embassy/ Office of Delegation of European Union in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 of the AD Rules;
- ii. The Authority sent a copy of initiation notification dated 13<sup>th</sup> February, 2009 to the Chinese Embassy/ Office of Delegation of European Union in India, known exporters from subject countries, known importers/ users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- iii. Request for extension of time to file the questionnaires' response was received from some interested parties. The Authority granted the time extension, keeping in view the time constraints.
- iv. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Chinese Embassy/ Office of Delegation of European Union in India in accordance with Rule 6(3) of the AD Rules.
- v. The Chinese Embassy / Office of Delegation of European Union in India were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country/territory to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.

- vi. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the AD Rules.

**Producers/Exporters in China PR**

S.N.	Company's Name
1.	M/s Jiangsu Changyu Chemical Co. Ltd
2.	M/s Jiangsu Changyu Chemical Co. Ltd
3.	M/s Changzhou Cuiqiao Weixing Chemical Co., Ltd
4.	M/s China Haohua Chemical (Group) Corporation
5.	M/s Jiangsu Jinmei International trade Co Ltd.
6.	M/s Xuzhou Jianping Chemical Co.Ltd.
7.	M/s Shanghai Huayi Group Huayuan Chemical Industry Co Ltd
8.	M/s Shandong Dacheng Chemical Group

**Producers/Exporters in European Union**

S.N.	Company's Name
1.	M/s Thermphos International B.V.
2.	M/s Thermphos Deutschland GmbH
3.	M/s CHIMIE PLUS Laboratories
4.	M/s Agro-Chemie Kft
5.	M/s PCC Rokita SA
6.	M/s Chimcomplex S.A. Borzesti
7.	M/s Panreac Quimica S.A.
8.	M/s Pentagon Chemical Specialties Ltd.

M/s Thermphos International B.V. subsequently responded to the questionnaire

- vii. In response to the above notification, following exporters/producers have responded:

S.N.	Company's Name	Country	Status	Product
1.	M/s Xuzhou Jianping	China	Producer	PCL3, PCL5,

	Chemical Co. Ltd. – “Jiangping”	PR		POCL3
2.	M/s Sancaitang Chemical Industry & Technology Co., Ltd. HB – “Sancaitang”	China PR	Producer	TMP
3.	M/s Luohe Huipu Chemistry Industry Factory – “Huipu”	China PR	Producer	TMP
4.	M/s China Haohua Chemical (Group) Corporation – “Haohua”	China PR	Exporter	PCL3, PCL5, POCL3, TMP
5.	M/s Sinochem International Corporation – “Sinochem”	China PR	Exporter	PCL3, PCL5, POCL3, TMP

- viii. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules.

SN	Company’ name	Product
1.	DCM Shriram Industries Ltd., New Delhi	PCL3
2.	Rencal Chemicals (I) Ltd., Vashi	
3.	SeQuent Scientific Limited, New Mangalore	
4.	Roopa Industries Ltd., Hyderabad	
5.	Penam Laboratories Limited, New Delhi	
6.	Dr. Reddy’s Laboratories, Hyderabad	PCL5
7.	Unimark Remedies Ltd., Mumbai	PCL5, TMP, TPPI
8.	Hetero Drugs Ltd., Hyderabad	PCL5
9.	Vardhaman Chem Tech Ltd	PCL5
10.	KLJ Organics Ltd., New Delhi	POCL3
11.	Megafine Pharma (P) Ltd., Mumbai	
12.	Bilag Industries Ltd., Vapi	
13.	Hindustan Insecticides, New Delhi	TMP
14.	Insecticides India Ltd., New Delhi	
15.	Dhanuka Laboratories Ltd., Gurgaon	TPPI

- ix. In response thereof, following have responded:

M/s Roopa Industries Limited, Hyderabad has filed their importer’s questionnaire providing details of the imports of the subject goods by them.

- 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 Authority recommended imposition of provisional Anti-Dumping duties concerning PCL<sub>5</sub> originating in or exported from China PR vide its Preliminary findings Notification No 14/3/2009-DGAD dated 18<sup>th</sup> August 2009 and provisional anti dumping duty was imposed by the Govt. of India vide Notification No. 119/2009-Customs dated 16<sup>th</sup> October 2009.
- xii. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 11th December 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in the final findings.
- xiii. The verification of the domestic industry's and exporter's information & data, to the extent deemed necessary, was conducted.
- xiv. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant matter were disclosed to the known interested parties. The comments received on this disclosure statement to the extent deemed relevant have been duly considered in these final findings.
- xv. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xvi. Investigation was carried out for the period starting from 1<sup>st</sup> October 2007 to 31<sup>st</sup> December 2008. The examination of trends, in the context of injury analysis, covered the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the Period of Investigation (POI).
- xvii. \*\*\* in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

#### **Submissions made by the Applicant on behalf of the domestic industry**

The petitioner withdraws the petition in response of PCL<sub>3</sub> and TPPI. However, the Authority should consider imposition of anti-dumping duties in respect of POCL<sub>3</sub> and TMP.

#### **C. Products under Consideration and Domestic Like Articles**

6. The investigations were conducted in respect of products under consideration viz. 'Certain Phosphorous based chemical compounds', namely

- (1) Phosphorous trichloride ( $\text{PCL}_3$ )
- (2) Phosphorous pentachloride ( $\text{PCL}_5$ )
- (3) Phosphorous oxychloride ( $\text{POCL}_3$ )
- (4) Triphenyl phosphite (TPPI)
- (5) Trimethyl phosphite (TMP)

6.1 However, the Authority notes that the Domestic industry vide their letter dated 11<sup>th</sup> January, 2010 has withdrawn their application in respect of Phosphorous trichloride ( $\text{PCL}_3$ ) and Triphenyl phosphite (TPPI). Therefore, the Authority hereby terminates the investigations in respect of these two products in terms of Rule 14 of the AD Rules. Thus, further investigations are restricted to 'Certain Phosphorous based chemical compounds', namely

- (1) Phosphorous pentachloride ( $\text{PCL}_5$ )
- (2) Phosphorous oxychloride ( $\text{POCL}_3$ ) and
- (3) Trimethyl phosphite (TMP)

6.2 The applicant has stated that these products have the following synonyms as tabulated:

Product name	Synonym name
Phosphorus Oxychloride ( $\text{POCL}_3$ )	Phosphoryl chloride
Phosphorus Pentachloride ( $\text{PCL}_5$ )	Phosphorus(V) chloride
Trimethyl Phosphite (TMP)	Phosphorus acid trimethyl ester, Phosphonic acid trimethyl ester, Methyl Phosphite

6.3  $\text{PCL}_5$  and  $\text{POCL}_3$  are inorganic chemicals, classifiable under Chapter 28, whereas, TMP is an organic chemical, classifiable under Chapter 29. Customs classification of each of the subject goods is as follows:

Subject Product	Customs Classification
PCL <sub>5</sub>	28121022
POCL <sub>3</sub>	28121030
TMP	29209041

6.4 The Customs classification is indicative only and is in no way binding on the scope of the present investigations. The products under consideration are used in production of various pesticides, insecticides and pharmaceuticals.

6.5 With regard to like articles, Rule 2(d) of the AD Rules provides as under: -

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

6.6 With regard to the possible difference between the each of the products sold by the exporters in the Indian market and each of the respective products sold by the domestic industry, the Authority notes that there is no dispute by the exporters that there is any difference in the two products. After considering the information on record, the Authority notes that there is no known difference in each of products under consideration exported from subject country (ies) and the respective products produced by the Indian industry. Each of the products under consideration produced by the domestic industry are comparable to the respective imported subject products in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any issue in this regard.

6.7 Thus, the Authority is of the view that each of the products under consideration produced by the domestic industry is like article to the respective subject product under consideration from subject country (ies) in accordance with the AD Rules.

**D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

## **Submissions made by the domestic industry**

The following submissions have been made in response to the Disclosure statement:

- **Withdrawal of support by Pharma Chemicals** – *It has been contended by the domestic industry that they are surprised on the withdrawal of support by Pharma Chemicals Industries and that the reasons given by Pharma Chemicals are totally unjustified. The dumping triggered earlier has not ceased.*
- **Monopoly position** – *It has been contended by the domestic industry that the argument deserves to be rejected in the light of established legal position. As the Designated Authority has repeatedly held, imposition of anti-dumping duties might affect the price level of product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.*

## **Examination by the Authority**

7. At the time of the initiation of this investigation, Rule 2(b) of the AD Rules defined ‘domestic industry’ as under:-

*“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry”.*

7.1 However, Rule 2(b) of the AD Rules has recently been amended to read as follows:

*“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers only”*

- 7.2 The Application has been filed by Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai on behalf of the domestic industry. M/s. United Phosphorus Limited has provided injury information, whereas M/s. Punjab Chemicals and Crop Protection Ltd, M/s. Sandhya Industrial Chemicals, M/s. Sandhya Dyes & Chemicals, M/s. S.M. Chemicals, M/s. Excel Industries Limited, M/s. Cheminova India Ltd and M/s. Pharma Chemicals Industries had supported the application.
- 7.3 Subsequently, M/s. Pharma Chemicals Industries, Mumbai vide their letter 3<sup>rd</sup> August, 2009 has withdrawn their support for the application, *inter alia*, stating that the support for antidumping tariffs for Phosphorus Pentachloride were proposed by them as Yellow Phosphorus prices had increased to 300% before China Olympics by China PR manufacturers because of export duty of 120% levied by the Chinese Government but now the export duty has been brought back to 20% by China PR effective July 2009 and prices of yellow phosphorus has come to the normal i.e. US\$ 2300 per MT. Thus, the price benefits from imported material are no more because the company's phosphorus prices have also come down drastically and they can compete with the imported phosphorus pentachloride prices.
- 7.4 It has been further stated that there are just 2 manufacturers of Phosphorus Pentachloride in India i.e. Pharma Chemical Industries and United Phosphorus Limited so this can lead to monopolistic environment in terms of pricing and supply. Besides, their capacity and other manufacturer capacity – producers of phosphorus Pentachloride are not enough to fulfill the requirements/demand of the actual consumers of the product which are mostly pharmaceutical companies manufacturing life saving drugs.

### **Examination by the Authority**

7.5 The Authority has taken note of the withdrawal of the support to the application by M/s. Pharma Chemicals Industries, Mumbai. The Authority notes that withdrawal of support by this company does not vitiate the standing of the applicant to maintain the present application for each of the products under consideration. As per the AD Rules, the application continues to hold support of more than 50% of portion of the domestic producers expressing either support for or opposition to the application for each of the products. The domestic producers expressly supporting the application account for more than 25% of the production for each of the products by the domestic industry. The Authority further notes that the production of United Phosphorus constitutes a major proportion in Indian production for each of the products under consideration.

7.6 The Authority notes that (a) production of each of the subject goods by M/s. United Phosphorus Limited constitute a major proportion of the Indian production (b) Production of each of the subject goods by M/s. United Phosphorus Limited along with that of the supporters constitute more than 50% of portion of the domestic producers expressing either support for or opposition to the application for each of the products; (c) and that the domestic producers expressly supporting the application account for more than 25% of the production for each of the products produced by the Indian domestic producers. Thus, the application has been made by or on behalf of the domestic industry in terms of the AD Rules. Further, M/s United Phosphorus Limited constitutes domestic industry for each of the products under consideration within the meaning of the Rule 2(b) read along with Rule 2(d) of the AD Rules.

**E. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

**Normal Value in respect of producers/exporters from China PR**

8. The Authority sent questionnaires to the known exporters from China PR, advising them to provide information in the form and manner prescribed. Responses to the questionnaires have been filed by the following producers/exporters from China PR:

S.N.	Name
1.	M/s Xuzhou Jianping Chemical Co. Ltd.
2.	M/s Luohe Huipu Chemistry Industry factory
3.	M/s China Haohua Chemical (Group) Corporation
4.	M/s Sancaitang Industry and technology Co. Ltd. HB
5.	M/s Sinochem International Corporation

**Submissions made by Chinese exporters/producers**

**M/s Xuzhou Jianping Chemical Co. Ltd.**

8.1 It has been stated that M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) is a producer and domestic seller of the product concerned, but is not an exporter. M/s Jianping sells the product concerned to two Chinese trading companies named China Haohua Chemical (Group) Corporation (Haohua) and Sinochem International Corporation (Sinochem). Then Haohua and Sinochem resell (export) the products to India. M/s Jianping is the producer & supplier and M/s Haohua and M/s Sinochem are the

exporters. They are not related to each other. M/s Jianping along with M/s Haohua and M/s Sinochem have responded to the questionnaire. M/s Jianping only produces PCL<sub>5</sub>, POCL<sub>3</sub> and does not produce TMP. So the response refers to PCL<sub>5</sub> and POCL<sub>3</sub> only.

- 8.1.1 It has been stated that there is no variation between the products under consideration in the country of export and the products under consideration exported to India. All the materials and relevant inputs are purchased locally from several suppliers, including from State owned companies.

### **M/s Luohe Huipu Chemistry Industry factory**

- 8.2 It has been stated that M/s Luohe Huipu Chemistry Industry Factory (Huipu) is a producer and domestic seller of the product concerned, but is not an exporter. M/s Huipu sells the product concerned to one Chinese trading company named M/s Sinochem International Corporation (Sinochem). Then Sinochem resells (exports) the product to India. M/s Huipu is the producer and supplier, whereas M/s Sinochem is the exporter. The two are not related.

- 8.2.1 M/s Huipu only produces TMP, and sells TMP in domestic market, and sells TMP to India through M/s Sinochem. So the response refers to TMP only. It has been stated that there is no variation between the product sold in the country of export and the product under consideration exported to India.

- 8.2.2 The assets used to produce TMP were purchased by the shareholder in 2004 from Yancheng Chemical Factory which was an insolvent State-owned enterprise. There was no assets evaluation report made during the course of purchase of the assets. All the materials and relevant inputs are purchased locally from several suppliers, including from State owned companies.

### **M/s Sinochem International Corporation**

- 8.3 It has been stated that M/s Sinochem International Corporation is the exporter/trader of the products concerned, but is not the producer of the products concerned. M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) and Luohe Huipu Chemistry Industry Factory (Huipu) are the suppliers of M/s Sinochem.

- 8.3.1 All of the PCL<sub>5</sub> and POCL<sub>3</sub> exported to India during the POI were supplied by M/s Jianping. All of the TMP exported to India during the POI was supplied by M/s Huipu. M/s Jianping and M/s Huipu have responded the questionnaire. M/s Jianping, M/s Huipu and M/s Sinochem are not affiliated. However, M/s Sinochem only exported PCL<sub>5</sub>, POCL<sub>3</sub> and TMP to India during the POI. So in this questionnaire response, the products concerned refer to PCL<sub>5</sub>, POCL<sub>3</sub> and TMP.
- 8.3.2 It has been stated that the subject goods sold in domestic market by M/s Jianping and M/s Huipu are identical in physical/ technical / chemical characteristics with those exported to India by M/s Sinochem. M/s Sinochem is the subsidiary of M/s Sinochem Corporation, which is 100% owned by the State-owned Assets Supervision and Administration Commission of the State Council of China PR.

#### **M/s Sancaitang Chemical Industry and Technology Co. Ltd. HB**

- 8.4 It has been stated that M/s Sancaitang is a producer and domestic seller of the product concerned, but is not an exporter of the subject goods. M/s Sancaitang sells the product concerned to one Chinese trading company named China Haohua Chemical (Group) Corporation (“Haohua”). Then Haohua resells (exports) the products to India or other countries. Thus, M/s Sancaitang is the producer and Haohua is the exporter. The two are not related. Both Sancaitang and Haohua have responded to the questionnaire. Sancaitang only sells TMP to India through Haohua, so the questionnaire response refers to TMP only.
- 8.4.1 It has been stated that there is no variation between the product sold in the country of export and the product under consideration exported to India. The assets used to produce TMP were purchased by the shareholders in 2004 from Jingzhou Additive Factory, which was an insolvent State-owned enterprise. There was no assets evaluation report made during the course of purchase of the assets. All the materials and relevant inputs are purchased locally, including from State owned company.

#### **M/s China Haohua Chemical (Group) Corporation**

- 8.5 It has been stated that M/s China Haohua Chemical (Group) Corporation (hereinafter referred to as “Haohua” or “the Company”) is the exporter/trader of the product concerned, but is not the producer of the product concerned. M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) and M/s Sancaitang Chemical Industry and Technology Co., Ltd. HB (Sancaitang) are the suppliers of M/s Haohua. All of the PCL<sub>5</sub> and POCL<sub>3</sub> exported to India during the POI were supplied by M/s Jianping; whereas all of the TMP exported to India during the POI was supplied by M/s Sancaitang. They are not affiliated to each

other.

- 8.5.1 M/s Haohua only exported PCL<sub>5</sub>, POCL<sub>3</sub> and TMP to India during the POI. So the response refers to PCL<sub>5</sub>, POCL<sub>3</sub> and TMP. It has been stated that there is no variation between the products sold in the country of export and the products under consideration exported to India.
- 8.5.2 M/s Haohua is 100% owned by China National Chemical Corporation which is a State-owned company.

### **Submissions of the domestic industry**

9. It has been contended by the domestic industry that China PR should be treated as non market economy country, *inter alia*, stating that:
- **Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity** – It has been contended by the Domestic industry that the European Commission has consistently held that possibilities of State interference cannot be ruled out in cases, where there is significant share of a State owned/controlled entity. It has been contended that it is not only the question of past interferences alone, but also possibilities of potential State interference in the future after the imposition of anti dumping duties that is relevant for granting market economy treatment.
  - **Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values**: It has been contended by the Domestic industry that “substantially reflect market values” has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market. The Domestic Industry contends that the fact that such prices are comparable to the price prevailing in China PR is grossly insufficient.
  - **Major inputs include utilities**: It has been contended by the Domestic industry that production of the products concerned require power and fuel as a major item of utility. Admittedly, while the power supplier is a State owned entity, insufficient information is available with regard to fuel

supplier. It has not been established by the exporters that the price of utilities reflect fair market values.

- **Market economy status cannot be given unless the responding exporters establish that their books are audited in line with international accounting standards:** It has been contended by the Domestic industry that Chinese exporters have repeatedly disputed the treatment of European Commission to reject market economy treatment in such situations where Chinese exporters are unable to establish that their books are consistent with Chinese GAAP. Chinese companies in such cases have been contending that the requirement of insisting on compliance with International Accounting Standards is beyond law. The European Commission has held that the requirement on insisting compliance with International Accounting Standards is to ensure accuracy and adequacy of revenues and expenses, assets and liabilities expressed in the annual report. To quote the European Commission, reliability of the accounts is not established with regard to this aspect unless the books are consistent with International Accounting Standards.
- **Market economy status cannot be granted even if one of the parameters is not satisfied:** It has been contended by the Domestic industry that the European Commission has repeatedly insisted that market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the Rules.
- **Onus/obligations:** It has been contended by the Domestic industry that it is not for the Authority to establish that the responding companies are indeed operating under market economy environment and are entitled for market economy treatment. On the contrary, it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
- **Transformation:** It has been contended by the Domestic industry that in a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.

It has been contended by the Domestic industry that failure to satisfy a number of conditions mentioned above by the responding Chinese exporters, is sufficient to hold that market economy status cannot be granted to responding Chinese companies and thus the Normal value should be determined in accordance with Para-7 of the Rules.

### **Examination of Market Economy claims by the Authority**

9.1 The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

9.2 As per Paragraph 8 of Annexure I to the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s)/producer(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

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

9.3 The Authority notes that the Chinese exporters/producers have submitted their questionnaire responses including the market economy questionnaire responses, consequent upon the initiation notice issued by the Authority and sought to rebut the non-market economy presumption. The questionnaire responses and the market economy responses of the respondents have been examined for determination of Normal value of the respondents of the subject goods from the subject country as follows:

9.4 The Authority notes that during the Exporter's verification of M/s Xuzhou Jianping Chemical Co. Ltd conducted by the Authority at the company's premises, the claim of Market Economy Treatment was not pressed by the company. The company, *inter alia*, expressed its inability to produce relevant documents relating to market economy treatment claim and thus was unable to rebut the NME presumption. The company provided a declaration to this effect on the occasion.

9.5 The Authority conducted producers/exporters' verification to the extent deemed necessary; the verification was conducted in respect of M/s Xuzhou Jianping Chemical Co. Ltd., M/s China Haohua Chemical (Group) Corporation and M/s Sinochem International Corporation. The Authority notes that M/s China Haohua Chemical (Group) Corporation is 100% owned by China National Chemical Corporation which is a State-owned company. As regards M/s Sancaitang Chemical Industry and Technology Co., Ltd., the Authority notes that the assets used to produce TMP were purchased by the company in 2004 from Jingzhou Additive Factory which was an insolvent State-owned enterprise. There was no assets evaluation report made by the company during the course of purchase of the assets. Besides, it is noted that all the materials and relevant inputs were purchased locally, including from State owned companies. The Authority notes that M/s Sinochem International Corporation is the subsidiary of M/s Sinochem Corporation, which 100% is owned by the State-owned Assets Supervision and Administration Commission of the State Council of China PR. As regards M/s Luohe Huipu Chemistry Industry factory, the Authority notes that the assets used by the company to produce TMP were purchased by the company in 2004 from Yancheng Chemical Factory which was an insolvent State-owned enterprise. There was no assets evaluation report made by the company during the course of purchase of the assets. All the materials and relevant inputs were purchased locally from several suppliers, including from State owned companies.

9.6 Thus, in a situation where the company is a State owned/controlled entity, possibilities of State interference cannot be ruled out. Further, the responding Chinese producers have not provided any evidence to establish that prices of basic inputs substantially reflect market values, particularly in the context that some inputs have also been procured from State-owned companies. The producers have named the raw materials suppliers and identified their legal status, some of which are State-owned. The respondents have not provided any evidence to establish that the inputs have been procured at prevailing international prices. Besides, it is also seen that in some cases, assets used to produce the products were acquired from insolvent State-owned enterprises. Thus, the Authority is unable to grant market economy treatment to the responding Chinese producers and exporters.

9.7 It is also noted that no questionnaire responses have been filed by entities other than the Chinese producers /exporters specified above.

9.8 In view of the above, considering issues regarding ownership and control, its impact on the cost and prices and business decisions of the enterprise etc, the Authority is of the view that the producers/exporters from China PR cannot be granted market economy status for the determination of their Normal Value.

9.8 Considering the Chinese producers as non-market economy companies, the Authority has determined Normal values for the products that are like articles to the exported products. No difference has been claimed between the products sold by the exporters in their domestic market and the products exported by them to India.

#### **Determination of Normal value in respect of Co-operative Exporters/Producers**

10.1 As noted above, there are significant issues of market economy determination in respect of the responding exporters from the subject country. Therefore, the Authority has estimated the Normal value in China on the basis of Para-7 to Annexure-I to the Rules.

10.2 Para 7 of Annexure I of the 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. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to*

*the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

10.3 The Authority indicated, in the initiation notification that the applicant has claimed that China PR should be treated as Non Market Economy and therefore Normal value in case of China PR should be determined in accordance with Para 7 and 8 of Annex-I of the Rules. The applicant has submitted that India can be considered as an appropriate market economy third country for determination of normal value in China PR, pleading that information for market economy third country is not available to them. This claim has not been contested by any other interested party.

10.3.1 In view of significant changes in the price of inputs within the period of investigation; the price of yellow phosphorus (a major input to manufacture the subject goods) at the time of exports has been considered on a monthly basis.

10.4 The Authority has noted that no difference has been claimed by any producer/exporter regarding the products under consideration that have been sold to India and like articles that have been sold in their domestic market. Therefore, the Authority has determined the normal value in China PR on available reasonable basis, in terms of second proviso of para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the products under consideration have been determined based on costs of production in India, duly adjusted. Since the exporters have not established any difference in the characteristics of the products under consideration exported to India and goods sold by the domestic industry, the Normal Values have been constructed taking into account international price of major inputs, consumption norms of the responding exporters; conversion costs and SGA expenses of the domestic industry duly adjusted and a reasonable profit margin of 5% for PCL<sub>5</sub>, POCL<sub>3</sub> & TMP.

#### **Normal Value in respect of producers/exporters from European Union**

11.1. M/s ThermPhos International B.V. from Netherlands did not file the questionnaire' response by the stipulated period but responded to the initiation notification, *inter alia*, stating that the fundamentals are missing to accuse Europe of dumping of POCL<sub>3</sub>. They have contended that the volumes from Europe are minuscule and that they are not dumping the product under consideration.

#### **Examination by the Authority**

- 11.2 The Authority notes that as per the data available on record, the volume of imports of the subject goods are more than the prescribed limits laid down under the AD Rules.
- 11.3 In respect of European Union, selling price in EU was looked into for determination of the Normal value. This selling price in EU was claimed by the Applicant on the basis of price at which an importer/consumer in EU has imported the product. Alternatively, the Normal value in EU has also been determined on the basis of constructed value, considering estimates of cost of production, duly adjusted, to include selling, general & administrative expenses and reasonable profit margin. However, the latter determination of Normal Value works out as lower than that determined on the basis of the selling price in EU and the same has been adopted for POCL<sub>3</sub> in case of EU.

**Determination of Normal value in respect of Non-Co-operative Exporters / Producers**

- 11.4 Since, no other response has been received from any other producer/exporter of the subject goods from the subject countries; the Authority has determined their Normal Value as per facts available in terms of Rule 6(8) of the AD Rules.

**EXPORT PRICE**

**Export Price in respect of Co-operative Exporters/Producers**

12. The Authority has considered all exports made by the responding exporters for determination of export price for each of the products under consideration as per their submissions.

**M/s Xuzhou Jianping Chemical Co. Ltd. (Producer) through M/s China Haohua Chemical (Group) Corporation (Haohua) (Exporter)**

12.1 M/s Jianping is a Chinese producer of PCL<sub>5</sub> and POCL<sub>3</sub> but the company does not directly export PCL<sub>5</sub> and POCL<sub>3</sub> to India and sells the product concerned to unrelated Chinese trading companies, one of which is M/s China Haohua Chemical (Group) Corporation (Haohua) and then M/s Haohua exports the products to India.

12.1.1 The Authority examined whether the export prices in respect of respondents could be determined on the basis of questionnaire responses filed by them. Separate weighted average export price to India has been determined for each of the subject goods exported. The adjustments have been made on account of ocean freight, overseas insurance, bank charges, VAT, handling charges and credit costs as claimed by the exporter and packing costs as claimed by the producer and verified by the Authority.

**M/s Xuzhou Jianping Chemical Co. Ltd. (Producer) through M/s Sinochem International Corporation (Sinochem) (Exporter).**

12.2 M/s Jianping is a Chinese producer of PCL<sub>5</sub> and POCL<sub>3</sub> but the company does not directly export PCL<sub>5</sub> and POCL<sub>3</sub> to India and sells the products concerned to unrelated Chinese trading companies, one of which is M/s Sinochem International Corporation (Sinochem). M/s Sinochem then exports these products to India.

12.2.1 The Authority examined whether the export prices in respect of respondents could be determined on the basis of questionnaire responses filed by them. Separate weighted average export price to India has been determined for each of the subject goods exported. The adjustments have been made on account of overseas freight, overseas insurance, bank charges, VAT, handling charges and credit costs as claimed by the exporter and packing costs as claimed by the producer and verified by the Authority.

**M/s Luohe Huipu Chemistry Industry factory (Producer) through M/s Sinochem International Corporation (Exporter)**

12.3 M/s Luohe Huipu Chemistry Industry factory (Huipu) is a Chinese producer of TMP but the company does not directly export TMP to India and has sold the product concerned to an unrelated Chinese trading company namely M/s Sinochem International Corporation (Sinochem). M/s Sinochem has then exported the product to India.

12.3.1 The Authority examined whether the export prices in respect of respondents could be determined on the basis of questionnaire responses filed by them. Separate weighted average export price to India has been determined for subject goods exported. The adjustments have been made on account of overseas freight, overseas insurance, bank charges, VAT, handling charges, and credit costs as claimed by the exporter and verified by the Authority and packing as claimed by the producer.

**M/s Sancaitang Industry and technology Co. Ltd. (Producer) through M/s China Haohua Chemical (Group) Corporation, (Exporter)**

12.4 M/s Sancaitang Industry and technology Co. Ltd is a Chinese producer of TMP but the company does not directly export TMP to India and has sold the product concerned to an unrelated Chinese trading company namely M/s China Haohua Chemical (Group) Corporation, (Exporter). M/s Haohua then has exported the product to India.

12.4.1 The Authority examined whether the export prices in respect of respondents could be determined on the basis of questionnaire responses filed by them. Separate weighted average export price to India has been determined for subject goods exported. The adjustments have been made on account of overseas freight, overseas insurance, bank charges, VAT, handling charges and credit costs as claimed by the exporter and verified by the Authority and packing costs and credit costs as claimed by the producer.

**Determination of Export Price in respect of Non-Co-operative Exporters/ Producers**

12.5 Since, no other response has been received from any other producer/exporter of the subject goods from the subject countries; the Authority has determined their Export Price as per facts available in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information provided by the applicant and the information provided by the co-operative respondents.

**DUMPING MARGIN:**

**13.** Considering the Normal values and Export prices as determined above separately for each of the products subject to investigation, the dumping margins have been determined as follows:

Producer/Exporter From China PR	Country	Product	Dumping Margin US\$ per Kg	Dumping Margin as %
M/s Xuzhou Jianping Chemical Co. Ltd. (Producer) through M/s China Haohua Chemical (Group) Corporation (“Haohua”) (Exporter)	China PR			
		PCL <sub>5</sub>	***	58.94%
		POCL <sub>3</sub>	***	46.34%
M/s Xuzhou Jianping Chemical Co. Ltd. (Producer) through M/s Sinochem International Corporation (“Sinochem”) (Exporter).	China PR			
		PCL <sub>5</sub>	***	63.56%
		POCL <sub>3</sub>	***	54.74%
M/s Luohe Huipu Chemistry Industry factory (Producer) through M/s Sinochem International Corporation (Exporter)	China PR	TMP	***	23.17%
M/s Sancaitang Industry and technology Co.Ltd. (Producer) through M/s China Haohua Chemical (Group) Corporation, (Exporter)	China PR	TMP	***	23.98%
All Other producers / exporters except specified in the above table	China PR	PCL <sub>5</sub>	***	68.96%
		POCL <sub>3</sub>	***	135.23%
		TMP	***	52.69%
All Producers/Exporters	European Union	POCL <sub>3</sub>	***	Negative

Since the dumping margin in respect of imports from European Union is de-minimis, the Authority has terminated the investigation in respect of European Union.

## F. Injury

### Submissions made by interested parties

14. M/s Roopa Industries Limited, Hyderabad has, *inter alia*, stated that:

- That they are manufacturers of Triphenylphosphine with Phosphorus Trichloride (PCL<sub>3</sub>) as key raw material and are facing heavy competition from China and European Union from where, Triphenylphosphine is being imported by Indian industry. For want of orders, though there is regular domestic demand, they had been forced to stop their manufacturing activity and suffer burden of overheads etc. for a few months intermittently in a year. This is because the import price is much less very often, than their price, though reasonably fixed.
- That the domestic consumption of their product is more than their production capacity and they should be expanding to meet the demand, if they could realize reasonable sale price but, the scenario is the other way round. They are not able to utilize even their current production capacity monthly regularly.
- Since April 2008, month after month, the two indigenous sources from whom they had been sourcing their requirements had increased the price of Phosphorus Tri Chloride, attributing to steep escalation of import price of Phosphorus. The price of Phosphorus Tri Chloride, went up to Rs. 217/- per kg. adversely impacting the viability of their activity. Moreover, the suppliers were not committing their requirements / schedules.
- Further, the suppliers themselves were also captive consumers of Phosphorus Tri Chloride for the other compounds and obviously, they would have considered value addition in the interest of their business activity. They have an edge over them, being captive consumers of their own Phosphorus Tri Chloride.
- They were forced to reduce their production for few months substantially and even stop the activity for few months, during the period of the steep increase in the price of Phosphorus Tri Chloride, because it was not viable at that input cost and because they could not offer their finished product to their clients, in comparison with the import price. The viability to manufacture Tri Phenyl Phosphine was affected.
- That the consumption of Phosphorus is below 0.27 Kg for 1.0 kg of manufacture of PCL<sub>3</sub> and the rest of it is Chlorine, which is locally available and is of very low price varying between free of cost to a maximum of Rs.9000/- PMT. Even if the import price of Phosphorus had doubled, the price the manufacturers had offered, at the time they were forced to import Phosphorus Trichloride, was around three times the immediately preceding offer/transaction. For illustration, let us take the current import price of Phosphorous and the domestic offers of Chlorine and PCL<sub>3</sub>

and verify the justification to increase the price of PCL3 to three times, assuming that the import price of Phosphorous goes up also to three times.

**Submissions made by China Haohua Chemical (Group) Corporation, China PR, Sinochem International Corporation, China PR and Xuzhou Jianping Chemical Co., Ltd., China PR**

14.1 Above-mentioned Chinese respondents have, *inter alia*, made the following submissions:

- The Authority should disclose calculations of dumping margin.
- Yellow phosphorus consumed by the domestic industry is imported from China PR, where it is already subjected to heavy export duty in China.
- Chinese exporters of yellow Phosphorus do not have to bear Chinese customs duty, overseas freight and overseas insurance. However, Indian domestic industry has to bear these costs (& other costs also) when yellow phosphorus is imported from China. Such difference should be excluded so as to ensure a fair comparison of the export price and normal value.
- The injury margin should also be calculated on monthly basis and then averaged for POI.
- Authority policy of allowing 22% return on capital employed is incorrect.
- During 2005-06 and 2006-07 there were nil imports of PCL5 and during 2007-08 there were very small imports of PCL5. Therefore injury to domestic industry during these years cannot be attributed to increased imports.
- Imports data and trends of profitability of the Domestic Industry clearly show that with increase in imports the losses of the Domestic Industry have drastically come down.
- Since Authority has observed that there is no price depression, it is clear that domestic industry is suffering from various other factors and attributing the same to imports is incorrect.

- Authority's findings of injury are based on increase in volume of imports and decline in market share. This alone cannot be the deciding factor for concluding injury.
- The drastic increase of the customs duty for exports of yellow phosphorus in China by 100% since May 20, 2008 led to the high cost of yellow phosphorus imported by Indian producers from China, which made the Indian users of PCL5 turn to imports of PCL5 from China. The raw material disadvantage of Indian producers should not be attributed to the alleged dumping of PCL5 from China.
- Chinese Government does not encourage exports of yellow phosphorus. The customs duty for exports of yellow phosphorus has been around 80% to 120%, whereas there is no customs duty for exports of the product from China. So the best choice for India is to import the product rather than producing in India.

#### **Submissions made by the Applicant on behalf of the domestic industry**

14.2 The domestic industry has, *inter alia*, made the following submissions:

- Injury to the domestic industry in case of  $\text{POCL}_3$  is clearly established, if production of domestic producers as a whole is considered.
- Selling price of the products changed significantly within the investigation period. It first increased and thereafter declined significantly. The profitability of the domestic industry therefore showed improvement in the investigation period. However, the domestic industry has once again suffered significant deterioration in profitability towards the end of the investigation period.

- Since price of the product increased significantly with reference to different time period, the Authority may consider determining dumping and injury by considering only beginning and end of investigation period.
- Domestic industry has suffered injury in PCL<sub>5</sub>, POCL<sub>3</sub> and TMP, as is established by the followings

**PCL<sub>5</sub>** - The petitioner submits that performance of the domestic industry has deteriorated during the period of investigation in terms of domestic sales, production and capacity utilization. The imports of PCL<sub>5</sub> started from China PR in 2007-08 with a market share of 7.40% that increased significantly to 59.05% in the period of investigation. While the market share of China PR increased and that of domestic producers as a whole declined significantly from 98.54% in 2005-06 to 92.60% in 2007-08 and 36.47% in the period of investigation. Hence, the volume effect has been adverse in the case of PCL<sub>5</sub>. As regards price effect, it is submitted that the imports of the PCL<sub>5</sub> are significantly undercutting the prices of the domestic industry. While the profitability in respect of PCL<sub>5</sub> improved over the injury period but the selling price of domestic industry remained significantly low.

**POCL<sub>3</sub>** - The imports of POCL<sub>3</sub> from the subject countries commenced in the period of investigation and acquired a significant market share during the period of investigation. The market share of domestic producers as a whole declined significantly during POI. The production and capacity utilization during the period of investigation declined as against the previous year but were higher when compared with 2005-06 and 2006-07. As regards price effect, it is submitted that though the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales; the landed price of imports is significantly below the selling prices of the domestic industry.

**TMP** - In case of TMP, the imports of the Chinese product showed a significant increase in market share during the POI whereas, the market share of the domestic producers as a whole declined. Production has increased as compared to immediate preceding year; however, it declined when compared to 2005-06 & 2006-07. The domestic sales have gone up during the injury period. The domestic industry was making profits throughout the injury period but the same has significantly declined during the POI as compared to the base year. The performance of the domestic industry has also deteriorated during the period of investigation in terms of return on investment and cash profit. It is further submitted that the selling price has not increased in line with increase in the cost of sales, thereby causing significant price suppression. Besides, the imports of TMP are significantly undercutting the prices of the domestic industry.

### 14.3 Examination by the Authority

- The Authority has disclosed calculations of dumping margin to the interested parties in accordance with Rule 16 of the AD Rules in the disclosure statement.
- The fact that Govt. of China PR has imposed export duty on the raw material is not relevant for the present purpose. Under the Rules, Chinese exporters were required to establish that they are operating under market conditions. Since none of the Chinese exporters have been able to establish market economy status, the normal value is determined on the basis of rules laid down under Para 7 of Annexure-I of the AD Rules. None of these provisions under Para 7 provides for adopting Chinese costs or prices, either in respect of raw materials or the product themselves. In view of the facts available on record, the Authority has considered international prices of Yellow Phosphorus for the purpose of determining normal value, which is fully consistent with the Rules on the subject.
- The Authority has determined injury margin after determining month-wise non-injurious price and landed price of import. Weighted average injury margin has been determined after considering the associated weights of exports made in each month of the POI.
- As regards return on capital employed for the purpose of determination of non-injurious price, the Authority has applied its consisting practice. While advancing this argument, the Chinese respondents have not substantiated the same establishing that the application of such consistent practice was inappropriate in the present case.
- The Authority has taken note of the arguments with regard to fact that no imports of PCL<sub>5</sub> in 2005-06 and 2006-07 were made from China PR. The Authority has taken due cognizance of this fact while assessing injury to the domestic industry.
- As regards improvement in profitability of the domestic industry during the period of investigation, the Authority notes that the statement of month-wise sales realization provided

by the domestic industry, which shows significant increase in the selling prices and thereafter significant decline towards the end of the period of investigation.

- As regards the argument that import volumes & market share alone cannot lead to conclusion on material injury, the Authority notes that the conclusion on injury is not based solely on volume of imports and decline in market share of domestic industry but on the basis of assessment of all injury parameters as mandated under the rules and regulations on the subject.

#### 14.4 **Submissions made by interested parties in response the Disclosure statement & Examination thereof by the Authority**

##### Submissions made by the Applicant on behalf of the domestic industry in response to the Disclosure statement

The following submissions have also been made in response to the Disclosure statement:

**Return on capital employed** – As regards the argument concerning return on capital employed, it has been contended that:

- (a) It is, in fact, the petitioner/domestic industry's grievance that the Authority has granted significantly low return on investment.
- (b) Considering that the investments made in these plants are fairly old, the Authority should in fact, consider gross fixed assets for determination of capital employed and profit. It is important to note in this regard that the current practice of determining capital employed by considering net fixed assets has a major fallacy in as much as capital employed continues to decline over the years with the reduction in net fixed assets. In fact, once the assets have got fully depreciated the current practice implies that the domestic industry should not get any profit on account of investments made in fixed assets. This is highly inappropriate situation.
- (c) The products under consideration are highly specialized products, the production of which is in limited countries & companies globally. Therefore, in any case the domestic industry ought to be adequately protected in order to ensure that such critical products production remains within the Country. More so, when the Chinese producers and the Govt. of China are absolutely clear i.e. to wipe out all other producers of various phosphorus based compounds.

**The following submissions, in brief, have been made on behalf of China Haohua Chemical (Group) Corporation, China PR; Sinochem International Corporation, China PR; Sancaitang**

**Chemical Industry & Technology Co. Ltd. HB, China PR; Luohe Huipu Chemistry Industry factory and Xuzhou Jianping Chemical Co., Ltd., China PR:**

1. It has been contended that the Volume effect alone cannot be the sole criteria for imposition of Anti Dumping Duty in case of PCL<sub>5</sub>.

**Examination by the Authority:** Annexure II to the AD Rules provides for consideration of both (a) the volume of the 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. Further, the AD Rules provide that while examining the volume of dumped imports, the Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.

In the instant case, the investigation has clearly established that the volume of dumped imports has increased in absolute terms and in relation to production & consumption in India in case of PCL<sub>5</sub>, as would be apparent from the injury analysis. Besides, the Authority notes that the imports are significantly undercutting the prices of the domestic industry and the domestic industry has not been able to realize the non-injurious price.

The Authority further notes that the AD Rules require examination and assessment of performance of the domestic industry over the injury period, by considering a number of parameters listed under the AD Rules. While the AD Rules provide for examination and assessment of all the listed parameters, it does not provide that the performance of the domestic industry must deteriorate in terms of each and every parameter. Deterioration in even one or more of economic parameters indicating injury may be sufficient to assess that domestic industry has suffered injury, provided such deterioration in performance is significant enough to outweigh the positive developments in other parameters. It is thus evident that the performance of the domestic industry has suffered within the meaning of provisions enshrined in Annexure-II to the AD Rules.

2. It has been contended that when the range of price undercutting is more than price underselling, it is evident that the Domestic Industry is able to realize the price which is higher than the Non-Injurious Price. In an event if the Domestic Industry is able to realize more than the Non Injurious Price, how an injury can be claimed and attributed to the Domestic Industry.

**Examination by the Authority:** The Authority notes that the above contention is based on an incorrect appreciation of facts. As already recorded in the preliminary findings, the Authority had considered the price of yellow phosphorus on a monthly basis, in view of significant changes in the price of yellow phosphorus (a major raw-material to manufacture the subject goods) within

the period of investigation. Accordingly, the price undercutting and price underselling has been analysed considering the relevant parameters on monthly basis.

The Authority notes that the domestic industry has produced and sold the subject goods throughout the POI, wherein the sales realization by the domestic industry is significantly lower than the non-injurious price during the POI in respect of both PCL<sub>5</sub> and TMP.

3. It has been contended that 22% Return on Capital Employed is contrary to the proposal made by the Government of India before WTO. The Designated Authority should reassess the NIP by adopting the above-mentioned parameters propagated by the GOI for applying lesser duty rule. Application of 22% return on capital employed is highly arbitrary, unreasonable and not based on facts and past experiences of the applicant Domestic Industry. 22% ROCE has given undue advantage to the applicant Domestic Industry and needs to be revised.

**Examination by the Authority:** As per the consistent practice of the Authority, a reasonable return on capital employed in determination of NIP has been allowed to provide for recovery of interest, corporate tax and reasonable profit.

### **Cumulative assessment in case of POCL<sub>3</sub>**

15. Annexure II (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that: -

- (a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively account for more than seven percent of the 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 articles.

15.1 The applicant has claimed that:

- i POCL<sub>3</sub> does not have different grades. The product manufactured by the producers from the subject countries *inter-se* and in comparison to the product manufactured by domestic industry has comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are inter-se like articles.

- ii There are limited parties who use this material. Imported and domestic material is being used interchangeably by same segment of the customers.
- iii The exporters from the subject countries and the domestic industry have sold the same product in the same periods to the same segment of customers.
- iv Market share of imports from each of the subject countries is more than *de-minimis*.
- v Domestic producer and exporters from the subject countries sell the like product to the same category of customers and both are competing in the same market. Both are being used by the consumers interchangeably.

15.2 However, the Authority notes that the margin of dumping in respect of imports of POCL<sub>3</sub> from European Union is de-minimis and the investigations are terminated against European Union. Consequently, cumulative assessment of injury to the domestic industry is not called for. Therefore, the Authority has analyzed injury to the domestic industry in respect of China PR only.

15.3 Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such products. While examining 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 terms 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.

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

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

15.5 The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties as under.

**Import Volume**

15.6 The applicant has provided the following imports data based on IBIS data.

S.N.	Product	POI (Oct07 to Dec08)
		Volume (MT)
1.	<b>PCL<sub>5</sub></b>	1722.00
2.	<b>POCL<sub>3</sub> (China PR)</b>	900.00
3.	<b>TMP</b>	368.00

15.7.1 However, as per the responses received from the responding exporters, the actual exports of the subject goods by them to India are as follows.

S.N.	Product	Volume of subject goods imported
		MT
1.	<b>PCL<sub>5</sub></b>	1899.00
2.	<b>POCL<sub>3</sub></b>	960.00
3.	<b>TMP</b>	352.00

15.7.2 Therefore, for analysis of volume of the imports of the subject goods, the data available on record has been collated and considered, which is as follows:

Imports in MT	2005-06	2006-07	2007-08	POI (Oct'07 – Dec'08)	POI (Annualized)
PCL <sub>5</sub>	32	0.42	123	1899	1519
POCL <sub>3</sub> (China PR)	0	0	0	960	768
TMP	32	32	0	368	294

15.7.3 Thus, the information available on record regarding the import of the subject goods shows that:

15.7.4 In PCL<sub>5</sub>, POCL<sub>3</sub>, and TMP, there have been significant imports during the period of investigation. It is seen that imports of PCL<sub>5</sub> and TMP increased in absolute terms over the injury period. In case of POCL<sub>3</sub>, the imports commenced during the period of investigation itself; but the volume was quite significant.

15.7.5 It is observed that there were no imports of the TMP from any other country except China PR. Whereas POCL<sub>3</sub> is also being imported from EU (Germany and Netherlands) above the *de-minimis* limits. It has been contended by the Applicant that imports of POCL<sub>3</sub> and PCL<sub>5</sub> from Hong Kong are transshipments from China PR as there is no manufacturing facility in Hong Kong for the subject goods. Imports of PCL<sub>5</sub> from other sources are below the *de-minimis* level.

### **Demand and Market Share**

#### **PCL<sub>5</sub>**

Demand	2005-06	2006-07	2007-08	Oct'07 – Dec'08	POI (Annualized)
Total Chinese Imports in MT	0	0	123	1899	1,519

Other Imports	32	0.42	0	144	115
Sales – domestic industry in MT (including captive)	1,166	928	834	691	553
Sales – Other Producers in MT	982	875	706	482	386
Total Demand in MT	2,180	1,803.42	1,663	3,216	2,573
<b>Market Share in Demand in %</b>					
	53.48				
Domestic industry		51.48	50.15	21.48	21.48
Other Indian Producers	45.06	48.50	42.45	14.99	14.99
China PR	-	-	7.40	59.05	59.05
Other Countries	1.48	0.02	-	4.48	4.48

### POCL<sub>3</sub>

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (Annualized)</b>
Total Chinese Imports in MT	0	0	0	960	768
Total EU Imports in MT	0	0	0	395	316
Other Imports	0	0	0	136	108
Sales – domestic industry in MT (including captive)	2,176	2,817	3,197	3,622	2,898
Sales – Other Producers in MT	2,160	1,324	1,106	486	389
Total Demand in MT	4,336	4,141	4,303	5,599	4,479

<b>Market Share in Demand in %</b>					
Domestic industry	50.19	68.02	74.29	64.70	64.70
Other Indian Producers	49.81	31.98	25.71	8.68	8.68
China PR	-	-	-	17.15	17.15
EU	-	-	-	7.05	7.05
Other Countries	-	-	-	2.42	2.42

### **TMP**

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (Annualized)</b>
Total Chinese Imports in MT	32	32	0	368	294
Other Imports	0	0	0	0	0
Sales – domestic industry in MT (including captive)	2,842	4,153	4,467	5,284	4,227
Sales – Other Producers in MT	739	910	993	0	0
Total Demand in MT	3,613	5,095	5,460	5,652	4,521
<b>Market Share in Demand in %</b>					
Domestic industry	78.66	81.52	81.81	93.49	93.49
Other Indian Producers	20.45	17.85	18.19	-	-
China PR	0.89	0.63	-	6.51	6.51
Other Countries	-	-	-		

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- 15.8 It is seen that in case of PCL<sub>5</sub>, the Chinese product acquired a significant share as compared to the preceding year. In case of POCL<sub>3</sub>, the imports from the subject countries acquired a significant market share during the period of investigation. In case of TMP, the imports of the Chinese product showed a significant increase in market share.

### **Demand**

- 15.9 Demand or apparent consumption of the products under consideration in the Country has been assessed as the sum of domestic sales (including captive consumption) of the domestic producers and imports from all sources as available on record. It is noted that demand of PCL<sub>5</sub> and POCL<sub>3</sub> has shown increase in the POI as compared to the previous years. As regards TMP, while the demand has increased in the POI as compared to the base year but it has decreased as compared to the years other than the base year.

### **Price effect of imports**

- 15.10 With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like articles 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.

- 15.10.1 The Authority notes that there was significant increase in the input cost to manufacture the subject goods over the injury period, leading to increase in the prices within the Period of investigation.

<b>Domestic Sales</b>	<b>Unit</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>Oct'07 – Dec'08 (annualized)</b>
<b>PCL<sub>5</sub></b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	90	117	162	162

<b>Domestic Selling Price</b>		***	***	***	***	***
	Rs./Kg					
<b>Trend</b>	Index	100	97	111	177	177
<b>POCL<sub>3</sub></b>						
<b>Cost of Sales</b>		***	***	***	***	***
	Rs./Kg					
<b>Trend</b>	Index	100	107	98	182	182
<b>Domestic Selling Price</b>		***	***	***	***	***
	Rs./Kg					
<b>Trend</b>	Index	100	89	90	221	221
<b>TMP</b>						
<b>Cost of Sales</b>		***	***	***	***	***
	Rs./Kg					
<b>Trend</b>	Index	100	79	107	157	157
<b>Domestic Selling Price</b>		***	***	***	***	***
	Rs./Kg					
<b>Trend</b>	Index	100	96	99	130	130

15.10.2 It is seen from the above table that on year to year basis, the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales in the case of PCL<sub>5</sub> and POCL<sub>3</sub>. However, in the case of TMP, the cost of sales has increased by 57% in POI when compared to base year and domestic selling price has gone up by 30% during the same period.

15.10.3 The Authority has further compared landed price of imports with the selling price of the domestic industry on month-to-month basis because of wide fluctuations in the input prices during the period of investigation. The weighted average price undercutting has been accordingly determined after considering associated import volumes. It is seen that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting, except in case of POCL<sub>3</sub> from EU as may be seen from the following table:

Country	Product	Based on data	Price undercutting (Rs/Kg)	Price undercutting as %
China PR	PCL <sub>5</sub>	Respondent	***	40-50%
China PR	POCL <sub>3</sub>	Respondent	***	60-70 %
China PR	TMP	IBIS	***	30-40 %
European Union	POCL <sub>3</sub>	IBIS	***	Negative

### Sales volumes

15.11 The information provided by the domestic industry with regard to its domestic sales is shown as under:

<b>Domestic (Merchant) Sales</b>	<b>Unit</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>Oct'07 – Dec'08 (annualized)</b>
<b>PCL<sub>5</sub></b>	MT	1,148	928	788	664	531
<b>Trend</b>	Index	100	81	69	46	46
<b>POCL<sub>3</sub></b>	MT	1,577	2,413	2,631	3,622	2898
<b>Trend</b>	Index	100	153	167	184	184
<b>TMP</b>	MT	1,070	906	752	601	481
<b>Trend</b>	Index	100	85	70	45	45
<b>Captive</b>						
<b>PCL<sub>5</sub></b>	MT	18	-	46	27	21
<b>POCL<sub>3</sub></b>	MT	599	404	566	0	0
<b>TMP</b>	MT	1,772	3,247	3,715	4,683	3,746
<b>Total (Merchant + Captive)</b>						
<b>PCL<sub>5</sub></b>	MT	1,166	928	834	691	553
<b>POCL<sub>3</sub></b>	MT	2,176	2,817	3,197	3,622	2,898
<b>TMP</b>	MT	2,842	4,153	4,467	5,284	4,227

15.11.1 It is seen from the above that in case of POCL<sub>3</sub>, the domestic sales have increased over the injury period. However, the domestic sales of PCL<sub>5</sub> have significantly declined over the injury period. As regards TMP, the sales volume increased till 2007-08 as compared to the base year, but declined during the POI.

### Capacity

15.12 The capacities of the domestic industry for the products under consideration are as under:

Capacity	2005-06	2006-07	2007-08	POI (Oct07 to Dec08)	Oct07 to Dec08 (annualized)
PCL <sub>5</sub>	1800	1800	1800	2250	1800
POCL <sub>3</sub>	1440	1440	1440	1800	1440
TMP	12000	12000	12000	15000	12000

15.12.1 The Authority notes that the domestic industry has separate/dedicated capacity for each of the products under consideration and that there have been no capacity additions over the injury period.

### **Production and Capacity Utilization**

15.13.1 The performance of the domestic industry with regard to its production & capacity utilization is shown as under:

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>PCL<sub>5</sub></b>					
Capacity	1800	1800	1800	2250	1800
Production	1,327	1,155	838	827	662
Capacity utilization	73.72	64.17	46.56	36.76	36.76
<b>POCL<sub>3</sub></b>					
Capacity	1440	1440	1440	1800	1440
Production-Plant1	1,109	1,026	1,370	1433	1,146
Production-Plant2 (By product)	1,231	1,896	1,834	2571	2057
Total-Production	2,340	2,922	3,204	4004	3203
Capacity utilization	77.01	71.25	95.14	79.62	79.62
<b>TMP</b>					
Capacity	12000	12000	12000	15000	12000
Production	10,880	10,320	9,217	12,061	9,649
Capacity utilization	90.67	86.00	76.81	80.41	80.41

15.13.2 It is seen that:

- (a) Production and capacity utilization of PCL<sub>5</sub> have significantly declined over the injury period.
- (b) Production of POCL<sub>3</sub> has increased till 2007-08, but declined marginally thereafter during the POI.
- (c) Production and capacity utilization of TMP declined up to 2007-08 and then increased in the period of investigation. However, the production and capacity utilization has significantly declined as compared to the base year.

**Market Share**

15.14 The market share of domestic industry declined significantly in respect of PCL<sub>5</sub>. In case of TMP, the market share of domestic industry has increased over the injury period. As regards POCL<sub>3</sub>, the market share of domestic industry increased till 2007-08 but has declined during the period of investigation thereafter.

**Factor affecting prices**

15.15 It is observed that the landed price of imports of each of the subject goods are significantly below the selling price of these products by the domestic industry and non-injurious price as determined by the Authority except in the case of imports of POCL<sub>3</sub> from European Union as may be seen from the following table:

**Price undercutting**

Country	Product	Based on data	Price undercutting (Rs/Kg)	Price undercutting as %
China PR	PCL <sub>5</sub>	Respondent	***	40-50%
China PR	POCL <sub>3</sub>	Respondent	***	60-70 %
China PR	TMP	IBIS	***	30-40 %
European Union	POCL <sub>3</sub>	IBIS	***	Negative

**Price underselling**

Country	Product	Based on data	Price underselling (Rs/Kg)	Price underselling as %
China PR	PCL <sub>5</sub>	Respondent	***	15-25 %
China PR	POCL <sub>3</sub>	Respondent	***	10-20 %
China PR	TMP	IBIS	***	10-20 %
European Union	POCL <sub>3</sub>	IBIS	***	Negative

**Profit/Loss, Cash Flow and Return on Investment.**

15.16.1 The performance of the domestic industry with regard to profits, return on capital employed and cash flows is shown as under:

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>PCL<sub>5</sub></b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-35	-110	-32	-32
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-18	-91	8	8
Return on investment (%)	***	***	***	***	***
Indexed Trend	-100	2	-65	31	31

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>POCL<sub>3</sub></b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***

Indexed Trend	-100	-192	-169	-124	-124
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-192	-169	-123	-123
Return on investment (%)	***	***	***	***	***
Indexed Trend	-100	-170	-57	-15	-15

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>TMP</b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	224	110	57	57
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	221	113	56	56
Return on investment (%)	***	***	***	***	***
Indexed Trend	100	182	54	25	25

15.16.2 It is seen from the above tables that –

- (a) In case of PCL<sub>5</sub>, the domestic industry has been suffering financial losses throughout the injury period. The return on capital employed and cash profits were also negative/low till 2007-08 and became positive during the period of investigation.
- (b) In case of POCL<sub>3</sub>, the domestic industry has been suffering financial losses, which increased in 2006-07 but reduced thereafter. Consequently, return on capital employed and cash profits were

also negative earlier but improved after 2006-07. However, profits on domestic sales, cash profits and Return on capital employed remained negative in respect of POCL<sub>3</sub> over the injury period;

- (c) In case of TMP, the domestic industry was profitable over the injury period. However, the profits that increased in 2006-07 deteriorated thereafter. During the POI, the profits were below the base year level. Return on capital employed and cash profits have followed the same trend as that of profits.

### **Inventories**

Average Inventories	Unit	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
PCL <sub>5</sub>	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
		100	906	1022	224	224
	Indexed Trend					
POCL <sub>3</sub>	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
		100	81	76	56	56
	Indexed Trend					
TMP	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
		100	26	61	92	92
	Indexed Trend					

- 15.17 The information about the inventory levels of different compounds is contained in the above table. It is seen that the inventory levels for POCL<sub>3</sub> and TMP have declined as compared to the base year, whereas it has increased in case of PCL<sub>5</sub>.

### **Employment, wages and productivity**

- 15.18 Since the domestic industry is a multi-product and multi-location company; employment & wages and consequently productivity apparently does not reflect the adverse impact of dumping.

### **Ability to raise capital investment**

- 15.19 Since the domestic industry is a multi-product and multi-location company; ability to raise capital investment apparently does not reflect the adverse impact of dumping.

### **Growth**

- 15.20 It is observed that in case of PCL<sub>5</sub>, growth in production, domestic sales volumes, market share, and capacity utilization is negative, whereas the same is positive in respect of profits, return on investment and cash profits. In case of TMP, growth in production, domestic sales volumes, capacity utilization, profits, return on investment and cash profits is negative. In case of POCL<sub>3</sub>, growth is positive in various injury parameters.

### **Magnitude of Dumping Margin:**

- 15.21 It is observed that dumping margins in respect of the subject goods are significantly positive except in the case of POCL<sub>3</sub> imported from European Union.

### **Conclusion on material injury**

#### **PCL<sub>5</sub>**

16. The Authority notes that performance of the domestic industry has deteriorated during the period of investigation in terms of domestic sales, production and capacity utilization. The imports of PCL<sub>5</sub> started from China PR in 2007-08 with a market share of 7.40% that increased significantly to 59.05 % in the period of investigation. While the market share of China PR increased but that of the domestic industry decreased significantly from 53.48 % in 2005-06 to 50.15% in 2007-08 and 21.48 % in the period of investigation. Hence, the volume effect has been adverse in the case of PCL<sub>5</sub>.

16.1 As regards price effect, the Authority notes that the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales, thus no price depression is seen. But the Authority notes that the imports of the PCL<sub>5</sub> are significantly undercutting the prices of the domestic industry. While the profitability in respect of PCL<sub>5</sub> improved over the injury period but the selling price of domestic industry remained lower than the non-injurious price. Thus, not only imports of PCL<sub>5</sub> are undercutting the prices of the domestic industry but causing underselling as well.

16.2 It is seen that the domestic industry had been suffering losses during the injury period. However, in view of the low volume of imports in the injury period before the POI, it cannot be stated that these losses before the POI were only on account of imports. But it is also seen that there are significant imports during the POI at dumped prices leading to significant loss of the market share vis a vis the imports.

### **POCL<sub>3</sub>**

17. The imports of POCL<sub>3</sub> from the subject countries commenced in the period of investigation and acquired a significant market share during the period of investigation. The market share of domestic industry declined during POI as compared to immediate preceding year; however, it remained higher than that of the base year. The production of POCL<sub>3</sub> increased till 2007-08, but declined marginally thereafter during the POI. Hence no adverse volume effect is seen over the injury period.

17.1 As regards price effect, the Authority notes that the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales, thus no price depression is seen. The landed price of imports is also significantly below the selling prices of the domestic industry. However, the volume of imports commenced in the period of investigation only and it is seen that the domestic industry was suffering financial losses since 2005-06, which increased in 2006-07, even when there were no imports before the POI. Apparently, the adverse performance of the domestic industry existed even without imports. It has not been demonstrated that this adverse performance could be attributed to imports of the subject goods. Besides, a negative dumping margin is seen as regards imports of the subject goods from European Union.

### **TMP**

18. In case of TMP, the imports from China PR showed a significant increase in its market share during the POI. However, at the same time, the market share of the domestic industry has also gone up. The production has increased as compared to immediate preceding year; however, it declined when compared to 2005-06 & 2006-07. The domestic sales have gone up during the injury period except a marginal decline during the POI. Thus, adverse volume effect is not apparent in respect of TMP.

18.1 The domestic industry was making profits during the injury period but the same has significantly declined during the POI as compared to the base year. The performance of the domestic industry has also deteriorated during the period of investigation in terms of return on investment and cash profit. It is also seen that the selling price have not increased in line with increase in the cost of sales, thereby causing significant price suppression. Besides, the imports of TMP are significantly undercutting the prices of the domestic industry. Thus, the price effect of the dumped imports of TMP from China PR on the domestic industry has been adverse.

18.2 In the preliminary findings dated 18<sup>th</sup> August 2009 in the instant matter, the Authority had, *inter alia*, observed a negative injury margin as regards imports of TMP from China PR. However, the said injury margin was based on calculations considering the applicable Customs duty @ 10%. However, it was subsequently learnt that this Customs duty was reduced to 7.5% thereafter vide Customs Notification No.20 dated 1<sup>st</sup> March 2007. Hence, the Authority has revised the injury margin calculations.

## **CONCLUSIONS**

19. As per the material available on record, the Authority holds that various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury in case of imports of PCL<sub>5</sub> and TMP.

### **G. CAUSAL LINK**

It has been contended by some interested parties that there is absence of causal link between dumped imports and injury to the domestic industry.

The Authority has examined the casual link issues as follows:

20. The Authority notes that it has not been demonstrated that the adverse performance of the domestic industry in case of POCL<sub>3</sub> could be attributed to imports of the subject goods. It was further examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry in case of PCL<sub>5</sub> and TMP, where it has been observed that material injury has been caused to the domestic industry. It was found as follows:

- a) Imports from Third Countries: - In case of imports of PCL<sub>5</sub> reported from Hong Kong, the applicant has claimed that these are transshipments of Chinese material only. And that there is no production facility for these products in Hong Kong. This claim of the applicant has not been disputed by any interested party. While the subject goods are being imported from other countries, but these imports are below the de-minimis level. As regards TMP, it is observed that there were no imports of TMP from any other country except from China PR.
- b) Contraction in Demand: - It is noted that the demand of PCL<sub>5</sub> has increased as compared to the base year. As regards TMP, while the demand has increased as compared to the base year but it has decreased as compared to the years other than the base year. It is further noted that the market share of the domestic industry improved despite the reduced demand.
- c) Pattern of consumption: - No significant change in the pattern of consumption of each of the products has been observed.
- d) Conditions of competition: - The applicant has claimed that conditions of competition or trade restrictive practices are not responsible for the claimed injury to the domestic industry for each of the products. None of the interested parties has disputed this claim.

- e) Developments in technology: - The applicant has claimed that there is no significant change in technology, which could have caused injury to the domestic industry for each of the products. None of the interested parties has disputed this claim.
- f) Export performance of the domestic industry: - The domestic industry has significant export activities. However, the entire information has been provided in respect of domestic operations for each of the products.
- g) Productivity: - The domestic industry has claimed that changes in productivity of each of the products are a result of dumping of the products under consideration. None of the interested parties has disputed this claim.

20.1 As per the material available on record, the Authority is of the view that various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury on account of dumped imports of the subject goods from China PR in case of PCL<sub>5</sub> and TMP.

#### **H. Form of Duty**

21. It has been contended by some interested parties that it is not appropriate to impose the fixed duty on PCL<sub>5</sub> and TMP considering that the price of yellow phosphorus which is the raw material of PCL<sub>5</sub> and TMP fluctuated significantly during the POI. It has been further contended that in a case where the cost and price varies significantly, it would be appropriate to impose Anti Dumping Duty in ad-valorem form and not in fixed form as Ad-valorem form of Anti Dumping Duty will take care of variations due to cost, prices and period and will be high for a high priced product and low for a low priced product.

#### **Examination by the Authority**

21.1 The Authority has duly considered the submissions of the interested parties suggesting imposition of the Anti Dumping Duty in ad-valorem form as against the fixed duty on PCL<sub>5</sub> and TMP. The Authority notes that the prices of the products under consideration fluctuated during the period of investigation with the changes in input prices; however, the subject goods, by and large, are homogenous products with little or no variation in grades/types. Even the Chinese respondents have stated in their submissions that there is no variation between the products sold in the country of export and the products under consideration exported to India. Besides, imposition of anti-dumping duty on ad-valorem basis would result in charging higher quantum of anti-dumping duty with the possible increase in the subject goods prices and vice versa, which may not be desirable.

## **I. Indian industry's interest & other issues**

22. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.
- 22.1 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.

## **J. Recommendations**

23. 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 aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the Act and the AD Rules and having established positive dumping margins as well as material injury and threat thereof to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive duty is required to offset dumping and injury in the instant matter. Therefore, the Authority considers it necessary and recommends imposition of definitive anti-dumping duty on imports of PCL<sub>5</sub> and TMP from China PR in the form and manner described hereunder.
- 23.1 Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, the definitive antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed on all imports of PCL<sub>5</sub> and TMP originating in or exported from China PR.

Sl. No	Heading / Subheading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	28121022	Phosphorus Pentachloride (PCL <sub>5</sub> )	China PR	China PR	M/s Xuzhou Jianping Chemical Co. Ltd.	M/s China Haohua Chemical (Group) Corporation	0.467	Per KG	US\$
2.	-do-	-do-	China PR	China PR	M/s Xuzhou Jianping Chemical Co. Ltd.	M/s Sinochem International Corporation	0.574	Per KG	US\$
3.	-do-	-do-	China PR	China PR	Any combination of producer & exporter except at Sr. No. 1& 2		0.777	Per KG	US\$
4.	-do-	-do-	China PR	Any	Any	Any	0.777	Per KG	US\$
5.	-do-	-do-	Any	China PR	Any	Any	0.777	Per KG	US\$
6.	29209041	Trimethyl Phosphite (TMP)	China PR	China PR	M/s Luohe Huipu Chemical Industry Factory	M/s Sinochem International Corporation	0.008	Per KG	US\$
7.	-do-	-do-	China PR	China PR	M/s Sancaitang Chemical & Technology Co. Ltd. HB	M/s China Haohua Chemical (Group) Corporation	0.119	Per KG	US\$
8.	-do-	-do-	China PR	China PR	Any combination of producer & exporter except at Sr. No. 6 & 7		0.575	Per KG	US\$
9.	-do-	-do-	China PR	Any	Any	Any	0.575	Per KG	US\$
10.	-do-	-do-	Any	China PR	Any	Any	0.575	Per KG	US\$

23.2 Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of Customs except duties under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

- 23.3 Subject to the above, the Authority confirms the preliminary findings dated 18<sup>th</sup> August 2009. However duty recommended in para 8 above would be applicable from the date of imposition of provisional anti dumping duty as per Section 9A (2) of the Custom Tariff Act 1975.
- 23.4 An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

**P. K. Chaudhery**

**The Designated Authority**