

F.NO. 14/18/2008-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties

NOTIFICATION

Udyog Bhavan, New Delhi
Dated the 6th May, 2010

FINAL FINDINGS

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

No. 14/18/2008-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 Rules) hereof:

1. WHEREAS M/s Cheminova India Limited, Mumbai (hereinafter referred to as the applicant) has filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act, and the Rules, alleging dumping of Diethyl Thio Phosphoryl Chloride (DETPC) (hereinafter referred to as the subject goods) originating in or exported from the China PR (hereinafter referred to as subject country) and requested for initiation of an investigation for levy of anti-dumping duties on the subject goods.

2. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicant issued a public notice dated 17th November, 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, in accordance with the sub-Rule 5(5) of the Rules, to determine the existence, degree and effect of the 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.

3. AND WHEREAS, the Designated Authority having regard to the Act and the Rules investigated and recommended imposition of provisional Anti Dumping Duties on imports of the subject goods falling under subheading 29.30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in or exported from the subject country, vide Preliminary Findings of even number dated 25th May, 2009 and Provisional Anti Dumping Duties were imposed on the subject goods vide Customs Notification No. 73/2009 dated 22.6.2009.

A. Background Of The Case:

4. The background of the case is as follows:

i) The Designated Authority had received a written application from M/s Cheminova India Limited, Mumbai and supported by M/s Excel Industries Ltd., Mumbai for and on behalf of the domestic industry, alleging dumping of Diethyl Thio Phosphoryl Chloride (DETPC) originating in or exported from China PR.

ii) The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 17th November, 2008 initiating Anti-Dumping investigations concerning imports of Diethyl Thio Phosphoryl Chloride originating in or exported from China PR, in accordance with the sub-Rule 6(1) of the Anti-dumping 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.

iii) The initiation notification issued by the Designated Authority was challenged by M/s. Meghmani Organics Ltd., Ahmedabad before the Hon'ble Gujarat High Court vide Special Civil Application No. 2201/2009. The matter was heard by the Hon'ble Division Bench of the Gujarat High Court on 8.4.2009 and disposed of with the directions that the preliminary objection raised by the petitioners as to jurisdiction of the Designated Authority shall be dealt with and decided by the Designated Authority within a period of four weeks i.e. on or before 07.05.2009, after hearing the petitioners in this regard in accordance with law.

iv) As per the directions of the Hon'ble Division Bench of the Gujarat High Court dated 8.4.2009, a hearing was granted by the Designated Authority on 24.4.2009. M/s. Meghmani Organics Ltd., along with other interested parties were invited for the hearing.

v) The representatives of M/s. Meghmani Organics Ltd., domestic industry and exporters attended the hearing and were given opportunity to present their arguments before the Designated Authority. After hearing the interested parties and their representatives, the Designated Authority instructed to submit written submissions by 28.4.2009 and rejoinders by 1.5.2009.

vi) After detailed examination and careful consideration of the submissions made on behalf of M/s. Meghmani Organics Ltd., Ahmedabad and other interested parties, and relying upon relevant Rules and judgements, the Designated Authority passed a speaking order vide order dated 6th May, 2009.

vii) The Designated Authority, having regard to the Act and the AD Rules; recommended imposition of provisional Anti Dumping duty on imports of the subject goods originating in or exported from the subject country. The preliminary findings were published vide Notification No 14/18/2008-DGAD dated 25th May 2009 and provisional duty was imposed on the subject goods vide Customs notification No. 73/2009-Customs dated 22nd June 2009.

viii) M/s. Meghmani Organics Ltd., Ahmedabad again filed a Petition being Special Civil Application No.6881 of 2009 before Hon'ble High Court of Gujarat, challenging the initiation notification dated 17.11.2008, Speaking Order dated 6.5.2009, passed by the Designated Authority in compliance with the earlier orders dated 8.4.2009 of the Hon'ble Division Bench of the Gujarat High Court, Preliminary Finding dated 25.5.2009 and Customs Notification No. 73/2009 dated 22.6.2009 on the grounds that initiation notification was without jurisdiction and the entire investigation suffers from excessive confidentiality.

ix) The Hon'ble Division Bench of the High Court of Gujarat vide order dated 09.10.2009 disapproved the preliminary finding of the Designated Authority on the issue of confidentiality. The Hon'ble Division Bench also directed the Designated Authority to provide all necessary details of findings which are kept blank while recording his preliminary findings and to permit the petitioners to raise their objections in this regard and while recording the final finding, consider such objections and submissions. The Designated Authority was also directed to consider as to whether Excel Industries Limited (erstwhile Respondent No.4) and their allied concerns have made any import of subject goods from China PR. Further, till such exercise is undertaken by the Designated Authority and final finding is arrived at, the petitioner was exempted from levy of provisional anti-dumping duty on an import of subject goods from China PR. The exemption was made conditional upon submission of an undertaking, before the Designated Authority within one week from the date of order, stating that in the event they are held to be liable to pay anti-dumping duty on the import of subject goods that may be made, while recording final finding on this issue, they will pay such anti-dumping duty subject to their right to appeal and obtaining stay against such duty from any competent Court or Tribunal.

x) The Designated Authority vide Special Leave petition No. 887 of 2010 (and separately, Cheminova Industries Ltd vide Special Leave petition No. 34374 of 2009 and Excel Industries Ltd vide Special Leave petition no. 35243 of 2009), challenged the impugned orders dated 9.10.2009 of Hon'ble Division Bench of the Gujarat High Court before the Hon'ble Supreme Court of India. After hearing the parties, the Hon'ble Supreme Court was pleased to order as follows:

“Leave granted.

Hearing expedited.

Pending disposal of the appeals, there shall be stay of the impugned order.

Place the appeals on 26th August, 2010.”

xi) M/s Siris Crop Sciences Limited vide Writ Petition No. 190 of 2010, M/s Sabero Organics Gujarat Ltd vide Writ Petition No. 173 of 2010, M/s Rotam India Ltd vide Writ Petition No. 191 of 2010 and M/s P. I. Industries Limited vide Writ Petition No. 183 of 2010, M/s GSP Crop Sciences Private Limited vide Writ Petition No 736 of 2010, M/s Bhagirdha Chemicals Industries Limited vide Writ Petition No 737 of 2010 and M/s Gharda Chemicals Limited vide Writ Petition No 738 of 2010, have filed Writ Petitions challenging the initiation notification dated 17.11.2008, Order dated 6.5.2009, passed by the Designated Authority in compliance with the orders of Hon'ble Division Bench of the Gujarat high Court dated 8.4.2009, Preliminary Finding dated 25.5.2009 and Customs Notification No. 73/2009 dated 22.6.2009, before Hon'ble High Court of Delhi on the grounds that initiation notification was without jurisdiction and the entire investigation suffers from excessive confidentiality.

xii) After hearing the parties, the Hon'ble High Court of Delhi was pleased to issue the notices and fix the matters for hearing on 24.05.2009. While the writ petitioners had also filed application for interim stay order as well, no interim stay order has been passed by the Hon'ble High Court of Delhi.

B. Procedure

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

- i. The Authority notified the Embassy of China PR in India about the receipt of the anti-dumping application made by the domestic industry before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.
- ii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 17th November, 2008 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Diethyl Thio Phosphoryl Chloride originating in or exported from China PR, in accordance with the sub-Rule 6(1) of the Anti Dumping Rules to determine the existence, degree and effect of allege dumping and to recommend the amount of anti dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
- iii. The Designated Authority sent a copy of Initiation Notification dated 17th November 2008 to the Embassy of China PR in India, known exporters from China PR, importers, consumers and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the Initiation Notification.
- iv. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Embassy of China PR in India in accordance with Rule 6(3) supra.
- v. The Embassy of China PR in India was informed about the initiation of the investigation in accordance with Rule 6(2) of the Anti Dumping Rules with a

request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.

- vi. The Authority sent questionnaires to elicit relevant information to the known exporters in the subject country in accordance with Rules 6(4) of the Anti Dumping Rules.
- vii. In response to the above notification, the following producers/exporters/associations have responded:

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

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

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

- 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. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and the period of investigation. Information has been received from the DGCI&S, which has been used to the extent deemed necessary.
- xii. 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.

- xiii. Investigation was carried out for the period starting from 1st April 2007 to 31st March, 2008 (POI). The examination of trends, in the context of injury analysis, covered the periods April 2004-March 2005, April 2005-March 2006, April 2006-March 2007 and the POI.
- xiv. In accordance with Rule 6(6) of the Anti Dumping Rules, the Authority also provided opportunity to all the known interested parties to present their views orally in a public hearing held on 7th October, 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were advised to file written submission and rejoinder submission by 15.10.2009 and 21.10.2009 respectively.
- xv. The submissions made by the interested parties prior to notification of the preliminary findings, which have been brought out in the notified preliminary finding, have not been repeated herein for the sake of brevity. However, the submissions made in response to the preliminary findings and arguments made in the written submissions/ rejoinders received from the known interested parties after the public hearing and issues raised by interested parties before various courts have been considered, wherever found relevant, in this finding.
- xvi. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating Chinese producers/exporters.
- xvii. In accordance with Rule 16 of the Anti Dumping Rules, the essential facts considered by the Authority were disclosed to the known interested parties vide Disclosure Statement dated 13th April, 2010. The comments received on the disclosure statement have been duly examined and considered wherever relevant in this finding.
- xviii. The views expressed by various interested parties earlier had been considered in the preliminary findings and also in the disclosure statement. The views which have not been considered earlier in the preliminary findings and in the disclosure statement and those raised in response to the disclosure statement are also examined and considered in the relevant paragraphs of this finding to the extent relevant as per Rules and have a bearing upon the case.
- xix. Information provided by the known interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the facts available.
- xxi. *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Anti-Dumping Rules.
- xxii. The exchange rate adopted for the POI is Rs. 40.75=1 US \$

C. Product Under Consideration And Domestic Like Article

C.1 Views Of The Domestic Industry

6. Following submissions have been made by the domestic industry with regard to products under consideration and like article:

i) The product under consideration in the present investigation is Diethyl Thio Phosphoryl Chloride (DETPC), a colourless or light yellow/amber organic liquid having disagreeable odor. It has density of 1.196 g/cm³. Diethyl Thio Phosphoryl Chloride is insoluble in water, but soluble in organic solvents. It is a highly toxic chemic which may irritate eyes and lungs. It is also known as O,O-Diethyl Phosphorochloridothioate or DETPC. Diethyl Thio Phosphoryl Chloride is having chemical formula C₄H₁₀ClO₂PS. It is an intermediate used in the production of pesticides.

ii) Diethyl Thio Phosphoryl Chloride is being imported under different synonyms and different Customs Classifications such as;

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

iii) Since these are common synonyms of the product under consideration, all these synonyms may be included within the scope of the product under consideration.

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

S.No.	ITC-CODE	Imports in Mt			
		2004-05	2005-06	2006-07	2007-08
1	28121090	-	-	-	1,160
2	28129000	180	-	-	20
3	28273990	320	210	160	-
4	29051100	-	120	160	380
5	29091900	40	-	-	-
6	29095090	20	-	-	-
7	29190090	460	40	240	-
8	29199010	-	-	80	560
9	29199090	-	-	-	600
10	29201000	7,523	6,989	3,220	-
11	29201010	-	-	400	-
12	29201020	-	-	920	-
13	29201100	-	-	80	100
14	29201910	-	-	-	2,078
15	29201920	-	-	160	220
16	29201990	-	-	40	2,175
17	29209010	-	140	40	-
18	29209020	-	-	440	596
19	29209030	-	-	240	760
20	29209090	480	-	-	-
21	29209099	-	-	1,990	3,553
22	29241900	-	-	138	254
23	29310090	270	100	10	140
24	29420011	700	360	-	20
25	29420090	300	95	440	-
26	38089010	178	-	-	-

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

C.2 Views Of The Importers/Users, Exporters And Other Interested Parties:

7. None of the opposing interested parties has raised any objection in this regard. Subject goods produced by the Domestic Industry has been treated by them as like article to the subject goods imported from subject country.

C.3 Examination By The Authority

8. With regard to like article, Rule 2(d) of the Anti-Dumping 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;

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

D. Litigation Before Various Courts

D.1 Special Civil Application No. 2201/2009 before Hon'ble Bench of the High Court of Gujarat, Ahmedabad

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

"Mr. Harin P. Raval, Learned Assistant Solicitor General of India, upon instructions of the Designated Authority, states that the preliminary objection raised by the petitioners as to jurisdiction of the Designated Authority shall be dealt with and decided by the Designated Authority within a period of four weeks i.e on or before 07.05.2009, after hearing the petitioner in this regard in accordance with law. In light of the statement made by the learned counsel for respondent No.2 authority, learned advocate for petitioners seeks permission to withdraw the petition, under instructions. Permission granted. The petition stands disposed of accordingly."

11. As per the directions of the Hon'ble Division Bench of the Gujarat High Court dated 8.4.2009, a hearing was granted by the Designated Authority on 24.4.2009. M/s. Meghmani Organics Ltd., along with other interested parties were invited for the hearing.

12. The representatives of M/s. Meghmani Organics Ltd., domestic industry and exporters attended the hearing and given opportunity to present their arguments before the Designated Authority. After hearing the interested parties and their representatives, the Designated Authority instructed to submit written submissions by 28.4.2009 and rejoinders by 1.5.2009.

13. The submissions made by various interested parties in pursuance of the hearing by the Designated Authority are summarized below:

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

- (i) Rule 5(1) contemplates filing of application “by or on behalf of the Domestic Industry”. The term “Domestic Industry” referred to in Rule 5(1) has been defined in Rule 2(b). The application has been filed by M/s. Cheminova who does not qualify to be referred to as “Domestic Industry” as defined under Rule 2(b). The applicant accounts for a mere 28% of the domestic production, which cannot be considered as a major or significant proportion of the domestic production.
- (ii) Prior to the initiation, the Designated Authority was informed by the applicant that there were three producers of the subject goods in India. At the time of initiation, the Designated Authority did not resort to polling, as has been done in other cases, to ascertain total production in India, despite the fact that the applicant constituted only 28% of the domestic production. Without information about the third producer, the Designated Authority would not have examined whether the application was filed by domestic industry as he could not have reached any conclusion on “major proportion” of the total domestic production.
- (iii) Rule 2(b) excludes producers who have relationship with exporters of product under consideration (alleged dumped article). Fact of relationship of M/s. Cheminova with their related entity in Denmark has been suppressed in the non-confidential version of the application. In the absence of such information, the Designated Authority can not take a view whether to include or exclude such producers in terms of Rule 2(b).
- (iv) The initiation notification does not indicate in any manner, whatsoever that the Designated Authority had exercised its discretion and the reasons in support thereof to allow the applicant as an eligible domestic industry despite its relationship with the Denmark entity exporting the subject goods to India.

- (v) The Authority ignored the production of M/s Sabero Organics Ltd. despite having the information that there were three producers of the subject goods in India.
- (vi) As per settled law, captive consumption cannot be included while reaching pre-initiation determination as mandated under law. M/s. Cheminova failed to disclose the details of any captive consumption of goods in the non-confidential version of application and further, there is no determination in respect thereto reflected in the initiation notification.
- (vii) Subsequent filing of information by M/s. Excel, who was not the applicant at the time of initiation, cannot be permitted at this stage as it seriously jeopardizes the interest of the interested parties.
- (viii) The antidumping investigations in the present case may be quashed by the Designated Authority as the same are without jurisdiction and against statutory law.
- (ix) There is no case for retrospective imposition of duty since none of the requirements of Section 9A(3) of Customs Tariff Act, 1975 have been met.
- (x) The copy of index to the public file, copies of the submissions etc should be provided.

b) **Domestic Industry**

- i. There is no merit in the objections raised by the interested parties which are based on incorrect and misplaced legal understanding. The application satisfied the requirement of the standing under Rule 5(3) read with Rule 2(b). Hence, the applicant constituted domestic industry within the meaning of Anti-Dumping Rules.
- ii. Standing and scope of domestic industry are two different requirements. In the name of jurisdiction, M/s. Meghmani has raised the issue of “scope of domestic industry” and has not referred to how the standing is not established in this case. Hence the argument of M/s. Meghmani with regard to standing requirement does not hold good.
- iii. As per Anti-Dumping Rules, M/s. Cheminova qualifies as Domestic Industry whose production constitutes a major proportion. The interested parties repeatedly stating “major proportion” whereas the requirement is “a major proportion”. Hence, omission of “a” is not accidental but it is deliberate on the part of these interested parties.
- iv. There is no prescribed legal requirement to resort to polling at pre-initiation of investigation.

- v. Exports made by M/s. Cheminova's affiliated Company in Denmark are from a country other than the subject country (China PR) and does not come within the definition under Rule 2(b).
- vi. Regarding exclusion of M/s. Sabero Organics, the same was excluded on the grounds that (a) the Company curtailed or stopped production substantially and resorted to imports and (b) the Company substantially captively consumed the Product Under Consideration.
- vii. Regarding non-consideration of captive consumption, it would be seen that if such captive consumption is excluded, the production of M/s. Cheminova still remains much higher than the minimum threshold limit. Moreover, M/s. Sabero Organics does not sell DETPC in the market and consumes entire production captively. Hence, on this ground, the production of M/s. Sabero could not have been included.
- viii. As per Anti-Dumping Rules, the application would satisfy standing requirement if the applicant makes more than 25% of Indian production. In the instant case, the production of the applicant is more than 28% of Indian production and the application has been supported by M/s. Excel Industries whose production accounts for about 71%.
- ix. There are massive imports in a relatively short period which is established by the fact that at least 1,500 MT DETPC was imported during March, 2009 and approximately 2,000 MT imports are to be cleared in the current month which are being imported at a price below the normal value.
- x. Due to substantial imports, both the domestic industries have been forced to reduce their production and suffering injury due to massive dumping at a price much below their cost of production.
- xi. DETPC is used for manufacturing agro-chemicals (insecticides) which are seasonal products largely consumed in Kharif Season. Delaying the imposition of duty by another two months, the importer would get advantage for one full year. The whole purpose for approaching the High Court at premature stage is to delay the imposition of anti-dumping duty and thereby gaining the period of seasonal consumption of the product concerned.
- xii. M/s. Excel Industries has not only supported the application for imposition of anti-dumping duty but also provided costing and injury information to the Authority.
- xiii. As there is no merit in the submissions made by other interested parties with regard to standing of the application or scope of the domestic

industry, there is full justification in imposition of anti-dumping duties on retrospective basis.

c) **Examination By The Authority**

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

i) Regarding qualification of M/s Cheminova India Ltd. as Domestic Industry, it is observed that in terms of Rule 2(b) read with Rule 5(3) of the Anti-Dumping Rules, the Authority needs to be satisfied whether the application has been filed by or on behalf of the domestic industry.

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

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

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

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

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

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

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding –
(i) dumping,
(ii) injury, where applicable; and
(iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.”

ii) It is observed that in the instant case the applicant accounts for 27.33% of the domestic production, while excluding production of M/s Sabero Organics, if any, being an importer of the subject goods. Moreover, the application was supported by M/s Excel Industries Limited, a major producer, whose collective production constitutes more than 50% of the domestic production, from the initial stage.

iii) Regarding requirement of polling before initiation it is stated that there is no prescribed legal requirement to resort to polling before initiation of investigation. At the stage of initiation of investigation, the Authority is not required to hold a detailed enquiry but to satisfy prima-facie the requirements prescribed under the Rule 5(3). However, to confirm about the domestic producers and their production the concerned administrative department was requested to provide relevant details.

iv) The contention that the Authority ignored the production of M/s. Sabero Organics, despite the information to the Authority that there were three producers of the subject goods in India does not hold good. The concerned Administrative Department was requested to provide details about the domestic producers and their production including M/s. Sabero Organics. Department of Chemicals & Petrochemicals provided information about M/s. Cheminova and M/s. Excel Industries only. This information further reinforced the information submitted by the applicant in their application in this regard. After initiation of the investigation, M/s. Sabero Organics was also requested to submit their response, but there is no response till date. It is further observed from the submissions made by the Domestic Industry that M/s. Sabero Organics curtailed or stopped production substantially and resorted to imports and also consumed the product captively. Further, as per the data provided by the DGCI&S, M/s. Sabero Organics has imported a substantial quantity (***) Mt constituting about 5% of the total imports of the subject goods from the subject country) of the subject goods from the subject country during the POI.

v) The contention that M/s. Cheminova suppressed their relationship with their parent Company in Denmark in the non-confidential version of the application does not hold good. In fact there was no suppression of facts regarding relationship with the parent Company in Denmark. The Authority had specifically called for information in this regard before initiation and the facts were submitted by the applicant.

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

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

vii) It has been alleged that M/s Cheminova has got captive consumption of the subject goods and as per settled law captive consumption cannot be included while reaching pre-initiation determination. Failure of M/s Cheminova to disclose the details of their captive consumption of the subject goods in the non-confidential version of the application makes them ineligible to become domestic industry. It is observed that M/s Cheminova has declared its captive consumption in its petition under Proforma IV A at Sl. No. 1 under the heading sales, however it is very nominal (***) Mt constituting about 1% of the total production). Further, if the quantity of captive consumption is excluded, the balance quantity still remains 26.53% which is higher than the prescribed threshold limit of 25% under the Anti-Dumping Rules.

viii) The argument that subsequent submission of information by M/s Excel Industries Ltd., who was not the applicant at the time of initiation of investigation and therefore cannot be permitted, does not hold good. It is observed that M/s Excel Industries Ltd., a major producer having more than 72.67% of the domestic production, supported the petition from initial stage along with relevant information/data to the Authority regarding their production and domestic sales during the entire injury period and POI.

- ix) As prescribed under the Rules 6(7), a public file containing non - confidential copies of submissions furnished by various interested parties have been made available by the Authority. The same have been visited by the interested parties and collected copies of the non-confidential submissions, whichever required. The opposing interested parties are fully aware of this practice of maintenance of Public file and could have inspected the Public file for obtaining requisite copies of the submissions required by them.
15. After detailed examination and careful consideration of the submissions made on behalf of M/s. Meghmani Organics Ltd., Ahmedabad and other interested parties, and relying upon relevant Rules and judgements, the Designated Authority passed a speaking order vide order dated 6th May, 2009. It was observed that M/s Cheminova India Ltd., supported by M/s Excel Industries Ltd., constitutes Domestic Industry and the initiation of the anti-dumping investigations by the Authority is well within its jurisdiction under Anti-Dumping Rules and Law in this regard. Accordingly the anti-dumping investigations in respect of imports of Di-ethyl Thio Phosphoryl Chloride (DETPC) originating in or exported from China PR was ordered to be continued for recommending further necessary action in accordance with Anti Dumping Rules and Law.

D.2. Special Civil Application No.6881 of 2009 before Hon'ble High Court of Gujarat, Ahmedabad

16. M/s. Meghmani Organics Ltd., Ahmedabad again filed a Petition being Special Civil Application No.6881 of 2009 before Hon'ble Bench of the High Court of Gujarat, challenging the initiation notification dated 17.11.2008, Order dated 6.5.2009 passed by the Designated Authority in compliance with the earlier orders of Hon'ble Bench of the Gujarat High Court dated 8th April, 2009, Preliminary Finding dated 25.5.2009 and Customs Notification No. 73/2009 dated 22.6.2009 on the grounds that initiation notification was without jurisdiction and the entire investigation suffers from excessive confidentiality.
17. The Hon'ble Division Bench of the High Court vide judgment and order dated 09.10.2009 disapproved the preliminary finding of the Designated Authority on the issue of confidentiality. The Hon'ble Bench also directed the Designated Authority to provide all necessary details of findings which are kept blank while recording his preliminary findings and to permit the petitioners to raise their objections in this regard and while recording the final finding, consider such objections and submissions. The Designated Authority was also directed to consider as to whether Excel Industries Limited (erstwhile Respondent No.4) and their allied concerns have made any import of subject goods from China PR. Further, till such exercise is undertaken by the Designated Authority and final finding is arrived at, the petitioner was exempted from levy of provisional anti-dumping duty on an import of subject goods from China PR. The exemption was made conditional upon submission of an undertaking, before the Designated

Authority within one week from the date of order, stating that in the event they are held to be liable to pay anti-dumping duty on the import of subject goods that may be made, while recording final finding on this issue, they will pay such anti-dumping duty subject to their right to appeal and obtaining stay against such duty from any competent Court or Tribunal.

The relevant portions of the impugned orders are quoted below:

“We, therefore, while not expressing any opinion on other issues decided by the designated authority in the impugned notification and reserving the petitioners’ right to challenge at the time of final finding, we disapprove the preliminary finding of the designated authority on the issue of confidentiality and direct the designated authority to provide all necessary details of findings which are kept black while recording his preliminary findings and permit the petitioners to raise their objections in this regard and while recording the final finding, the designated authority shall take into consideration such objections and submissions that may be made in this regard. Not only this, designated authority shall take into consideration the issues raised by the petitioners with regard to the respondent No. 4 and to decide as to whether they or their allied concerns have made any import of subject goods from China. The details as to finding recorded by the D.A. shall be provided to the petitioners. Till such exercise is undertaken by the designated authority and final finding is arrived at, the petitioners shall not be saddled with the levy of provisional anti-dumping duty on an import of subject goods from China on condition that the petitioners shall file an undertaking within one week from today before the designated authority that in the event they are held to be liable to pay anti-dumping duty on the import of subject goods that may be made, hereinafter from China, while recording final finding on this issue, they will pay such anti-dumping duty subject to their right to appeal and obtaining stay against such duty from any competent Court or Tribunal.

It is once again made it clear that we have not expressed any opinion on the other issues which are raised before this Court or on findings recorded by the designated authority and they are kept open and parties are at liberty to agitate before the appropriate forum while challenging final findings, if the occasion so arises.

Subject to the aforesaid observations and directions, this petition is accordingly disposed of. Rule is made absolute to the above extent only, without any order as to costs.

At this state, a request is made on behalf of respondent Nos. 3 & 4 to stay operation of this order to enable them to approach the higher forum, because the confidentiality aspect hurts them. In view of our finding on

confidentiality, there is no question of any damage being caused to these respondents. It is also argued that direction not to impose anti-dumping duty on the goods to be imported by the petitioner is likely to affect the interest of the respondent Nos. 3 & 4. In our opinion, as a consequence, legal judicial orders are not to be stayed on individual grounds. Therefore, the request cannot be acceded to.”

D.3. Special Leave Petition No. 887 of 2010

18. The Designated Authority vide Special Leave petition No. 887 of 2010 , and separately, M/s Cheminova Industries Ltd vide Special Leave petition No. 34374 of 2009 and M/s Excel Industries Ltd (the domestic industry) vide Special Leave petition no. 35243 of 2009, had challenged the order dated 9.10.2009 of Hon’ble Bench of the Gujarat High Court before the Hon’ble Supreme Court.

After hearing the parties, the Hon’ble Supreme Court vide their order dated 8th February, 2010 was pleased to order as follows :

*“Leave granted.
Hearing expedited.
Pending disposal of the appeals, there shall be stay of the impugned order.
Place the appeals on 26th August, 2010.”*

D.4 Writ petitions filed before the Hon’ble High Court of Delhi by various interested parties

19. M/s Siris Crop Sciences Limited vide Writ Petition No. 190 of 2010, M/s Sabero Organics Gujarat Ltd vide Writ Petition No. 173 of 2010, M/s Rotam India Ltd vide Writ Petition No. 191 of 2010, M/s P I Industries Limited vide Writ Petition No. 183 of 2010, M/s GSP Crop Sciences Private Limited vide Writ Petition No 736 of 2010, M/s Bhagirdha Chemicals Industries Limited vide Writ Petition No 737 of 2010 and M/s Gharda Chemicals Limited vide Writ Petition No 738 of 2010, have filed Writ Petitions challenging the initiation notification dated 17.11.2008, Order dated 6.5.2009, passed by Designated Authority in compliance with the orders of Hon’ble Bench of the Gujarat high Court, Preliminary Finding dated 22.5.2009 and Customs Notification No. 73/2009 dated 22.6.2009, before Hon’ble High Court of Delhi on the grounds that initiation notification was without jurisdiction and the entire investigation suffers from excessive confidentiality.
20. After hearing the parties, the Hon’ble High Court of Delhi was pleased to issue the notices and fix the matters for 24.05.2009. While the writ petitioners had also filed application for interim stay order as well, no interim stay order has been passed by the Hon’ble High Court of Delhi.

E. Scope of Domestic Industry & Standing

E.1. Views of the Exporters

21. In the Post preliminary findings stage M/s Dua Associates on behalf of Yangxin Chentian Chemical Industry Co., Ltd., Zhejiang Xinnong Chemical Co., Ltd. and China Crop Protection Industry Association made the following submissions:
- (i) The Petitioner does not constitute “Domestic Industry” under Rule 2(b) and the Petition fails to meet the standing requirements contrary to Rules 5(1) and 5(3) of the Anti Dumping Rules and deserves to be terminated.
 - (ii) The Petitioner is neither the sole domestic producer engaged in the manufacture of the like article nor does Petitioner’s output of the said article constitutes a major proportion of the total domestic production of that article.
 - (iii) Cheminova India Limited is clearly related to Cheminova Denmark, the exporter of the alleged dumped article.
 - (iv) Authority has erroneously rejected the submission that the exports made by M/s Cheminova Denmark, the parent company of M/s Cheminova India Ltd., to India disqualify the latter as domestic industry, stating that the exports made by the parent company were not from the subject country i.e. China PR and hence the same cannot be treated as of the dumped article.
 - (v) Full investigation has not been done of the presence of Cheminova’s parent company in China whilst arriving at the finding as to status of Cheminova as domestic industry. Cheminova Shanghai Representative Office of the parent company, Cheminova Denmark, and Cheminova, the Petitioner which is subsidiary of the said parent company are both directly and/or indirectly controlled by said Cheminova Denmark. Accordingly even if the exclusionary words of Rule 2(b) are considered to only refer to the subject country i.e. China PR, even by that test Cheminova fails to meet the test of domestic industry.
 - (vi) The Authority whilst seeking to declare that Cheminova India Ltd. supported by M/s Excel Industries Ltd. constitutes domestic industry has wholly failed to examine if Excel fulfills the test of “domestic industry” as per the Anti Dumping Rules. In fact the Hon’ble Designated Authority has itself recorded in the Preliminary Findings the aspect that there has been a subsequent submission of information by M/s Excel Industries Ltd. although it has held that the argument that subsequent submission cannot be permitted does not hold good as Excel allegedly supported the Petition from the initial stage with relevant information/data. Thus it is submitted that this is an erroneous approach and it is reiterated that a subsequent filing, which would itself require to be tested for standing, cannot be used to retrospectively give jurisdiction to the Authority which it did not have

at the relevant time i.e. initiation.

- (vii) Cheminova India Limited does not constitute “domestic industry” as also submitted herein above. Further even assuming without admitting that the application was sought to be made by “on behalf of” domestic industry, information relating to the “domestic industry” was not part of Cheminova India Limited’s application based on which the present investigation has been initiated.
- (viii) Excel, as a group, has itself imported DTPC through Excel Crop Care Ltd and therefore is not eligible to seek protection under Anti Dumping law.

E.2. Views of the Importers

- 22. Post preliminary findings, M/S APJ-SLG, Law Offices on behalf of M/s Gharda Chemicals Ltd., Meghmani Organics Ltd., Siris Crop Sciences Ltd. and PI Industries Ltd. made the following submissions:
 - a) Section 5(1) contemplates filing of application “by or on behalf of the Domestic Industry”. Admittedly the application has been filed by M/s. Cheminova who does not qualify to be referred to as “Domestic Industry” as defined under Rule 2(b).
 - b) No determination as mandated under Rule 5(3) has been made by the Authority to reach a conclusion that application has been filed by on behalf of Domestic Industry.
 - c) The application has been filed by a sole producer viz. M/s. Cheminova and not by or on behalf of Domestic Industry, the injury information contained in the application is that of sole producer viz. M/s. Cheminova and not for Domestic Industry or after inclusion of information of M/s. Excel. Thus, the adequacy and accuracy of the information coupled with conditions of Rule 5(3) could not have been applied or examined. Further, examination of exclusion of related parties with exporters has been not taken into consideration. No examination of captive consumption has also been undertaken to reach correct determinations as mandated under law.
 - d) Cheminova India is not a major producer of the subject goods as Excel is having 71% of total Indian Production.
 - e) Cheminova India is related to exporter of the alleged dumped article i.e; Cheminova Denmark. Authority has erroneously held that the exports made by M/s Cheminova Denmark, were not from the subject country i.e. China PR and hence the same cannot be treated as dumped article.

- f) Initiation is based on information filed by Cheminova India which is not domestic industry. M/s Excel, the supporter, has not filed any information at the time of initiation.
- g) Excel cannot be constituted part of domestic industry unless it is not being examined by the Designated Authority that Excel fulfills the criteria mentioned under Rule 2(b).
- h) Applicant, M/s Cheminova does not constitute domestic industry as it accounts only for 28% of the total Indian production and is related to a Danish exporter of PUC.
- i) There are in all three producers of subject goods in India. At the time of initiation DA should have, like in other cases, resorted to polling to ascertain total production in India.
- j) Test of supporter is not envisaged under Rule 2 (b) but only those constituting major proportion. If Sabero buys from Excel, then it does not entail its exclusion from domestic industry as per rule 2 (b). Also such a fact does not necessitate reduction in production of Sabero.
- k) The Authority whilst seeking to declare that “Cheminova India Ltd. supported by M/s Excel Industries Ltd. constitutes Domestic Industry” has wholly failed to examine if Excel fulfills the test of “domestic industry” as per the Anti Dumping Rules.
- l) It is denied that Excel Crop Care Ltd. is not a related company of the Petitioner. Under its obligations as per Company Law, the same is being shown as a related entity in the records of Excel. In any case, the submissions made by them are allowed to be treated as confidential despite the fact that no non-confidential versions of the same have been filed.
- m) Reply of Excel Crop Care is being claimed as confidential without stating reasons for such claims of confidentiality and why indexation is not possible. Such an approach is contrary to requirements of Rule 7.
- n) The backdoor entry of Excel is evident from the record as if they were included at the time of initiation, the case would not have passed the pre-conditions of initiation and injury would have been diluted. Clearly, such an approach was strategic and commercial advantage has already been obtained by way of imposition of provisional duties.
- o) The Petitioner does not constitute “Domestic Industry” and the Petition fails to meet the standing requirements. The present investigation is contrary to Rules 5(1) and 5(3) of the Anti Dumping Rules and deserves to be terminated.

- p) The Domestic Industry has admitted that the application was filed by M/s. Cheminova and which was only a minor proportion of the total production in India as per Rule 2(b). In other words, it failed to qualify as Domestic Industry and failed to provide data on injury and causal link in terms of Rule 5(2)(b) and Rule 5(2)(c) for the Domestic Industry as a whole. In the absence of such data and information available in the application itself for the Domestic Industry as a whole the Designated Authority could not have proceeded further with the initiation of the present case they being pre-conditions for initiation. Additionally, the deeming fiction under Rule 2(b) for relationship with exporters and imports by related entities are being applied to Excel after initiation of the investigation. In other words, this examination being a pre-condition of initiation is being applied post -initiation. This factor alone is a good reason for termination of the present investigation.
- q) The discretion provided under 2(b) cannot be exercised unless the necessary cogent material was available to the Designated Authority at the appropriate time. Clearly, at the stage of initiation, all this information was not even on record and hence it cannot be said that the Designated Authority exercised discretion under Rule 2(b). This being a pre-condition for initiation, exercise of discretion without supporting reasons is hence flawed and contrary to law. In view of the above, the case law cited by the Domestic Industry is not applicable in the facts and circumstances of the present case.

E.3. Views of the Domestic Industry

23. Post preliminary findings the following views have been made by the domestic industry:
- a) The Application has been filed by M/s Cheminova India Limited and has been supported by M/s Excel Industries Ltd from the stage of the application. Both have provided injury information.
- b) Interested parties disputed the standing of the petition. Elaborate submissions were made by the Domestic industry. The Designated Authority has thereafter passed a detailed speaking order dated 6th May, 2009 pursuant to the orders dated 8th April 2009 of the Hon'ble High Court of Gujarat, holding that the petition satisfied standing. Domestic industry submits that there is no merit in the objections raised by the interested parties in this regard. The entire objections are based on incorrect and misplaced legal understanding.
- c) The Rules provide that the petition should be filed by or on behalf of the domestic industry, which means that the petition should be supported by those domestic producers whose collective production constitute more than 50% of total production. Admittedly, the present petition is supported by those domestic producers whose collective production constitute more than 50% of eligible domestic production. Further, the production of petitioner is more than 25% of total production of like article by the domestic industry. It is emphasized that

- production of Sabero Organics in any case is required to be excluded in view of (a) the company has curtailed or stopped production substantially (b) the company has been substantially captively consuming the product and both Cheminova and Excel Industries are not aware of any sale of DETPC by Sabero, even when both the companies are in market for such a long period and (c) significant imports made by them. Moreover, Sabero has not preferred to respond to the Authority even till date.
- d) Denmark is not a subject country in the present investigation. Domestic producers who are not importers of alleged dumped article from the subject country are not to be excluded from the definition of domestic industry. Although, Cheminova Denmark is also having related company in China PR, it is submitted that the company is not at all involved in production and sale of the product under consideration, nor has exported the product under consideration to India during the relevant period.
 - e) With regard to imports made by Excel's related company it is submitted that Excel Industries and Excel Crop Care are unrelated companies and none of the related parties of Excel Industries have imported the product under consideration. However, M/s. Excel Crop Care is in the category of companies over which key management personnel and/or their relatives have significant influence. "Key management person" as defined in Companies Act having significant influence over other companies does not imply that such key management personnel is legally or operationally in a position to exercise restraint or direction over the later. Moreover, (i) Excel Crop Care and Excel Industries are not under the "same management", considering the provisions of Section 370(1b) and 372(11) of the Companies Act 1956 and (ii) Excel Crop Care and Excel Industries have only one common director between the two companies.
 - f) Without prejudice it is submitted that Excel Crop Care has imported an insignificant volume of the product under consideration from China PR.
 - g) The applicant accounts for 27.33% of the domestic production, while excluding production of M/s Sabero Organics, if any, being an importer of the subject goods. Moreover, the application was supported by M/s Excel Industries Limited, a major producer, whose collective production constitutes more than 50% i.e; 72.67% of the domestic industry production. As per Anti-Dumping Rules, M/s. Cheminova qualifies as Domestic Industry whose production constitutes a major proportion. The interested parties repeatedly stating "major proportion" whereas the requirement is "a major proportion". The application satisfied the requirement of the standing under Rule 5(3) read with Rule 2(b). Hence, the applicant constituted domestic industry within the meaning of Anti-Dumping Rules.

E.4. Examination by the Authority.

24. The views/submissions expressed by the interested parties relating to scope of domestic industry and standing in the post preliminary finding stage are examined hereunder:

- (i) Regarding qualification of M/s Cheminova India Ltd. as Domestic Industry, it is observed that in terms of Rule 2(b) read with Rule 5(3) of the Anti-Dumping Rules the Authority needs to be satisfied whether the application has been filed by or on behalf of the domestic industry.

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

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

Rule 2(b) has been further amended vide Notification No. 18-2010-Customs(N.T.) dated 27th February, 2010 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.

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

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

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

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less

than twenty five per cent of the total production of the like article by the domestic industry, and

- (b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -
 - (i) dumping,
 - (ii) injury, where applicable; and
 - (iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

- (ii) Regarding requirement of polling before initiation, Authority observes that there is no prescribed legal requirement to resort to polling before initiation of investigation. Nor has the interested party established why such a recourse would have been necessary or even desirable in this case. The interested party in fact has not been able to establish till date that the petition lacked standing at any stage. It is also important to note that at the stage of initiation of investigation, the Authority is not required to hold a detailed enquiry. The Authority is merely required to satisfy itself prima-facie at the stage of initiation of investigation that the requirements prescribed under the Rule 5(3) are met. Verification of information through various sources with regard to various parameters, including collection of information from concerned administrative department, collection of import data from the DGCI&S or even from customs authorities are a matter of detailed investigation.
- (iii) It is observed that in the instant case the applicant company accounts for 27.33% of the domestic production, while excluding production of M/s Sabero Organics, if any, who has not responded to the investigation. The application was supported by M/s Excel Industries Limited, another major producer from the stage of application itself. Moreover, as per the DGCI&S data, M/s Sabero Organics has imported significant quantity of the subject goods from the subject country during the POI.
- (iv) The concerned Administrative Department was requested to provide details about the domestic producers and their production including M/s. Sabero Organics. Department of Chemicals & Petrochemicals provided information about M/s. Cheminova and M/s. Excel Industries only. In other words, the information available with the concerned administrative Ministry of the Govt.

of India with regard to this product does not even include M/s Sabero Organics as a producer. This information further reinforced the information submitted by the applicant in their application in this regard. After initiation of the investigation, M/s. Sabero Organics was also requested to submit their response, but there is no response till date. It is further observed that the submissions made by the applicant that M/s. Sabero Organics curtailed or stopped production substantially and resorted to imports and also consumed the product captively has remained unrebutted by M/s Sabero Organics before the Authority.

- (v) The contention that M/s. Cheminova suppressed information with regard to their relationship with their parent company in Denmark with the Designated Authority does not hold good. In fact there was no suppression of facts regarding relationship with the parent Company in Denmark. The Authority had specifically called for information in this regard before initiation and the facts were submitted by the applicant.
- (vi) It has been alleged that M/s Cheminova has got captive consumption of the subject goods and as per settled law captive consumption cannot be included while reaching pre-initiation determination. It has been further argued that failure of M/s Cheminova to disclose the details of their captive consumption of the subject goods in the non-confidential version of the application makes them ineligible to become domestic industry. However, the data of the domestic industry has already been verified and the Authority observes that:- Firstly, M/s Cheminova has declared its captive consumption in its petition under Proforma IV-A including the non-confidential version of the application available in the public file. Secondly, it is noted that the captive consumption of the company is very nominal, that is about *** Mt which constitutes about 1% of the total production of the domestic industry. Thirdly, if the quantity of captive consumption is excluded, the balance quantity still remains 26.53% and thus does not impact the standing.
- (vii) The submission that the exports made by M/s Cheminova Denmark, the parent company of M/s Cheminova India Ltd., to India disqualify the status of the later as domestic industry is not correct. The exports made by the parent company were not from the subject country, i.e. China PR, nor in significant volumes, nor at lower prices. The imports being from third countries, first and foremost, these imports cannot be treated as “dumped article”. Rule 2(b) of the Rules defines domestic industry. After stating what domestic industry means, i.e., domestic producers as a whole or those whose collective output of the article constitutes a major proportion of the total domestic production, certain categories of domestic producers are excluded therefrom. The categories excluded are those domestic producers who are related to exporters of the alleged dumped article, those who are related to importers of the alleged dumped article; or those who themselves are importers thereof. The issue that arises for consideration therefore is what is the scope of the words alleged

dumped article. The group of domestic producers who are importers of alleged dumped article or are related to exporters of the alleged dumped article or are related to importers of the alleged dumped article can be treated differently under this provision. The domestic producers who are themselves importers should mean domestic producers who are themselves importers of alleged dumped article from the subject country. In other words, domestic producers who are not importers of alleged dumped article from the subject country are not to be excluded from the definition of “domestic industry.”

- (viii) It has been argued that Excel Industries Ltd. has provided information post initiation of investigations and the same cannot be accepted and used by the Authority for the investigation. The Authority observes that M/s Excel Industries Ltd has expressly supported the petition filed by M/s Cheminova India Ltd at the time of initiation of investigation. Under Rule 6(4), the Authority issued a notice calling for information, in the prescribed form and manner, from various known interested parties, including the exporters, foreign producers and other interested parties. Such information is required to be provided by such parties. Rule 2(c) defines interested party and the same includes a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India. Thus, the Authority is required to call information from other Indian producers of the subject goods, who are not party to the petition. Such being the case, there is no justification in the argument that the Authority should not call for information from a company who commands a major share in Indian production, that too in an investigation where the product under consideration is being produced only by three producers. In fact, a copy of the initiation notification was also sent to M/s Sabero Organics. They however preferred not to respond to the Authority.
- (ix) After perusing the information on record and verifying the same, it is noted that Excel Industries Ltd, Mumbai (supporter of the application) has not imported the subject goods during the entire relevant period. Further, the company has a number of related companies. Excel Industries has denied that any of its related company has imported the product under consideration during the relevant period. Information provided by Excel Industries Ltd, however, shows that Excel Crop Care Ltd is a group company and consumes DETPC. It is noted from the DGCI&S data that Excel Crop Care has imported only *** MT DETPC during the period of investigation as against the total Indian production of 9335 MT, demand of 20285 MT and imports of 12361 MT. In any case, the volume of imports made by the company is very insignificant constituting less than 1% of the Indian production.
- (x) The Authority also considered the possible impact of exclusion of Excel Industries Ltd from the fold of eligible domestic industry under the Rule 2(b). However, the Authority observes that in the event of exclusion of M/s Excel Industries Ltd from the purview of the domestic industry then in that case,

Cheminova's share in eligible Indian production would become 100%, since the other alleged producer M/s Sabero Organics is ineligible due to their significant imports of the subject goods from the subject country during POI and has not cooperated with the Authority.

25. In view of the above the Authority holds that imports made by Excel Corp Care does not in any way affect the status of Excel Industries Ltd. as domestic industry under Rule 2(b). Authority further notes that the provisions of Rule 2(b) as amended vide Notification No. 18-2010-Customs (N.T.) dated 27th February, 2010. The Authority examined whether the above drawn conclusion would have been different, considering the present legal provision. The Authority holds that the Excel Industries would have been construed as eligible domestic industry even under the amended Rule 2(b).
26. In the post disclosure, the interested parties have reiterated their arguments with regard to lack of standing of the petitioner. The issue was well considered by the Authority in the Preliminary Findings and also in the disclosure statement. They have argued that the findings of facts reached by the Authority in respect of Excel Industries is flawed and further these findings of facts have come at such a late stage of the proceedings. It is pointed out in this regard that if Excel Industries were to be treated as ineligible under Rule 2(b), the standing of the petitioner to maintain the present petition would have, at least, increased as brought out in the disclosure statement. Therefore, whether or not Excel Industries were to be treated as eligible or ineligible at the stage of initiation, the same would not have vitiated the present decision. Post initiation, since Excel Industries provided relevant information and further since Rule 2(b) provides for considering domestic producers as a whole as the domestic industry; and only in the absence of all the domestic producers, the law permits considering a major proportion as domestic industry; the Authority considered Cheminova and Excel as domestic industry at the stage of Preliminary Findings.
27. Interested parties have also contended that the relevant Rule does not permit exclusion of production of producers that are not being part of the domestic industry. This is because the term used is "a major proportion of the total domestic production". However, they have conveniently ignored the rest of the definition which provides that if any producer is related to the exporters or importers of the alleged dumped articles or itself an importer thereto, in which case such producers shall not be treated as part of the domestic industry. Further, while the Authority has referred to this issue in the context of standing under Rule 5(3), they are referring to this in the context of definition of domestic industry. Rule 5(3) provides that the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. It is in this

context of Rule 5(3) that the Authority has concluded that the production of M/s Cheminova would be 100%, if Excel Industries were to be treated as ineligible.

28. In the above context post disclosure the interested parties have alleged that the Authority has applied different standards in different cases for considering significance of quantum of imports. They have stated that while in the instant case the Authority proposes to examine the significance of quantum of imports as a percentage of the total production, the same test has been applied as a percentage of total imports from the country concerned in the case of viscose filament yarn, diametrically opposite approaches. However, the Authority observes that in the present case imports in relation to all the three possible parameters i.e. in relation to total imports, production and consumption, constituted a small percentage.
29. After detailed examination and careful consideration of the submissions made on behalf of M/s. Meghmani Organics Ltd., Ahmedabad and other interested parties against the initiation of anti-dumping investigations in respect of the subject goods and the submissions made on behalf of the domestic industry in support of the initiation of anti-dumping investigations in the instant case and relying upon relevant Rules and judgments, it is observed that M/s Cheminova India Ltd., supported by M/s Excel Industries Ltd., constitutes Domestic Industry and the initiation of the anti-dumping investigations by the Authority is well within its jurisdiction under Anti-Dumping Rules and Law in this regard.

F. Confidentiality Issue

F.1 Views of the Importers

30. Post Preliminary Findings, M/S APJ-SLG, Law Offices representing M/s Gharda Chemicals Ltd., Meghmani Organics Ltd., Siris Crop Sciences Ltd. and PI Industries Ltd. has disputed the confidentiality of information contained in the submissions before the Authority. They have further disputed non-disclosure of certain information by the Authority in the preliminary findings and reiterated the issues in their post disclosure comments. Their arguments are briefly as follows:-
 - a) The Designated Authority has not disclosed data and information obtained to construct normal value, whereas the data relevant to the international prices of all major inputs could not have been allowed to be kept confidential. When the normal value had been constructed by the Authority, the said Authority had no right to claim confidentiality in this regard.
 - b) We have also been denied access to non-confidential version of the questionnaire responses filed by the other participating parties which we presume should be part of the public file. Copies of all documents that

have been filed before the Designated Authority ought to be made available to us. In case of confidential documents, the non-confidential version should be made available in terms of Rule 6(7).

- c) Contrary to requirements of Rule 6(7) we have not been provided with the copies of the written submissions of other interested parties even when these interested parties have not claimed any confidentiality on the same.
- d) The Hon'ble Designated Authority should provide the detailed information as directed by the Hon'ble Bench of the Gujarat High Court vide its order dated 09.10.2009 and grant a fresh opportunity to all the interested parties to present their case.
- e) Interested parties had sought certain information/documents/data in various letters. The same have not yet been provided to them even at this stage of the investigations and they were awaiting receipt of these essential documents. In view thereof, these interested parties were handicapped to file full and meaningful rejoinder submissions.
- f) The interested parties requested the Authority to re-visit its decision and allow access to all documents that have been filed in the investigation. In any case documents which have been relied upon to reach the findings could not have been withheld from interested parties and ought to have been made available or kept in the public file.
- g) Domestic industry has alleged that responding exporters have filed questionnaire response which are grossly deficient and exporters have made excessive claims of confidentiality. In contrast, we notice that Domestic Industry has made excessive claims of confidentiality all throughout their application. Further, all subsequent submissions/data/information filed is contrary to Rule 7.
- h) It appears that claims of confidentiality in the present case are automatically allowed by the Designated Authority without examination of the nature of information.

F.2 Views of the Exporters/Industry Association

31. Post Preliminary Findings, M/s Dua Associates, representing M/s Yangxin Chentian Chemical Industry Co., Ltd., Zhejiang Xinnong Chemical Co., Ltd and China Crop Protection Industry Association, has expressed the following views on the confidentiality issue and reiterated the same post disclosure:-

- a) Non-disclosure of relevant information by the authority which forms basis for its conclusions violates the requirements of transparency and is against the rules of natural justice.
 - b) The failure to disclose crucial parameters such as normal value, dumping margin and injury margin and the components of calculations therein is against the rules of natural justice and requirements of transparency, and as such contrary to Rule 12 of Anti Dumping Rules and Article 6 of the Anti-dumping Agreement. As laid down in the case of Birla Ericsson, all these calculations ought to be disclosed by the Hon'ble Authority.
 - c) The non-disclosure of details of the Normal Value, dumping margin and injury margin including non injurious price and landed price calculations, has seriously affected the Chinese producers/exporters rights of defense and amounts to a gross violation of the principles of natural justice.
 - d) The Preliminary Findings and even subsequent thereto despite request thereof, the Hon'ble Authority has failed to disclose relevant information as to normal value, dumping and injury margin which has hampered the ability of the Chinese producers/exporters to respond to the same.
 - e) No information related to normal value has been disclosed with respect to major inputs that were considered such as source of the international prices, prices for each input, conversion cost, SGA expenses used, and profit Margin.
 - f) The Designated Authority has erred in observing that a conclusion drawn by the Authority based on confidential information also becomes confidential. The confidential data and conclusion emanating from the same can at least be disclosed to the concerned producer/exporter to whom the data relates.
32. Post Preliminary Findings, M/s Seth Associates on behalf of M/s Lianyungang Liben Agro-chemical Co. Ltd and Xingtai Pesticides Co., Ltd. has submitted that the Authority has provided no information on how the normal value of the product under consideration is constructed, such as the amount of cost of raw material, conversion cost, SGA expenses and finance cost, and profit margin. The constructed normal value is considered confidential, which substantially prevent our clients from commenting on the calculation and rebutting the Authority's decision. Post disclosure, no comment has been received from the above interested parties.

F.3 Views of the Domestic Industry

33. Post Preliminary Findings, the domestic industry has submitted that the information disclosed by the responding producers/exporters in the non-confidential version of their questionnaire responses are grossly deficient and does not permit reasonable understanding of the substance of information filed on confidential basis. The producers/exporters have not even filed indexed version of any of the appendices. No reasons have been given for claiming confidentiality on these.

F.4 Examination by the Authority

34. The Authority has examined the confidentiality claims of the interested parties. In the preliminary findings, the data of the domestic industry concerning volumes of capacity, production and sales and imports data have not been kept confidential. The data of domestic industry in respect of customers, cost, prices and the data that would give competitive advantage to their competitors have been kept confidential.
35. The Authority after examining the submissions of the interested parties observed that the methodology of computation of Normal Value has been disclosed in the Preliminary Findings.
36. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7). As regards providing a copy of the written submissions made by the interested parties, the Authority notes that these submissions have also been made available through the public file.
37. With regard to confidentiality issues, the Authority notes that the arguments of the interested parties and the specific requests for disclosure of (a) certain information provided by the interested parties, and (b) information relied upon by the Authority in the preliminary findings for which the Hon'ble Bench of the High Court of Gujarat passed a detailed order dated 9th October, 2009, on a writ petition No. 6881/2009 filed by M/s Meghmani Organics Ltd, directing disclosure of certain information. The Designated Authority vide Special Leave petition No. 887 of 2010, and separately, the domestic industry (M/s Cheminova India Ltd. vide Special Leave petition No. 34374 of 2009 and M/s Excel Industries Ltd. vide Special Leave petition no. 35243 of 2009), had challenged the order dated 9.10.2009 of Hon'ble Bench of the Gujarat High Court before the Hon'ble Supreme Court. After hearing the parties, the Hon'ble Supreme Court vide their order dated 8th February, 2010 was pleased to grant stay of the impugned orders.
38. Even when the contentions raised by the Writ petitioners before the Hon'ble Bench of the High Court of Gujarat are now pending adjudication before the

Hon'ble Supreme Court, the Authority has considered various contentions raised in various writ petitions, examined the same and dealt with the same in the present findings.

39. A number of parties have represented before the Designated Authority claiming that the confidentiality claims made by other interested parties are inappropriate or that the Designated Authority has wrongly accepted the confidentiality claims of the interested parties. In the writ petitions filed before the Hon'ble Bench of the High Court of Gujarat and Delhi, the petitioners have challenged the grounds of confidentiality by the Designated Authority with regard to various data/information in the Preliminary Findings issued by the Designated Authority. The Hon'ble Bench of the High Court of Gujarat, ordered to disclose information which are kept blank while recording the preliminary finding such as the following:

a) Information relating to normal value -

- (i) Reasonable Profit margin
- (ii) Ex-factory cost excluding interest
- (iii) Cost of raw material
- (iv) Conversion cost
- (v) SGA expenses
- (vi) Normal value

b) Information relating to export price -

- (i) Export volume
- (ii) CIF export price per unit
- (iii) Price adjustment
- (iv) Ocean freight
- (v) Inland freight
- (vi) Other auxiliary fees
- (vii) Credit cost
- (viii) Bank charges

c) Information relating to injury-

- (i) Selling Price
- (ii) Price-undercutting
- (iii) Cost of Sale for whole injury period
- (iv) Landed price of import
- (v) NIP

- (vi) Injury margin for different exporters
- (vii) Price underselling
- (viii) Return on capital employed GFA and NFA basis for whole injury period
- (ix) Cash flow for whole injury period
- (x) Cash profit for whole injury period
- (xi) Export volume for whole injury period

40. After careful examination of various contentions of the interested parties, the orders of the Hon'ble Bench of the High Court of Gujarat, the legal provisions under the Indian Rules & WTO Agreement of Anti Dumping and considering the principles of natural justice, the Authority observes as follows:-

a) With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

Confidential information. (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

b) The WTO Agreement on Anti Dumping provides as follows with regard to confidentiality of information :-

Article-6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the

authorities. Such information shall not be disclosed without specific permission of the party submitting it.

Article-6.5.1 The authorities shall require interested parties providing confidential information to furnish non confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

Article-6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Footnote to Article 6.5.2 (footnote 18 of the WTO Agreement on Anti Dumping) provides as follows :-

Members agree that requests for confidentiality should not be arbitrarily rejected.

41. It is thus evident that the public notices issued by the authorities are directly subjected to confidentiality provisions and should protect confidentiality of information provided by an interested party. Further, a conclusion drawn by the Authority based on confidential information also becomes confidential, if disclosure of such conclusion can in any way effectively lead to disclosure of information provided on confidential basis.
42. The Authority also examined the legal provisions and practices of other investigating Authorities and observed that similar public notice/communications issued by other investigating Authorities as well, does not include any confidential information while issuing findings.
43. With regard to the submission of the interested parties that the Designated Authority has not disclosed the reasons of confidentiality, the Authority notes as follows in this regard:-
 - (i) The WTO Agreement on anti-dumping and Anti-dumping Rules very clearly specifies what is required to be treated as confidential information.

- (ii) The Authority holds that any information which is, by nature confidential or which has been provided on confidential basis is required to be treated as confidential information and cannot be disclosed to other interested parties.
- (iii) While disclosing any information in its communications/orders, the Designated Authority is required to ensure that such disclosure of information should not eventually lead to disclosure of information provided on confidential basis by an interested party. In other words, in case any interested party would be able to reach to confidential information provided by another interested party, the said information cannot be disclosed by the Authority.
- (iv) While the interested parties providing information on confidential basis are required to give reasons for claiming confidentiality, the Authority is not required to give reasons for confidentiality of information contained in the public notice. Under the Rules, the Authority is required to be satisfied with regard to reasons for confidentiality claimed by various interested parties.
- v) Some interested parties have demanded a copy of the communications sent by the Authority to various interested parties. These interested parties have also demanded a copy of the communications between the Authority and the applicant domestic industry prior to initiation. The Authority notes that data/information must be distinguished with documents. The request made by the interested parties includes a number of documents. This request was pressed before the Hon'ble Bench of the High Court of Gujarat. However orders of the Hon'ble Division Bench of High Court of Gujarat does not cover any such request. Further, in any case, the Authority does not consider it appropriate to make available communications made by the Authority to the interested parties before or after initiation of investigations.
- vi) Under the rules, the Authority receives documents from interested parties. Confidentiality provision provides that information provided to the Authority on confidential basis cannot be disclosed to other interested parties. Even if the claim of confidentiality is unwarranted, the Authority is best authorized to disregard such information. As per Rule 7 of the Anti Dumping Rules and Article 6.5 of the Anti Dumping Agreement the Designated Authority is required to keep an information as confidential if submitted to him on confidential basis by any interested party. The Authority is not authorized to disclose or make public such information.

- vii) The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to “respective interested parties”, while non-confidential facts are required to be disclosed to all interested parties. At no stage the Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests. Thus it would be sufficient if full explanation of the reasons for the methodology used in the establishment and comparison of the export price, normal value and Non-injurious price are disclosed by the Designated Authority instead of disclosing the actual figures. Normal Value, export price and non-injurious price are based on the confidential information submitted by the parties and disclosure of the same would be of significant competitive advantage to a competitor and its disclosure could have a significantly adverse effect upon the person supplying the information.
 - viii) Disclosure of the commercially sensitive and confidential information, provided by the interested parties to the Designated Authority, by reposing trust and confidence, to facilitate the investigation, will completely vitiate the market atmosphere both in the domestic as well as international fronts. The disclosure of confidential information relating to the cost of production, non-injurious price etc. of the domestic industry will provide undue advantage to its domestic as well as overseas competitors and place them in a disadvantageous position before the consumers. Likewise disclosure of the confidential information relating to the exporters such as normal value, net export price, landed price etc. will jeopardize their commercial interest vis-à-vis their competitors as well as buyers.
44. The interested parties have also disputed the Authority’s position that the conclusion drawn on the basis of confidential information is also confidential. Further, they have said that the information can be disclosed at least to the very same party to whom the confidential information pertains. It is reiterated in this regard that any conclusion drawn on the basis of confidential information would indeed remain confidential. Disclosure of any such information would enable other parties to reach to the confidential information of interested parties and would defeat the very purpose for which confidentiality has been granted. This is the position taken by the Designated Authority in the SLP filed before the Supreme Court. As regards disclosure of information to an interested party to whom the information pertains, the Authority observes that the same has already been disclosed to the concerned parties.

G. **Other Issues Raised By the Interested Parties**

- a) This was not a fit case for imposition of provisional duties. The preliminary findings have been issued by the Designated Authority contrary to the mandatory

requirements of Rule 12. In the absence of any material on record to reach such mandatory determination that measures were necessary to prevent injury being caused during the investigation, the recommendations made in the preliminary findings are contrary to Rule 12, read with Rule 20 and Article 7.1(iii).

- b) Written submissions provided by the domestic industry are not serial numbered properly, making it difficult for interested parties to offer para-wise comments as required by the Hon'ble Designated Authority in terms of the Trade Notice No. 1/2007 dated 22nd October 2007.
- c) Response of M/s Excel has been accepted without the support of certificate of truthfulness.
- d) Designated Authority has not recorded any findings in terms of Rule 12 to the effect that the present case was an appropriate case where it was necessary to resort to preliminary findings recommending provisional duties.

G.1 Examination by the Authority

- 45. The submissions of interested parties have been appropriately dealt with in accordance with law. The Authority has carried out an objective examination of alleged dumping and consequent injury to the domestic industry at preliminary stage and the preliminary findings were recorded based on the sufficiently detailed information and in accordance with the Anti-dumping Rules and established procedure. As regards appropriateness of recommending interim anti dumping duties, the preliminary finding issued by the Authority is self-explanatory vide which the Authority had recommended imposition of interim anti dumping duties.
- 46. As regards the manner in which the domestic industry filed written submissions, the Authority reiterates that there is no prescribed requirement that an interested party should file written submissions, which are paragraph numbered. Written submissions filed by an interested party cannot be ignored/rejected for such reasons. Nor can it be appreciated that an interested party is unable to offer comments on the written submissions because the same are not paragraph numbered. What the Trade Notice No. 1/2007 dated 22nd October 2007 issued by the Authority requires is that the rejoinders to the written submissions filed by the interested parties should be in the form of exact parawise comments to the written submissions.
- 47. Regarding the allegation that M/s Excel's information has been accepted without certificate of correctness, it is observed that the data of the concerned constituent of the domestic industry has been verified and a certificate of correctness may not be necessary at this stage.

48. Post disclosure the interested parties have stated that the Authority has not recorded reasons for recommending provisional duties. However, the reasons for recording preliminary findings have been recorded in the Preliminary Findings itself.

H. Determination of Normal Value, Export Price and Dumping Margin

H.1 Examination of Market economy claims

49. The Authority, notes that in the past China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the Annexure-I to the Anti-dumping Rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.
50. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove 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.
51. The Authority notes that following producers/exporters of the subject goods from the subject country have submitted market economy questionnaire responses along with their questionnaire responses consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. The

questionnaire responses and the Market economy responses of such responding producers/ exporters as listed below have been examined for determination of dumping margin. For the responding producers/exporters, the Authority has determined individual dumping margin and examined market economy status in accordance with the Anti-dumping Rules :-

S.N.	Name of the producers/exporters
1.	Yangxin Chentian Chemical Industry Co., Ltd.
2.	Lianyungang Liben Agro-chemical Co., Ltd.
3.	Xingtai Pesticides Co., Ltd.
4.	Zhejiang Xinnong Chemical Co., Ltd.

H.2. Views of the Domestic Industry

- a) Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
- b) It is evident from preliminary finding that Authority notes that in a situation where one of the shareholders in the company is a State owned/controlled entity having significant share in the company, possibilities of State interference cannot be ruled out.
- c) Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values. Domestic industry submits 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.
- d) Market economy status cannot be given unless the responding exporters establish that their books are audited in line with international accounting standards.
- e) Market economy status cannot be granted even if one of the parameters is not satisfied.
- f) Domestic industry submits 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.
- g) 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.

- h) Domestic industry submits that failure to satisfy the 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.

H.3. Views of the Exporters

52. Post preliminary findings and post disclosure M/s Dua Associates representing M/s Yangxin Chentian Chemical Industry Co., Ltd., and Zhejiang Xinnong Chemical Co., Ltd made following submissions with regard to MET :-

- a) In the Preliminary Findings, the Hon'ble Designated Authority has directly rejected the market economy treatment request of M/s Yangxin Chentian Chemical Industry Co., Ltd., and Zhejiang Xinnong Chemical Co., Ltd and has proceeded to construct the Normal Value as per facts available.
- b) M/s Yangxin Chentian Chemical Industry Co., Ltd. and Zhejiang Xinnong Chemical Co., Ltd are purely private companies.
- c) None of the shareholders of M/s Yangxin Chentian Chemical Industry Co., Ltd. and Zhejiang Xinnong Chemical Co., Ltd are state-owned/controlled company. On the contrary, all of the shares of M/s Chentian are owned by Chinese individuals.
- d) M/s Yangxin Chentian Chemical Industry Co., Ltd. and Zhejiang Xinnong Chemical Co., Ltd have supplied abundant information about its basic inputs for production, including the name of suppliers, the nature and type of ownership of the same, the quantities and value of the inputs, etc.
- e) M/s Yangxin Chentian Chemical Industry Co., Ltd. and Zhejiang Xinnong Chemical Co., Ltd both use the spot prices and market conditions drive sales prices of the basic inputs for production. Prices of basic inputs substantially reflect market value as required by the Anti Dumping Rules. Further, the raw materials have been purchased by M/s Chentian and Xinnong at international prices.
- f) Two major inputs of DTPC are procured from different suppliers, most of which are private companies, purchase price for the same material fluctuates from time to time, which rightly reflects the demand and supply variation trend.
- g) Phosphorus pentasulphide is not the same as yellow phosphorus. It is submitted that the statement that yellow phosphorus constitutes 20-25% of the costs in DTPC is patently incorrect and all submissions of the domestic industry with

regard to price of yellow phosphorus are wholly unsubstantiated and irrelevant to the present case. Hence, they cannot be used to deny market economy treatment to Chinese companies.

- h) Designated Authority has presumed that if the purchase price of certain inputs is not equal to the international price, then, the purchase price does not reflect the “Market Value” of the input concerned. It is reiterated that the “market value” need not necessarily be equal to “prevailing international price”. The connotation of the word “market value” lies in emphasizing that the pricing mechanism of a certain product is decided by market power based on demand and supply.

53. M/s Seth Associates on behalf of M/s Lianyungang Liben Agro-chemical Co. Ltd and Xingtai Pesticides Co., Ltd. made the following submissions with regard to MET, subsequent to preliminary findings, but no comments were received from them on the exporter’s verification report and disclosure statement issued by the Authority:-

- a) Our Clients independently make the decision on the management, purchase the inputs at market prices and sell the product under consideration on the supply and demand basis.
- b) No Government or Government agency interferes in the daily operation of the company concerned. Our clients have provided sufficient information in their responses to market economy treatment questionnaire to substantiate the qualification for the market economy status and should be granted the market economy treatment.

H.4 Examination by the Authority

54. The Authority had conducted verification of the above stated four responding producers/exporters. Issues relating to Market Economy Claim made by these responding producers/exporters were also examined during the on the spot verification and a verification report was issued to each one of these responding producers/exporters. Notwithstanding their claim on Market Economy Treatment (MET), the Authority concludes that the status in respect of all the four continues to be “Operating under Non-Market Economy” conditions on account of the following:-

M/s Zhejiang Xinnong Chemical Co., Ltd.

55. Although the company has claimed to have been set-up in 1999 as a limited liability company, it could not substantiate with satisfactory documentary evidence as to how a trademark “Xinnong” existed a decade back predating the establishment of the company. This inter-alia substantiates that the Company existed in 1989 as well, which fact was concealed by the responding producer/exporter. Further, the source of funds, purpose of investment and

relationship with M/s Jiangsu Rural Credit Co-operative could not be substantiated with satisfactory documentary evidence. However, in their post-verification comments they have admitted that M/s Jiangsu Rural Credit Cooperative is their subsidiary, the fact they had not declared earlier. That apart, issues related to non-availability of records regarding source of funds, existence of a supervisory board controlled by the Ministry of Audit above the board of directors, the Company getting substantial subsidies/grants from the Government as evidenced by the balance sheet for the year 2007, the Company not providing any evidence whatsoever demonstrating that the prices of major inputs consumed by them substantially reflect market values, amply make it clear that the subject producer/ exporter is operating under Non Market Economy (NME) conditions and therefore, the Authority holds them to be a NME company for the purpose of this investigation.

M/s Yangxin Chentian Chemical Industry Co., Ltd.

56. Although the company claimed to have been set-up in 2002 as a limited liability company, no satisfactory explanation / documents could be provided explaining how the company was set up in 2002 when the Land Use Right was obtained in 2004. The Company had actually grown out of the erstwhile State owned company M/s Huangshi City Fuchi Phosphate Factory (a State-owned Company), although this fact was denied by them. They failed to substantiate that the mode of the transfer of land and assets of this erstwhile State owned company was at market value and also how they dealt with the existing plant and equipments after taking over of the company. Post disclosure the interested party has claimed that the said transfer of land and assets was at market price, but, no documentary evidence was provided to support the claim. Further, Mr. Yin Qian, the Chairman of the subject company, was earlier working in another State owned company namely M/s Yangshin Chemical Factory in the Yangshin District. The subject company had signed a tripartite agreement with M/s Wenzhou Dragon Dyestuff Plant (details of this company not declared) and the Government of the Peoples Republic of China for restructuring and reforming M/s Yangshin Chemical Factory and jointly acquired the assets of this State owned company and received substantial State subsidies and grants. Moreover they had also received substantial subsidy for the purpose of foreign trade development. Regarding the source of the funds by the individual shareholders/ investors in the company, no satisfactory reply/ document could be provided. The company has not provided any evidence whatsoever demonstrating that the prices of major inputs consumed by them substantially reflect market values.

M/s Lianyungang Liben Agro-chemical Co., Ltd. and M/S Xingtai Pesticides Co., Ltd.

57. In respect of these two producers/exporters, the Authority had issued exporter's verification report amply indicating that they are operating under non-market economy conditions. However, no comment on the verification report has been

received from them by the Authority. The Authority had also highlighted each of these issues related to MET claim in the disclosure statement as well, which was not responded to by these producers/exporters. In view of the above, the Authority concludes that these two producers/exporters have admitted to be operating under non-market economy conditions and therefore the Authority grants them NME status for the present investigation.

58. The Authority had not granted market economy treatment in the Preliminary Findings as non of the producer/exporter had established with verifiable evidence that “prices of major inputs substantially reflect market values”. It was further observed in the Preliminary Findings that in a situation where the raw material prices are significantly lower than the prevailing market rates in the international market, not only a vital condition for market economy treatment is not satisfied but also costs may be underestimated. The Authority had therefore taken a view in the preliminary findings that even if one of the critical parameters of market economy treatment is not satisfied it would not be feasible to grant market economy status to the responding companies.
59. In view of the issues concerning ownership and control, their impact on the cost and prices and business decisions of the companies, and verification of the same, the Authority has not granted market economy status to any of the subject producers/exporters for the determination of Normal Value.

I. Normal Value, export price and dumping margin.

I.1. Views of the interested parties

60. M/s Seth Associates on behalf of M/s Lianyungang Liben Agro-chemical Co. Ltd and Xingtai Pesticides Co., Ltd. had made the following submissions subsequent to preliminary findings, but offered no comments post disclosure:-
- a) The Authority provides no information on how the normal value of the product under consideration is constructed, such as the amount of cost of raw material, conversion cost, SGA expenses and finance cost, and profit margin. The constructed normal value is considered confidential, which substantially prevent our client from commenting on the calculation and rebutting the Authority’s decision.
- b) The Customs Tariff Commission of State Council issued the Circular on adjustment of Export Tariff on Certain Goods which come in to effect as of July 1, 2009. The Circular cancel the special export tariff, 50%, as previously levied on the yellow phosphorus which is a key raw material for the manufacturing the DETPC. After the Circular comes in to effect, the export tariff applicable to the export of yellow phosphorus from China PR shall be 20%, far less than 70% before adjustment. Since Indian DETPC producers import a large volume of

yellow phosphorus from China PR for manufacturing DETPC, our clients believe that the adjustment of export tariff of yellow phosphorus will significantly lower the production cost of Indian Producers. Therefore our client respectfully request DGAD to consider this factor and reduce the dumping margin and/or injury margin accordingly in the upcoming final findings.

61. M/s Dua Associates representing M/s Yangxin Chentian Chemical Industry Co., Ltd., Zhejiang Xinnong Chemical Co., Ltd. and China Crop Protection Industry Association, made following submissions subsequent to preliminary findings and post disclosure:

- (a) Chinese producers/exporters have provided detailed data for determination of Normal Value as part of the response to the Exporters Questionnaire and the same ought to have been taken into consideration for determining the Normal Value and the Hon'ble Designated Authority ought to have considered the domestic sale price of DTPC in China PR as the basis for determining the Normal Value of the subject goods based on Section 9A(1)(c)(i) of the Customs Tariff Act, 1975 ("the Act") read with the provisions of paragraphs 1 to 6 of Annexure I of the Anti Dumping Rules.
- (b) The Hon'ble Authority has committed error in determining normal value on the basis of "available reasonable basis" and constructing the same "based on facts available".
- (c) Designated Authority in so doing has ignored some of the factors which affect comparability of the prices and costs and have failed to make adjustments for the same.
- (d) The advantages enjoyed by Chinese producers/ exporters with regard to their economies of scale, procurement logistics, process infrastructure, geographical reasons and availability of raw material, have complete relevance and bearing to both the dumping and injury analysis since they lead to lower cost of production. However, the said advantages have been completely ignored by the Hon'ble Designated Authority while determining the Normal Value.
- (e) By using India as a surrogate country and constructing normal value on the facts available and disregarding the advantages enjoyed by Chinese producers, instead of basing assessment of normal value on the facts submitted as part of response to exporters questionnaire, an artificially high normal value has been arrived at, which has led to an erroneous conclusion of dumping to the detriment of Chinese companies.
- (f) Hon'ble Authority has failed to distinguish between export sales and domestic sales and that the same has undoubtedly led the Hon'ble Authority to an artificial ex-factory export price which may be far lower than the real ex-factory export price. The sales to unaffiliated traders in

China PR are reported as domestic sales by it and it is not understood on what basis these have been considered as part of export sales by the Hon'ble Authority.

- (g) The Authority has not followed the procedure of Rule 7 for establishing non-market economy with regard to selection of third country market economy or surrogate country for determination of normal value.
- (h) The full methodology for arriving at normal value, export price, dumping margin and NIP are not disclosed by the Designated Authority.

I.2. Examination by the Authority

- 62. In terms of Para 8 (2) of the annexure of Anti-dumping Rules, China PR has been treated as a non-market economy country subject to rebuttal of the same by the exporting country or individual producer/exporter in terms of the above Rules. 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 their claim for market economy treatment.
- 63. The Authority indicated, in the initiation notification, that the applicant claimed that China PR is a non market economy and that India, China and Denmark are the only known producers of the product under consideration in the World. The applicant domestic industry had determined normal value based on the cost of production in India, including selling general & administration expenses and profit. Authority invited comments from all interested parties in accordance to Para 7 of Annexure I. However, none of the interested parties, including the applicants and Chinese producers/exporters have placed any material fact before the Authority to select an appropriate market economy third country for this purpose. The domestic industry has submitted that India should be treated as an appropriate surrogate country for China PR in this matter and the normal value should be determined accordingly. None of the opposing parties have disputed the claim of the domestic industry with regard to production facilities being available only in three countries – China, India and Denmark. However, they have argued that by using India as a surrogate country and constructing normal value on the facts available and disregarding the advantages enjoyed by the Chinese producers instead of basing assessment of normal value on the facts submitted as part of their responses to exporters questionnaire, an artificially high normal value has been arrived by the Designated Authority. The Authority notes that China PR is a non-market economy country and advantages enjoyed by Chinese producers/exporters cannot be taken in to account while determining Normal Value. The Authority also notes that Denmark is a developed country and may not be an appropriate third country for the Chinese producers.

64. The Authority would determine individual normal value for each co-operating producer/ exporter in accordance with Section 9A of Customs Tariff Act, 1975 amended from time to time. However, individual normal value can only be determined in case of responding producers/exporters from China PR if they are able to rebut the NME presumption to the satisfaction of the Authority. Since in the instant investigation, none of the responding producers/exporters from the subject country could rebut the NME presumption to the satisfaction of the Authority, the Authority has determined normal value as per Para 7 of Annexure 1 of the anti-dumping Rules.
65. As recorded above, cost and prices of the responding producers/exporters from China PR are significantly affected by non-market economy situation and therefore, the normal value cannot be determined in terms of Para 1 to 6 of Annexure-I to the Rules. Therefore, the Authority refers to Para 7 of the said Annexure for determination of normal value in China PR for the subject goods.
66. In this connection Para 7 of Annexure I of the Anti-dumping 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.*
67. The Authority has followed the prescribed procedure and consistent practice for determining the normal value, export price, dumping margin and the non-injurious price and the methodology for determination of the same has been disclosed in the disclosure statement itself.
68. The Authority had recorded in the preliminary findings that in the absence of any reliable data in respect of cost and prices of the subject goods in an appropriate third country, normal value was determined on the basis of the third option available in the Rules, which provides for adoption of 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. Accordingly, the ex-

works Normal Value of the product under consideration for all producers/exporters from China PR has been constructed based on the facts available. The Normal Value had been constructed taking into account international prices of all the major inputs. Consumption norms had been considered as per claims made by the responding producers/exporters, conversion cost and SGA expenses had been adopted on the basis of efficient domestic producer. After adding a reasonable profit margin of 5% of ex-factory cost excluding interest, constructed normal value for the preliminary findings was worked out as US\$ ***/Kg.

69. After verification of the producer/exporter's data from the subject country and in view of the non-market economy status meted out to them and since no interested party has provided the data of any appropriate third country, the Authority has adopted the third option available in the Rules, which provides for adoption of 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 and constructed the normal value in respect of the subject country. The Normal Value has been constructed taking into account international prices of all the major inputs. Weighted average consumption norms of cooperating Chinese producers has been considered and conversion cost and SGA expenses adopted on the basis of the efficient domestic producer, and after adding a reasonable profit margin of 5% of ex-factory cost excluding interest, constructed normal value has now been worked out as follows:-

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

J. EXPORT PRICE

J.1. CO-OPERATIVE EXPORTERS

J.1.a. M/s Zhejiang Xinnong Chemical Co. Ltd.

70. M/s Zhejiang Xinnong Chemical Co. Ltd. has reported export of *** Mt of the subject goods to India during the POI. This company has claimed adjustments towards ocean freight, insurance, VAT adjustment, commission, inland transportation, other auxiliary fees and bank charges to arrive at ex-factory export price. The Authority has determined the ex-factory export price of this producer/exporter as US\$ *** per kg. after making adjustments for the expenses as per table given at para 74 below.

J.1.b. M/s Yangxin Chentian Chemical Industry Co. Ltd.

71. Yangxin Chentian Chemical Industry Co. Ltd. has reported export of *** Mt of the subject goods to India during the POI. The exporter has claimed adjustments towards ocean freight, insurance, commission, inland transportation, other auxiliary fees and bank charges to arrive at ex-factory export price. However, during verification of the exporter's data, it was noticed that no adjustment towards VAT paid and refund obtained has been made though the exporter is required to pay VAT @17% of the invoice value and is entitled for a refund of a part of the VAT paid on exports. Such adjustments have therefore been made based on the invoice value. The Authority has therefore determined the ex-factory export price of this producer/exporter as US\$ *** per kg. after making adjustments for the expenses as per table given at para 74 below.

J.1.c. M/s Xintai Pesticides Co. Ltd.

72. M/s Xintai Pesticides Co. Ltd. has reported export of *** Mt of the subject goods to India during the POI. The exporter has claimed adjustments towards overseas transportation, inland freight, port surcharge, bank charges, credit cost and overseas insurance to arrive at ex-factory export price. However, during the verification of the exporter's data it was noticed that no adjustment towards VAT paid and refund obtained has been made though the exporter is required to pay VAT @17% of the invoice value and is entitled for a refund of a part of the VAT paid on exports. Such adjustments have therefore been made based on the invoice value. The Authority has therefore determined the ex-factory export price of this producer/exporter as US\$ *** per kg. after making adjustments for the expenses as per table given at para 74 below.

J.1.d. M/s Lianyungang Liben Agro Chemical Co. Ltd.

73. M/s Lianyungang Liben Agro Chemical Co Ltd has reported export of *** Mt of the subject goods to India during the POI. The exporter has claimed adjustments towards overseas transportation, overseas insurance, credit cost, VAT, inland freight and port charges to arrive at ex-factory export price. The Authority has determined the ex-factory export price of this producer/exporter as US\$ *** per kg. after making adjustments for the expenses as per table given at para 74 below.

74. The ex-factory export prices for the above cooperative producers/exporters are determined as follows: -

	Unit	Yangxin Chentian	Lianyungang Liben	Xingtai Pesticides	Zhejiang Xinnong
Export volume	Mt	***	***	***	***
Export price per unit	US\$/Kg	***	***	***	***
Price adjustments					
Ocean freight	US\$/Kg	***	***	***	***

Insurance	US\$/Kg	***	***	***	***
Commission	US\$/Kg	***	***	***	***
Inland freight	US\$/Kg	***	***	***	***
Other Auxiliary Fees	US\$/Kg	***	***	***	***
Credit Cost	US\$/Kg	***	***	***	***
Bank charges	US\$/Kg	***	***	***	***
VAT differential	US\$/Kg	***	***	***	***
Total adjustment	US\$/Kg	***	***	***	***
Ex-factory export price	US\$/Kg	***	***	***	***

J.1.e. Non -Cooperative Exporters

75. Since no other response has been received from any other producer/ exporter of the subject goods from the subject country, the Authority has decided to determine the export price in respect of non-cooperating exporters, as per facts available in terms of Rule 6(8) of the Anti-dumping Rules. Adjustments at par with the ones allowed in case of co-operating producers/exporters has been allowed for arriving at their export price at ex-factory level. By adopting this method the export price at ex-factory level in respect of non-cooperating exporters for the subject goods worked out by the Authority is US\$ *** per kg. on the basis of facts available.
76. As regards the submission of M/s APJ-SLG for providing the details of computation of dumping margin, the Authority notes that the details of export price have already been provided to the respective responding producer/exporter in the disclosure statement. The methodology of determination of constructed normal value was suitably disclosed in the disclosure statement along with the percentage of dumping margin arrived at.
77. As regards the submission of M/s Dua Associates, the Authority notes that the export price arrived at with adjustments was disclosed to respective responding producer/exporter along with methodology adopted for determination of the same. The methodology of determination of constructed normal value was also suitably disclosed in the disclosure statement along with the percentage of dumping margin arrived at.
78. As regards the submission of M/s Dua Associates regarding the impact of prices of yellow phosphorus, the Authority notes that the Phosphorus Pentasulphide (P2S5) is an intermediate and is produced from Yellow Phosphorus. Prices of Phosphorus Pentasulphide are governed more by prices of yellow phosphorus than by the product itself. If price of yellow phosphorus goes up, price of Phosphorus Pentasulphide also goes up.
79. As regards the submission of M/s Dua Associates, in respect of advantages enjoyed by Chinese producers/ exporters with regard to their economies of scale, procurement logistics, process infrastructure, geographical reasons and

availability of raw materials, the Authority notes that since the Chinese producers/exporters have not been granted market economy treatment, the Authority has determined normal value based on the methodology explained in para 69.

80. The following views have been expressed by the Domestic Industry in the post disclosure stage:

- i) The export price of Xintai Pesticides must be rejected in view of diversion of exports through them due to lower duty imposed on them.
- ii) All the exporters should be declared non-cooperating due to non-declaration of essential facts in their responses.

81. Regarding the view of the domestic industry that the export price of M/s Xintai Pesticides must be rejected in view of diversion of exports through them due to lower duty imposed on them is concerned, the Authority observes that the allegation is unsubstantiated and developments post POI cannot constitute part of the subject investigation. Further, the Authority observes that the subject producers/exporters had submitted responses and cooperated for verification of their data and therefore it will not be proper to declare them as non-cooperative as claimed by the Domestic Industry.

K. Dumping Margin

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

	Unit	Yangxin Chentian	Lianyungang Liben	Xingtai Pesticides	Zhejiang Xinnong	Non-cooperative
Normal value	US\$/Kg	***	***	***	***	***
Export price	US\$/Kg	***	***	***	***	***
Dumping margin	US\$/Kg	***	***	***	***	***
Dumping margin	Range %	70-80	40-50	30-40	45-55	85-95

L. Injury and Causal Link

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

a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

84. The Authority has determined the injury to the domestic industry and causal link between the dumped imports and injury, taking into account all relevant facts in accordance with Rule 11 of Anti-dumping Rules and Annexure-II of the Anti-dumping Rules.
85. The Authority notes that the injury analysis has been appropriately carried out in terms of numbers with regard to the injury parameters such as capacity, production, sales, stock, market share etc. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti-dumping Rules states as follows:-

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

L.1 Views of the domestic industry

86. Post preliminary findings, the domestic industry has made the following submissions:
- (a) Imports from China PR increased in absolute terms as also in relation to production and consumption in India.
 - (b) Imports of the product were undercutting the prices of the domestic industry in the market.
 - (c) Whereas cost of production kept increasing over the injury period, even though the selling prices also increased, the increase in selling prices were significantly lower than increase in the cost of production. The imports were suppressing the prices of the domestic industry and preventing the price increases that would have otherwise occurred in the absence of dumped imports.
 - (d) Demand for the product declined in 2006-07 and consequently production and sales of the domestic industry also declined. However, the decline in production and sales of the domestic industry was more than the decline in the demand. Resultantly, the domestic industry lost market share significantly upto 2006-07. Even though the domestic industry regained some market share in the POI, the same was much lower than the levels registered earlier. The

- domestic industry was faced with significant unutilized capacities in a situation where the demand for the product is quite significant in the market.
- (e) Profitability of the domestic industry declined continuously and so steeply that the domestic industry started suffering financial losses from 2006-07, which increased further during the POI.
 - (f) Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits became negative during the POI. Growth of the domestic industry was negative in a number of parameters till 2006-07, which became positive thereafter in respect of volume parameters (even though the domestic industry could have gained higher volumes in the absence of dumping). However, growth in price parameters continued to remain negative all along.
 - (g) Imports were resulting in price undercutting in the market. Consequently, the volume of imports kept increasing even in a situation where the domestic industry was having unutilized capacities.
 - (h) The price undercutting being caused to the domestic industry resulted in a situation where the domestic industry was unable to increase its selling prices in proportion to increase in the cost of production.
 - (i) Price suppression caused by the dumped imports resulted in deterioration in profitability to such an extent that whereas the domestic industry was earning profits till 2005-06, it started suffering financial losses in 2006-07, which increased further during the POI.
 - (j) Deterioration in profitability caused by the dumped imports led to deterioration in performance of the domestic industry in terms of return on capital employed, cash profits and consequently cash flow.

L.2 Views of the Producers/ Exporters

- 87. M/s Seth Associates representing M/s Liben Agro and Xintai have not offered any views on injury in the post preliminary finding stage.
- 88. M/s Dua Associates representing M/s Yangxin Chentian Chemical Industry Co. Ltd., Zhejiang Xinnong Chemical Co., Ltd And China Crop Protection Industry Association, made following submissions in the post preliminary finding stage:-
 - (a) Many of the indices in respect of the domestic industry show a positive trend and the Preliminary Findings themselves record that many of the aforesaid factors indicate improvement which itself leads to the conclusion that it is not alleged dumping which is the cause of any alleged injury to the Petitioner and/or its

purported supporter Excel. Unfortunately these appear to have been ignored by the Hon'ble Authority.

- (b) Authority has ignored improvements recorded in one parameter whilst assessing other parameters and has thus failed to make a cumulative assessment of various parameters relating to the domestic industry which alone can give a realistic picture as to any alleged injury. Further the Authority has chosen to disregard indices pointing against any alleged injury on account of imports from China PR and hence the injury assessment is incomplete and erroneous.
- (c) Though the Authority has seen it fit to comment that the increase in Chinese imports was very significant during the POI, it has failed to consider that even more significant was the increase in the sales of the domestic industry.
- (d) The increase of imports from Xinnong and other Chinese Exporters is less than the growth of market demand.
- (e) The Authority here also erred in discounting the positive growth in the market share of the domestic industry during the POI and the decrease in the market share of imports from China PR and that the Chinese imports had only grown from 58.66% to 60.94% i.e. just over 2% from 2004-05 to 2007-08 (POI).
- (f) Authority has not explained the basis for its implicit conclusion that any increase in demand must correlate to an equivalent increase in domestic production or the domestic production is suffering some alleged injury. The said assumption presupposes that the domestic production is nearly the same as domestic demand.
- (g) The domestic industry cannot meet the domestic demand and imports are a necessity. The domestic industry has at no point of time been able to meet the demand in India.
- (h) A comparison of the Authority's own data concerning demand in the market and production of the domestic industry set out in the Preliminary Findings and noted above clearly indicates that the domestic industry has all along been incapable of meeting the domestic demand which has in all good monsoon years been far higher than the production of the industry. Further this also makes it amply clear that the same is not on account of exports from Chinese Exporters.
- (i) This makes it amply clear that imports are unavoidable for consumers in India and if duty is imposed on imports from China the clear beneficiary will be the only other production and export source i.e. the Petitioner's Denmark parent.
- (j) So the mere conclusion that because demand increased by 14% and production only by about 6% therefore the dumped imports prevented domestic industry from increasing its production is patently wrong.

- (k) Authority has also chosen to ignore that its own data showing tremendous increase in production of DTPC by the domestic industry during POI i.e. 53.70%.
- (l) Authority whilst commenting on the increase in the Chinese imports during POI, has failed to note that the imports from Denmark have increased by 84% during the POI. Further, the Authority has also ignored that given these facts, if anti dumping duty is imposed on imports from China, imports from Denmark will greatly benefit as then they will be the only source of imports which are necessary since domestic industry cannot meet domestic demand and thus by way of the present investigation a monopoly is sought to be created which will ultimately be detrimental to the consumers in India.
- (m) Domestic industry's decline in prices over the injury investigation period has been just 0.2% and during the POI just 2.08% although in the same period Chinese import prices have gone up in fact 1.98% over injury investigation period and over 16% during the POI. Hence there is no price effect establishing any alleged injury either.
- (n) There is no material injury or any threat of material injury to the Domestic Industry by the imports of DTPC from China. The alleged injury is just a mere allegation, conjecture and remote possibility and the same are not substantiated by evidence.
- (o) It is reiterated that imports of DTPC are on account of the gap in the demand in India and the Indian domestic production. That imports are to bridge this gap. The increase of volume of imports is mainly on account of increase in demand of the subject goods which cannot be supplied by domestic production.
- (p) There is no Causal Link attributable to "Other Factors". Injury, if any, suffered by the Indian industry are on account of disadvantages suffered by it which are not suffered by Chinese exporters.
- (q) It has been admitted by the Domestic Industry that it has always been earning low levels of profit in the preceding years and that the losses in recent years have been due to "other factors" and not due to dumping of DTPC by the Chinese exporters.
- (r) Injury, if at all, suffered by the Petitioner is on account of loss of market share to its internal competitor.
- (s) The 6% decrease in production of the Petitioner has resulted in 6% increase in the production of the Supporter, Excel. Therefore, the decrease in production of the Petitioner is due to internal competition with the only producer in the Indian market and not due to imports or dumping from China PR as alleged.
- (t) There is a wide gap between domestic demand and domestic production and sales, thus necessitating imports of the subject goods from the subject countries,

especially in view of the fact that the subject good is exported to India only from China and now Denmark.

L.3 Views of the Importers/Users

89. The importers/ users have not offered any views on injury in the post preliminary finding stage.

L.4 Post disclosure the following issues relating to injury analysis have been raised by the interested parties:-

90. No examination of the sales negotiation process in the Indian market has been undertaken by the Designated Authority.

91. No. analysis has been done by the Designated Authority to examine competition between Excel and Cheminova .

92. No examination has been done by the Designated Authority to seek at what price the captive sales were made by the domestic industry and whether any injury could be attributed to such captive sales or sales to related entities.

L.5 Examination by the Authority

93. The Authority has determined the injury to the domestic industry and causal link between the dumped imports and injury, taking into account all relevant facts in accordance with Rule 11 of Anti-Dumping Rules.

94. The Authority notes that the injury analysis has been appropriately carried out in number terms with regard to the injury parameters such as capacity, production, sales, stock, market share etc.

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

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

in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

97. The Authority has taken note of arguments of interested parties on injury and causal link and addressed the relevant issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.
98. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules supra.
99. Post disclosure the interested parties have stated that the Authority has not examined sales negotiation process in the domestic market and that M/s Cheminova has long term sales contracts with the consumer industries which involves an inbuilt pricing formula. The Authority observes that no such argument on this account was raised by the interested parties during the course of the proceedings. The Authority holds that no interested party should raise such highly factual arguments (consideration of which even requires spot verification) at the belated stage of disclosure statement. Nevertheless, the Authority examined this issue and directed the domestic industry to clarify the factual position along with the copies of the long term contracts and a statement of sales bifurcating the contractual sales and normal sales. From the information/document furnished by the domestic industry, the Authority observes that during POI M/s Cheminova has ***% of the total domestic sales through contracts at the weighted average rate of Rs.*** per Kg and ***% domestic sales otherwise at the weighted average rate of Rs.*** per Kg. From the above analysis the Authority observes that there is no significant difference in the pricing structure between the two routes of domestic sales of M/s Cheminova during the POI. The Authority further observes that the weighted average price of M/s Excel, the other constituent of Domestic Industry, is less than the weighted average contractual price and the weighted average non-contractual price of M/s Cheminova during the POI. Moreover, the price undercutting, price underselling, price suppression and price depression examined by the Authority basing exclusively on M/s Excel's data is found to behaving in the same trend as the injury parameters when examined by taking the data of the domestic industry.

Price Undercutting

Particulars	Units	2004-05	2005-06	2006-07	POI
Price undercutting based on Excel	Rs./kg	***	***	***	***
Price undercutting based on DI	Rs./kg	***	***	***	***

Price undercutting based on Excel	%	10-20	15-25	15-25	5-12
Price undercutting based on DI	%	10-20	15-25	15-25	7-15

Price Underselling

Particulars	Units	Excel	DI
Landed Price	Rs./kg	85.40	85.40
Non-injurious price	Rs./kg	***	***
Price underselling	Rs./kg	***	***
Price underselling	%	30-40	35-45

Price suppression and depression

Particulars	Unit	2004-05	2005-06	2006-07	POI
Cost of Sales - Excel	Rs/ Kg	***	***	***	***
Trend	Indexed	100	106.07	109.94	107.90
Cost of Sales - DI	Rs/ Kg	***	***	***	***
Trend	Indexed	100	106.60	114.71	110.55
Selling Price - Excel	Rs/ Kg	***	***	***	***
Trend	Indexed	100	99.06	89.57	85.06
Selling Price - DI	Rs/ Kg	***	***	***	***
Trend	Indexed	100	101.22	94.67	88.85

100. In view of the arguments of the interested parties, the performance of the domestic industry was examined individually. It is seen that the price undercutting is positive and both the companies individually show price depression. Further, the profitability of both the units also show the same pattern. It is observed from the data available on record that profitability of both the domestic industry has deteriorated. Both the units were in profits in the base year and the profits steeply deteriorated and both suffered financial losses during 2006-07 and 2007-08. Return on investment of both the companies were also positive in the base year and steeply deteriorated to negative levels during the POI. Thus, the information on record does not show that the conclusions with regard to injury to the domestic industry would have been different for the reasons stated by the interested parties. On the contrary, if the selling price of M/s Cheminova is higher due to alleged sales on contract basis, it implies that the financial losses and return on investment of the company would have been more adverse than the levels found during the investigation period.
101. The interested parties have also disputed injury determination arguing that the performance of the domestic industry improved on account of sales, market share, decline in imports, production and capacity utilization. It is, however, found that they have primarily compared period of investigation with preceding year and

have assumed that dumping commenced only in the period of investigation. Even when the Authority fixes a period of investigation for the purpose of determination of dumping margin, the same does not imply that the dumping occurs only during the period of investigation. The pattern of price and volumes in fact shows that dumping occurred over a longer period. In order to contain its volume injury, the domestic industry took a hit on profitability during the period of investigation which directly resulted in some increase in the volumes during the period of investigation, even when profitability and return on investment declined. However, the parameters during the period of investigation are still remained far adverse as compared to the first two years. The Authority is required to see overall situation prevailing during the injury period and then come to a conclusion.

102. They have also alleged that the price war in the Indian market could have been triggered by imports made by the related party of Excel. Such arguments are merely conjectures and unsubstantiated. The insignificant quantum of *** Mt of imports made by M/s Excel Crop Care Ltd., as is evident from the DGCI&S data, as against the total imports of 12361 Mt in to India during the POI can not cause any price war in the domestic market. When an interested party claims that some other factor could have contributed injury to the domestic industry, the onus to establish existence of such other factors and to quantify injury on account of the same rests on such interested parties themselves. While the Designated Authority is required to examine other known factors of injury and while the Authority can still consider such other known factors as are brought to the notice of the Authority, the same does not imply that the obligation to examine existence of other unlisted factors and quantify injury due to the same is onto the Authority without any supporting evidence and necessary information from the interested parties. In fact, the interested parties are required to demonstrate existence of such other factors and quantify injury caused to the domestic industry due to any such other factors.
103. Regarding the price of the captive sales of the domestic industry and its injury potential that can be attributed to such captive sales or sales to related entities, the Authority observes that M/s Excel has no captive sales. As far as M/s Cheminova is concerned, their captive sales is too insignificant (**Mt) compared to the total domestic sales (**Mt) and therefore cannot have any substantial impact on the injury.
104. The interested parties have also disputed injury determination arguing that the performance of the domestic industry improved on account of sales, market share, decline in imports, production and capacity utilization etc. It is, however, found that they have primarily compared period of investigation with preceding year and have assumed that dumping commenced only in the period of investigation which is far from the truth. The Authority is required to see overall situation prevailing during the injury period and then come to a conclusion.

105. The view that the price war in the Indian market could have been triggered by imports made by related party of M/s Excel sounds to be merely a conjecture and unsubstantiated. The volume of imports by such related party were so low as compared to the rest of the imports that the same could not have triggered any price war.

M. Volume Effects of Dumped Imports

a) Demand and market share

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

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

107. It is seen from the table above that the demand for the product declined significantly between 2005-06 and 2006-07 and thereafter shown a significant increase during the POI.

b) Import volume and market share

108. The Authority has examined the volume of imports of the subject goods as provided by (a) the applicant domestic industry (which is based on secondary source of import data), (b) information procured by the Authority from the DGCI&S and (c) the responding producers/exporters. It is noted that the volume of imports reported in the DGCI&S data is not exhaustive, which appears to be due to the fact that the imports have been cleared in a number of customs classifications. This was further established by examination of the import data provided by the responding importers. Therefore, the Authority has relied upon the information received from the secondary sources (IBIS) as provided by the applicant. On the basis of various import data on record, the import volume from China PR are found to be above the de-minimis levels.

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

Imports in MT	Unit	2004-05	2005-06	2006-07	POI
China PR	MT	10,470	8,055	8,620	12,361
Other Countries	MT	-	-	138	255
Total Imports	MT	10,470	8,055	8,758	12,616

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

c) Market share in demand

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

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

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

d) Share of dumped imports in relation to domestic production

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

	Unit	2004-05	2005-06	2006-07	POI
Imports from China	MT	10,470	8,055	8,620	12,361
Production of the domestic industry	MT	9003	7938	6200	9335
Dumped Imports in relation to production of domestic industry.	%	116.29	101.47	139.03	132.42

e) Capacity & capacity utilization

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

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

115. It is observed from the table above that capacity utilization of the domestic industry declined upto 2006-07, but increased thereafter during the POI. Though, production of the domestic industry increased again during the POI, the same is still low considering that there is significant demand for the product in the Country.

f) Production

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

	Unit	2004-05	2005-06	2006-07	POI
Production MT	MT	9003	7938	6200	9335
Trend	Indexed	100	88.17	68.87	103.68
Demand	MT	17,848	14,209	13,380	20,285
Trend	Indexed	100	79.61	74.97	113.66
Production in relation to Demand	%	50.45	55.87	46.34	46.02

117. It is observed that production of the domestic industry declined upto 2006-07. However, decline in production was more than decline in the demand, which shows that dumped imports led to higher loss of market for the domestic industry in the past. During the POI, even when demand increased sharply, the dumped imports prevented the domestic industry to increase its production. Whereas demand increased by about 14%, production increased only by about 4%.

g) Sales volume

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

	Unit	2004-05	2005-06	2006-07	POI
Domestic sales	MT	7378	6154	4622	7670
Trend	Indexed	100	83.41	62.65	103.96
Demand	MT	17,848	14,209	13,380	20,285
Trend	Indexed	100	79.61	74.97	113.66

Market Share of domestic industry in Demand	%	41.34	43.31	34.55	37.81
---	---	-------	-------	-------	-------

119. It is observed from the table above that sales of the domestic industry declined sharply till 2006-07 and thereafter increased substantially. While the demand for the product also declined, the decline in sales was far more than decline in the demand. Resultantly, the domestic industry lost significant market share. Demand for the product increased significantly during the POI. However, inspite of the same, the domestic industry has not been able to increase its sales volumes to the extent of increase in demand. In fact, even market share of the domestic industry has not gone back to the levels of the base year. Therefore, dumped imports are impacting the sales of the domestic industry.

N. Price Effect of the Dumped imports on the Domestic Industry

a. Price Undercutting

120. With regard to the effect of the dumped imports on the prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.
121. The net sales realization was arrived at after deducting all rebates and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the dumped imports are undercutting the prices of the domestic industry.

Price Undercutting based on Net sales realization of Domestic Industry:

Particulars	Units	2004-05	2005-06	2006-07	POI
CIF Import Price	Rs./kg	76.98	72.18	67.22	78.49
Landed price of imports	Rs./kg	93.61	84.06	76.64	85.40
Net Sales Realization	Rs./kg	***	***	***	***
Price undercutting	Rs./kg	***	***	***	***
Price undercutting %	%	10-20	15-25	15-25	7-15
Cost of sales	Rs./kg	***	***	***	***

122. Further, it is observed from the table below that the price undercutting is positive both when the calculation is done basing on the data of M/s Excel Industries Ltd exclusively and also when calculated on the basis of the data of a few individual cooperating importers. Therefore the post disclosure allegation of the interested parties that M/s Cheminova has long term sales contracts having inbuilt pricing formula and therefore the price undercutting calculated on the basis of cumulative price of both the constituents of the domestic industry is faulty, is not correct.

Price Undercutting based on data of M/s Excel Industries Ltd

Particulars	Units	2004-05	2005-06	2006-07	POI
CIF Import Price	Rs./kg	76.98	72.18	67.22	78.49
Landed price of imports	Rs./kg	93.61	84.06	76.64	85.40
Net Sales Realization	Rs./kg	***	***	***	***
Price undercutting	Rs./kg	***	***	***	***
Price undercutting %	%	10-20	15-25	15-25	5-12

Price Undercutting based on individual importers data for the POI

Particulars	Units	MEGHMANI	GHARDA	BHAGIRADHA
CIF Import Price	US\$/Kg	***	***	***
Landed price of imports	US\$/Kg	***	***	***
Purchase Price From DI	Rs/Kg	***	***	***
Purchase Price From DI	US\$/Kg	***	***	***
Price undercutting	US\$/Kg	***	***	***
Price undercutting	Rs/Kg	***	***	***
Price undercutting %	%	5-15	1-10	10-20

123. It is observed from the table above that imports are undercutting prices of the domestic industry. It is also noted that having lost significant market share during 2006-07, the domestic industry seem to have reduced the price difference between the imported product and domestic product in order to regain its market share. Resultantly, the market share of the domestic industry improved during the POI.

b) **Price Underselling**

124. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed

value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI in accordance with the practice of the Authority as also taking in to account the decision of Hon'ble Supreme Court in the Reliance case. The analysis shows that the landed value of subject imports was significantly below the non-injurious price determined as follows:-

Particulars	Rs/Kg
CIF price	78.49
Landed Price	85.40
Non-injurious price	***
Price underselling	***
Price underselling Range (%)	35-45

c) **Price suppression/depression**

125. Price depression exists when the industry's prices are lower than the level of the previous period. Price suppression occurs when dumping prevents price increase that would otherwise take place due to increase in costs.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Cost of Sales	Rs/ Kg	***	***	***	***
Trend	Index	100	106.60	114.71	110.55
Selling Price	Rs/ Kg	***	***	***	***
Trend	Index	100	101.22	94.67	88.85

126. From the above table, it is evident that price depression is there since the industry's price during the POI is lower than the price during the immediate preceding year. Further, price suppression is also there as the proportion of reduction in the cost of sales during the POI as compared to the immediate preceding year is 4% whereas during the same period the selling price has been reduced by 6%.

127. The above analysis shows that the dumped imports have adverse volume and price effect on the domestic industry in terms of increase in volume of dumped imports both in absolute and relative terms, and by suppressing and depressing the prices of the domestic market while eroding its market share.

d) **Profit/Loss**

128. The profitability of the domestic industry is given in the following table:-

	Unit	2004-05	2005-06	2006-07	POI
Profit before tax(PBT)	Rs. Lacs	***	***	***	***
Trend	Indexed	100.00	46.57	-53.30	-105.53
Profit before interest & tax(PBIT)	Rs. Lacs	***	***	***	***
Trend	Indexed	100.00	62.83	-28.33	-63.71
Profit Before interest(PBIT)	Rs./KG	***	***	***	***
Trend	Indexed	100.00	75.33	-45.21	-61.28
Profit before tax (PBT)	Rs./MT	***	***	***	***
Trend	Indexed	100.00	54.33	-79.92	-100.16

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

O. Examination of other Injury Parameters

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

a) Return on capital employed

131. Information regarding return on capital employed is given in the table below:-

	Unit	2004-05	2005-06	2006-07	POI
Return on Capital Employed - NFA basis	%	***	***	***	***
Trend	Indexed	100	64.38	-40.04	-81.14

132. The Authority notes from the table above that return on capital employed of the domestic industry has deteriorated significantly over the injury period and the same became negative during 2006-07 and during the POI.

b) Cash Flow

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

	Unit	2004-05	2005-06	2006-07	POI
Cash profits	Rs.Lacs	***	***	***	***
Trend	Indexed	100	65.57	1.43	-23.50

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

c) Factors affecting domestic prices

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

d) Inventories

136. Inventory holding of the domestic industry has declined as compared to the base year. However, the same has gone up during the POI as compared to the immediate preceding year as observed from the table below.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Opening stock	Mt	458	502	403	369
Closing stock	Mt	502	403	369	421
Average stock	Mt	480	452	386	395

e) Productivity

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

	Unit	2004-05	2005-06	2006-07	POI
Productivity per employee	Mt	***	***	***	***
Trend	Indexed	100	85.25	72.17	110.63
Productivity per day	Mt	***	***	***	***
Trend	Indexed	100	88.17	68.87	103.68

f) **Employment and Wages**

138. Authority notes that employment with the domestic industry declined during the injury period except 2005-06, while wage paid shows increasing trend during the POI as compared to the immediate preceding year as well as the base year.

	Unit	2004-05	2005-06	2006-07	POI
Employment	No	***	***	***	***
Trend	Indexed	100	103.43	95.43	93.71
Wages	Rs.Lacs	***	***	***	***
Trend	Indexed	100	97.34	79.76	142.67

g) **Growth**

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

h) **Ability to raise capital investment**

140. In the preliminary finding it was mentioned that no significant investment was made by the domestic industry. But, after verification of the domestic industry's data it was observed that the domestic industry has made investments to the tune of Rs.*** lakhs during the POI. However, continued dumping of the product would certainly have adverse impact on the ability of the domestic industry to raise capital investment.

P. **Examination of other issues raised by the various interested parties**

141. With regard to information concerning a number of parameters in the application, the Authority notes that the application filed contains separate information with regard to various injury parameters. In any case captive consumption by the applicant domestic industry is not very significant. Further, the application includes information on indexed basis with regard to inventories, profits, employment and capital investment for expansion.
142. The Authority notes that demand for the product has substantially increased during the investigation period as compared to previous year. In fact, in its application, the applicant alleged that there was a significant decline in demand during 2006-07 leading to decline in sales volumes.

143. It is, however, noted that imports have increased in absolute terms and in relation to production and consumption over the injury period. Even though market share of imports declined during the period of investigation as compared to preceding year, the same is still higher as compared to earlier years.
144. With regard to increase in prices during the period of investigation, the Authority notes that there has been significant change in the prices over the injury period. Even within the period of investigation, the prices moved significantly from a low of Rs *** per Kg. to as high as Rs.*** per Kg. The increase of ***% in overall import price does not imply that imports are not having any adverse price effect on the domestic industry.
145. With regard to production, sales and capacity utilization, the Authority notes that the unutilized capacity with the domestic industry is still substantial despite increasing demand in the country. Further, the volume achieved by the domestic industry has to be seen along with the price at which the goods have been sold. It is noted that the profitability of the domestic industry steeply deteriorated over the injury period.
146. While it is appreciated that demand for the product has increased, it is noted that the domestic industry could have produced and sold significantly higher volumes, by using unutilized capacities (22% during POI), in the absence of dumped imports. It is noted that the increase in imports between 2004-05 and POI was 2146 MT, whereas the unutilized capacity with the domestic industry in the POI was 2665 MT. In other words, had the dumped imports not increased over the period, the domestic industry could have utilized its full capacity. It could not therefore be accepted that the entire increase in imports was due to shortfall in the demand in the Country. In any case, the performance of the domestic industry deteriorated in terms of parameters such as profit/loss, return on investment and cash profits.
147. With regard to alleged unfair advantage to the domestic industry in production of Pesticides as a result of imposition of proposed anti dumping duties, the Authority is of the view that the purpose of anti dumping duties is to eliminate unfair pricing and to create a level playing field for the domestic industry vis-à-vis the dumped imports. Contrary to what has been argued by the interested parties, it can be said that access to unfairly priced import to other Pesticides manufacturers is giving undue advantage as compared to those manufacturers who are having their own captive production of DETPC.
148. Reduction in price undercutting in 2007-08 as compared to 2006-07 is because of significant increase in imports during 2006-07 when the demand increased and the domestic industry lost their market share. Domestic industry argued that as a result of this loss of market share during 2006-07, the domestic industry took corrective action in reducing the price gap between the domestic and imported product, results of which could be seen in the market share in the investigation

period increasing in favour of domestic industry. However, it is evident that while the demand increased by 2438 MT over the injury period, sales of the domestic industry increased only by 292 MT, whereas the imports increased by 2146 MT. At the same time, the domestic industry had unutilized capacity of 2665 MT in investigation period. It is thus evident that practically entire increase in demand was taken away by the dumped imports in a situation where the domestic industry had unutilized capacities to the extent of increase in demand.

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

Q. Conclusion on Injury

150. On examination of various injury parameters, the Authority finds that imports from China PR increased in absolute terms as also in relation to production and consumption in India. Imports of the product were undercutting the prices of the domestic industry in the market. Further, whereas cost of production kept increasing over the injury period, even though the selling prices also increased, the increase in selling price was significantly lower than the increase in the cost of production. The imports were thus suppressing the prices of the domestic industry and preventing the price increase that would have otherwise occurred in the absence of dumped imports. With regard to consequent impact of the dumped imports on the domestic industry, it is found that demand for the product declined very significantly upto 2006-07 and consequently production and sales of the domestic industry declined upto 2006-07. However, the decline in production and sales of the domestic industry was more than the decline in demand. Resultantly, the domestic industry lost market share significantly upto 2006-07. Even though the domestic industry regained some market share during the POI, the same was much lower than the levels registered earlier.
151. The domestic industry was faced with significant unutilized capacities in a situation where the demand for the product is quite significant in the market. Profitability of the domestic industry declined continuously and so sharply that the domestic industry started suffering financial losses from 2006-07, which increased further during the POI. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits became negative during the POI. Growth of the domestic industry was negative in a number of parameters till 2006-07, which became positive thereafter in respect of volume parameters (even though the domestic industry could have gained higher volumes in the absence of dumping). However, growth in price parameters continued to remain negative all along. It is thus concluded that the domestic industry has suffered material injury.

R. Causal Link and Other Factors

152. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-dumping have been examined to see whether these any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:-

(a) Volume and Prices of imports from third country

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

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

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

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

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

(d) Development in Technology

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

(e) Export performance of Domestic Industry

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

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

(f) Productivity of the Domestic Industry

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

159. The above non-attribution analysis shows that no other known factors, other than the dumped imports, appear to have affected the domestic industry.

S. Factors establishing causal link

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

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

161. Therefore, the Authority concludes that the domestic industry has suffered material injury and the injury to the domestic industry has been caused by the volume and price effects of dumped imports from the subject country.

T. Magnitude of injury and injury margin

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

	Unit	Yangxin Chentian	Lianyungang Liben	Xingtai Pesticides	Zhejiang Xinnong	Non- cooperative
Non-injurious price	US\$/Kg	***	***	***	***	***
Landed price of imports	US\$/Kg	***	***	***	***	***
Injury margin	US\$/Kg	***	***	***	***	***
Injury margin	Range %	50-60	30-40	15-25	30-40	85-95

U. Conclusion:

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

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

V. Indian industry's interest & other issues

V.1 Issues raised by the interested parties

164. The following issues were raised by the interested parties:-

- a) There is a wide gap between domestic demand and domestic production and sales thus necessitating imports of the subject goods from the subject country, especially in view of the fact that the subject good is exported to India only from China PR and now Denmark.
- b) The cost of commonly used and popular pesticide products such as Chlorpyrifos, Quinalphos, Propanofos, Triazophos and Anilophos, for most common crops will go up by at least 15 to 20% on account of the imposition of the high anti-dumping duty recommended by the Authority in the Preliminary Findings thus impacting the interest of the farmers.
- c) In the event the anti-dumping duty are imposed by the Authority on the imports of DTPC from China PR , Indian Exporters will have to increase their prices by at least 5% to 7% and will therefore lose a competitive edge over the other exporters around the world. This will further worsen the declining export performance of India as a country.
- d) Several Indian companies manufacture the products namely, Chlorpyrifos, Quinalphos, Propanofos, Triazophos and Anilophos in which DTPC is used as the main raw material. In order to protect the interest of the Petitioner, it is not prudent to penalize 20 or more manufacturers who use the product.
- e) Both Indian producers put together are unable to meet the domestic demand. Imposition of anti dumping duty in such situation is counterproductive and will cause scarcity of DTPC in the domestic market.

V.2 Examination by the Authority

165. 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 product to the consumers. The imposition of anti-dumping duties does not intend to create market scarcity in the domestic market by preventing imports. In fact the subject goods are freely importable and even in the event of imposition of anti-dumping duties against imports of the subject goods originating in or exported from the subject country, the subject goods would continue to be imported freely. The fundamental principle of anti-dumping duty is to prevent dumping and to ensure fair trading practice and to create a level playing field for the domestic producers vis-a-vis foreign producers/exporters resorting to dumping.
166. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products.

However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

W. Recommendation

167. The Authority notes that the investigation was initiated and notified to all the known interested parties and adequate opportunity was given to the exporters,

importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and completed the investigation into dumping, injury and causal link in terms of the Anti-dumping Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports from the subject country, the Authority is of the view that imposition of anti-dumping measures is required to offset dumping and injury. Therefore, the Authority considers it necessary and recommends imposition of definitive anti-dumping duties on imports of the subject goods from the subject country in the form and manner described hereunder.

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

SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Yangxin Chentian Chemical Industry Co., Ltd.	Yangxin Chentian Chemical Industry Co., Ltd.	1.024	Per Kg	US\$
2	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Lianyungang Liben Agro-chemical Co., Ltd.	Lianyungang Liben Agro-chemical Co., Ltd.	0.754	Per Kg	US\$
3	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Xingtai Pesticides Co., Ltd.	Xingtai Pesticides Co., Ltd.	0.516	Per Kg	US\$
4	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Zhejiang Xinnong Chemical Co., Ltd.	Zhejiang Xinnong Chemical Co., Ltd.	0.798	Per Kg	US\$
5	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	China PR	Any combination of producer and exporter other than the above		1.157	Per Kg	US\$
6	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	China PR	Any country other than China PR	Any	Any	1.157	Per Kg	US\$
7	29.30	Diethyl Thio Phosphoryl Chloride (DETPC)	Any country other than China PR	China PR	Any	Any	1.157	Per Kg	US\$

169. Subject to the above, the Authority confirms the preliminary findings dated 25th May, 2009.

170. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(P.K.Chaudhery)
Designated Authority