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F.No.14/12/2012-DGAD
Government of India
Department of Commerce
Directorate General of Anti Dumping & Allied Duties

Udyog Bhawan, New Delhi
Date: 27th December 2013

Final finding

Sub: Anti-dumping investigation concerning imports of Red Phosphorous originating in or exported from China PR - Final finding

Having regard to 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 thereof, as amended from time to time (hereinafter referred to as the AD rules).

A. Background of the Case

2. The Designated Authority (hereinafter referred to as the Authority), under the above Rules, received a written application from M/s. Metal Powder Company Ltd. (MEPCO) and M/s. United Phosphorus Limited (UPL) (hereinafter referred to as the applicants) on behalf of the domestic industry, alleging dumping of **Red Phosphorous** originating in or exported from People's Republic of China (hereinafter referred to as China PR or subject country) and consequent injury to domestic industry and requested for initiation of anti-dumping investigation and levy of anti dumping measures.

3. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicants. The application was, therefore, considered as duly documented. The Authority, on the basis of sufficient evidence submitted by the Applicants to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country.

4. The Authority notified the embassy of the subject country in India about the receipt of the application containing, *inter alia*, allegations of dumping and consequent injury to the domestic industry before proceeding to initiate the investigation in accordance with sub- Rule 5(5) of the AD Rules.

5. Accordingly, the Authority initiated an investigation into the alleged dumping, and consequent 'injury' to the domestic industry in terms of the Rules 5 of the AD Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping measure, which, if levied, would be adequate to remove the injury to the domestic industry.

B. General Procedure

6. Procedure described below has been followed with regard to this investigation:
- i. The Authority notified the embassy of the subject country in India about the receipt of dumping application before proceeding to initiate the investigation in accordance with

- sub-Rule 5(5) of the Anti-dumping Rules.
- ii. The Authority issued a public notice dated 28th September 2012 published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods, originating in or exported from the subject country.
 - iii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the Applicants) and industry associations and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the Anti-dumping Rules.
 - iv. The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India (whose details were made available by the Applicants) and advised them to make their views in writing within forty days from the date of the letter.
 - v. The Authority provided a copy of the non-confidential version of application to the known exporters and the embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.
 - vi. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rule 6(4) of the AD Rules:
 - a. Shanghai Yancui Import and Export Co., Ltd.
 - b. Changzhou General Import and Export Corporation
 - c. Sichuan Time Plastic Steel Profile Technology Co. Ltd.
 - d. Peony Chemicals Private Limited
 - e. Sichuan Blue Sword Import and Export Co. Ltd.
 - f. Nantong Italmatch Chemicals Co Ltd.
 - g. Yunnan Jianglin Group Co., Ltd.
 - h. Yunphos International Trading Co.
 - vii. None of the exporters from the subject country has responded to the initiation notification.
 - viii. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:
 - a. Prasol Chemicals Limited
 - b. Wimco Limited
 - c. Star Chemicals (Bombay) Pvt. Ltd.
 - d. Salvi Chemical Industries Limited
 - e. Shree Ram Enterprises
 - f. Finar Chemicals Ltd.
 - g. Shreeji Engineering
 - h. Mittal Rod Industries
 - i. Solaris Chemtech Indus Ltd
 - j. Patel Chemicals Company
 - k. Kamnath Indus
 - ix. In response to the initiation notification, following parties (importers/users/producers) have responded:
 - (a)Agrosynth Chemicals Ltd., Bangalore
 - (b)Sri Magenta Chemicals Pvt. Ltd., Virudhunagar
 - (c)Star Chemicals Pvt. Ltd., Mumbai.
 - (d)Prasol Chemicals Limited
 - 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 the subject goods for the past three years, including the period of investigation and the same was received.
 - 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 the domestic industry. The Non Injurious Price (NIP) has been determined after onsite verification at the premises of the domestic industry as per Annexure III of the anti dumping rules.
 - xiii. The Authority held a public hearing on 22.07.2013 to hear the interested parties orally. The interested parties present at the time of hearing were advised to file written submissions of the views expressed orally and were also given an opportunity to file rejoinder to the views expressed by other interested parties. The written submissions and rejoinders received from interested parties have been considered, to the extent considered relevant.
 - xiv. On the spot verification of the data provided by the applicants was carried out to the extent considered necessary.
 - xv. In accordance with Rule 16 of the Rules supra, the essential facts were disclosed by the Authority to the known interested parties and comments received on the same, are considered in the final finding to the extent these are found relevant to the investigations. The following interested parties have responded to the disclosure statement
 - a. M/s Agrosynth Chemicals Ltd, Importer.
 - b. The domestic industry
 - xvi. Investigation was carried out for the period starting from 1st April, 2011 to 31st March, 2012 (POI). The examination of trends, in the context of injury analysis covered the period from April 2008-March 2009, April 2009-March 2010, April 2010-March 2011, and the POI.
 - xvii. The submissions made by the interested parties considered relevant by the Authority, have been addressed in this final finding.
 - xviii. *** in this final finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
 - xix. The Central government upon the request from DGAD extended the date for completing the subject investigations and notifying the final findings till 27th December, 2013.
 - xx. Exchange rate adopted for the POI is 1 US \$ =Rs 48.14.

C. Product Under Consideration and Like Article

7. The product under consideration in the present investigation is 'Red Phosphorous, excluding red phosphorous used in electronic applications'. It is also known as "Phosphorous Amorphous". Red Phosphorus is an allotrope of elemental Phosphorus, and is one of the major forms of the same. The other major form of phosphorus is White Phosphorus. Red phosphorus occurs as a violet-red amorphous powder and exhibits polymorphism. It has no smell; however, when contaminated with yellow phosphorus, it smells strongly like Ozone. It has high electrical resistivity and is insoluble in most solvents; the properties of red phosphorus are intermediate between white and black. Red phosphorus is obtained by heating white phosphorus to around

250°C with a catalyst. Red Phosphorus is more stable and less reactive form of phosphorus. The chemical formula of Red Phosphorous is P₄. Its molecular weight is 123.88.

8. 'Red Phosphorous' is classified under Chapter 28 at subheading no. 2804.70 20 in the Customs Tariff Act. However, Customs classifications are indicative only and in no way binding on the scope of this investigation.

C.1 Views of the Domestic Industry

9. The following are the views of the domestic industry:

- a) The present petition covers all types of 'Red Phosphorus', excluding 'Red Phosphorus' used in electronic applications.
- b) Red Phosphorus is packed in steel drums with inner packing of plastic bags. Small quantities of the product under consideration are packed in sealed bottles.
- c) Red phosphorus is used to manufacture phosphoric acid, metallic phosphides, safety matches, etc.
- d) It is incorrect that the domestic industry cannot produce and supply all the specifications of the requirement of the consumers. The consumers can place orders for the material required by them and the domestic industry shall supply the same.

C.2 Views of Importers/consumers and other Interested Parties

10. It has been contended by an interested party, Agrosynth Chemicals Ltd. that the specifications of the product supplied by the domestic industry do not meet the specifications required by the consumers.

C.3 Examination by the Authority

11. The Authority has noted the arguments advanced by the interested parties. It is noted that Agrosynth Chemicals has contended that they cannot use the goods supplied by the domestic industry. The domestic industry, however, provided communication showing that Agrosynth Chemicals had approved the product offered by domestic industry, but, Agrosynth Chemicals did not place order for procurement of the goods from domestic industry. It is thus, not established that the domestic industry is not offering like article to the imported product from China nor it has been established that goods produced by domestic industry are not suitable for some particular application where Chinese product has been consumed.

12. Accordingly, the product under consideration is defined as '*Red Phosphorous, excluding red phosphorus used in electronic applications*'. The subject goods fall under Tariff Item '2804.70 20' of the Customs Tariff. However, Customs classifications are indicative only and in no way binding on the scope of the present investigation and proposed measures.

C.4 Like Article

13. Rule 2(d) of the AD Rules defines like article as follows:

"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 the characteristics closely resembling those of the articles under investigation".

14. The applicants have claimed that the subject goods produced by the domestic industry are identical to the product under consideration being imported into India. The applicants have further claimed that there is no known difference in the applicants'

product and product under consideration exported from the subject country and the two 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. There is no significant difference in the subject goods produced by the applicants and those exported from the subject country and both are technically and commercially substitutable.

15. The Authority has examined the matter and notes that there is no known difference in subject goods produced by the domestic industry and exported from the subject country. There is no evidence that the domestic industry has not offered a product to substitute the imported product. The subject goods produced by the domestic industry and that 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. In view of the same, the subject goods produced by the petitioner companies are being treated as domestic like article to the product under consideration imported from the subject country in accordance with the anti dumping Rules.

D. Scope of Domestic Industry and Standing

16. Rule 2 (b) of the AD rules defines domestic industry as under:

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

17. The application was filed by M/s. Metal Powder Company Ltd. (MEPCO) and M/s. United Phosphorus Limited (UPL) (referred to as the applicants or petitioners) as the domestic industry of the subject goods in India. The applicants are major producers of Red Phosphorous in the Country and, the production of the applicants accounts for major proportion of domestic production of like article in India. There are two other known Indian producers of the subject goods – Sri Magenta Chemicals and Kalpataru Chemicals. While Sri Magenta Chemicals has expressed their support to the petition; Kalpataru has not expressed either support or opposition to the petition. Further, it has also been submitted by the applicants that the other two Indian producers have imported subject goods.

18. It is noted that the production of petitioner companies constitute 69.2% of Indian production. Further, petition has been supported by M/s Magenta Chemicals whose production constituted 10.3% of Indian production. The petition is thus supported by domestic producer’s i.e. M/s MEPCO, M/s UPL and M/s Magenta Chemicals whose collective output constitutes 79.5% of Indian production. However, no information in the form and manner of domestic industry proforma has been received from M/s Magenta Chemicals during the investigation proceedings.

19. In view of the above and after due examination, it is held that the applicants i.e M/s UPL and M/s MEPCO satisfy the requirements of standing and constitute domestic industry in terms of Rule 2(b) and Rule 5(3) of the AD Rules respectively.

E. Miscellaneous issues raised by the Interested Parties-(Importers)

20. The following are the issues raised by Agrosynth Chemicals Ltd.:
- a) It has been claimed by the responding users that they are a small scale industry producing aluminium and zinc phosphide and thereby using red phosphorous. There are only three companies in India, other than ACL engaged in the manufacture of Aluminium Phosphide, i.e., the petitioner (United Phosphorus), Excel Crop Care and Sandhya Organics. The petitioners have been trying to control the aluminium phosphide market by impermissible and restrictive practices.
 - b) UPL has been indulging in anti-competitive activities and has been penalized by the Competition Commission. The Competition Commission by its order dated 23.04.2012 has imposed penalties on United Phosphorus Limited (UPL).
 - c) The petitioner is taking advantage of the yellow phosphorus prices from China, yet is seeking to block ACL imports of its raw materials, so as to remove ACL from the Aluminium Phosphide market.
 - d) ACL has a strong apprehension that UPL, MEPCO and others are forming a cartel in order that they can increase the prices of Red Phosphorus to reap enormous profits.
 - e) Usage of Yellow Phosphorus for manufacture of Aluminium Phosphide is more outdated technology. Even the match industry has converted from Yellow Phosphorus to Red Phosphorus due to the above reasons.
 - f) Post Disclosure, the importer M/s Agrosynth has reiterated their earlier submissions made before the Authority.
21. Star Chemicals Pvt. Ltd. responded to the notice of initiation. The company however did not make any submissions. Further, they have not filed importer questionnaire response, nor attended the hearing, nor filed any post-hearing submissions.

E 1 Views of the Domestic industry

22. The submissions of the domestic industry with regard to the above issues are as follows:
- a) The issue raised by Agrosynth concerns Aluminium Phosphide which is not the product under consideration in the present case.
 - b) The issue regarding indulging in anti-competitive activities is entirely irrelevant to the Designated Authority for reasons – (a) it does not pertain to product under consideration; (b) it pertains to another statutory authority in India.
 - c) The petitioners have established dumping by considering import price of Yellow Phosphorous. Petitioners have no intention to remove any company from the market. All are free to compete. Petitioners' petition is with regard to dumping of the product under consideration which has caused significant injury to the domestic industry.
 - d) A consumer cannot demand access to dumped material, that too when such dumping is causing injury to an established industry in India. The purpose of anti-dumping duties is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers. Fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic

industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply.

- e) There is no cartelization. Petitioner companies are behaving in a manner fully consistent with the law of the land in this regard. In fact, petitioner companies are suffering financial losses in production and sale of the product under consideration.
- f) With regard to the issue of technology, the fact is that manufacturing Aluminium Phosphide from Red Phosphorus is outdated technology and all manufacturers, apart from ACL have switched from using Red Phosphorus to Yellow Phosphorus. The safety records of Aluminium Phosphide manufacturers like UPL cannot be doubted, as they have OHSAS 18001 certification. Further, the match industry has always been using Red Phosphorus, and has never used Yellow Phosphorus as it is not suitable for this application. Notwithstanding, the issue is irrelevant to the Designated Authority. The present investigation concerns Red Phosphorous and not either Aluminium Phosphide or match boxes.
- g) Post disclosure, the domestic industry has requested the Designated Authority to confirm the product under consideration and like article in the final findings.

E 2 Examination by the Authority

23. The Authority has examined the submissions of various interested parties under the appropriate headings in this final finding.

F. Dumping Margin

F.1 Normal value in China PR

F.1.1 MET Examination and normal value for all producers and exporters from China PR

24. The Authority notes that in the past three years China PR has been treated as non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD rules, China PR is to be treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules for the purposes of preliminary determination.

25. As per Paragraph 8 of the 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 establish to the contrary. The cooperating exporters/producers of the subject goods from 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.

26. It is noted that none of the producers/exporters of the subject goods from China PR have submitted their questionnaire responses and responses to the market economy questionnaire consequent upon the initiation notice issued by the Authority and none of the producers/exporters have sought to rebut the non-market economy presumption.

F.1.2 Views of the Domestic Industry

27. Views of domestic industry are briefly as follows –

- a. None of the Chinese producers/exporters have responded in the present case. It should, therefore, be considered that the fact of dumping has not been disputed by the Chinese producers/exporters.
- b. The domestic industry has claimed that China PR be treated as a non-market economy. The domestic industry has, therefore, claimed determination of normal value on the basis of constructed cost considering the cost of production of the domestic industry.
- c. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity – The Designated Authority and the EC has consistently held that possibilities of State interference cannot be ruled out in such cases. It is being held that it is not only the question of past interferences alone, but also possibilities of potential State interference in the future after the imposition of anti-dumping duties that is relevant to market economy treatment.
- d. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values – “substantially reflect market values” has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market. The fact that such prices are comparable to the price prevailing in China is grossly insufficient.
- e. Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards – market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS). The requirement on insisting compliance with International Accounting Standards is to ensure accuracy and adequacy of revenues and expenses, assets and liabilities expressed in the annual report.
- f. Market economy status cannot be granted even if one of the parameters is not satisfied – market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules. This situation is just the opposite of the test required for material injury. It is well acknowledged position that a positive finding of injury can be recorded even if one single parameter established injury. Thus, while one parameter is sufficient to establish existence of injury, failure to pass one single parameter is sufficient to reject the claim of market economy status.
- g. Onus/obligations – it is not for the Authority to establish that the Chinese companies are indeed operating under market economy environment and is entitled for market

economy treatment. On the contrary, it is for the Chinese exporters to establish that they are operating under market economy conditions.

- h. Response from group as a whole – Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected.
- i. Transformation– 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.
- j. It has been argued by the interested parties that the conversion cost from Yellow/white phosphorous to Red Phosphorous should not exceed 30% of cost of White Phosphorous. The domestic industry has claimed normal value on the basis of verifiable information. Further, the Designated Authority would adopt the lowest known cost for the product under consideration in India. Petitioners submit that the same shall clearly establish existence of significant dumping. The petitioners submit that data on record clearly shows that normal value is higher than export price, thus establishing dumping.

F.1.3 Views of other interested parties

28. It has been alleged by the importers that there is absence of dumping. The petitioner has failed to bring out the basis for dumping. However, these interested parties have not provided any substantiated claim.

F.1.4 Examination and determination of normal value by the Authority for producers and exporters in China PR

29. In this connection Para 7 of Annexure I of the Rule 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”

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

31. As per Paragraph 8 of the 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 establish to the contrary. The cooperating exporters/producers of the subject goods from 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 criteria enumerated therein.

32. The Authority notes that none of the producers/exporters of the subject goods from China PR have submitted their questionnaire responses and no response to the market economy questionnaire have been submitted consequent upon the initiation notice issued by the Authority. Since none of the Chinese companies have claimed market economy treatment, the Designated Authority has not determined whether any of the Chinese producers could be granted market economy treatment.

33. The Authority has proceeded in accordance with Para 7 of Annexure - I to the Rules as none of the Chinese producers/ exporters have responded. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No information with regard to prices and costs prevalent in these markets have been provided either by the applicants or by the exporters or other interested parties, nor any publicly available information could be accessed, nor the Chinese companies have responded or made any claim with regard to an appropriate market economy third country. In the absence of sufficient information on record regarding the other methods as are enshrined in para 7 of Annexure I of AD Rules, the Authority has determined the normal value by adopting the method "other reasonable basis".

34. With regard to the argument of interested parties about normal value in China, the authority notes that the normal value is required to be considered on the basis of cost or price in a market economy third country. While advancing arguments about estimated cost of production, it is noted that these interested parties have not provided any verifiable evidences with regard to the cost that are incurred in production and sale of the product under consideration. The authority notes in this regard that information with regard to actual cost of production has been provided by the domestic industry and the same has been relied upon for determination of normal value. It is seen that the conversion cost involved in production of the product under consideration are significantly higher than the claims made by interested parties.

35. The Authority has therefore constructed the normal value for China PR on the basis of the cost of production in India, duly adjusted, including selling, general and administrative expenses and profit and considering the international prices of major raw materials. Accordingly, the constructed normal value for Chinese exporters is be determined as US\$ ***per Kg.

F.2 Export Price

36. As none of the exporter/producer has provided any information that can be used for determination of the export price, the Authority has determined the 'Export Price' for all exporters from China PR on the basis of imports into India. For the purpose of determining the net export price, the Authority has taken into account transaction wise import data received from DGCIS. In view of non cooperation from Chinese producers, price adjustments have been allowed on the basis of facts available. Accordingly, export price has been adjusted for ocean freight, marine insurance, commission, port expenses, bank charges, inland freight, VAT difference etc. The net export price worked out by the Authority is US\$***per Kg.

F.3 Dumping Margin

37. Comparing the normal values and export prices at ex-factory level as determined above, the dumping margin for the producers/exporters in the subject country is determined by the Authority as follows:-

Particulars	US\$/Kg
Normal value	***
Export Price	***
Dumping margin	***
Dumping margin (%)	***
Range Dumping margin (%)	40-50%

G. Injury and Causal Link

G.1. Views of the Domestic Industry

38. The domestic industry has argued that:

- a) Imports from the subject country have been reported in significant volume and have increased in absolute terms.
- b) The major raw material used in the production of Red Phosphorous, Yellow Phosphorous, is imported from China. The price of imported Yellow Phosphorous has seen extreme fluctuations during injury period and before it. The data considered for injury period must include the periods of raw material fluctuations.
- c) Imports from the subject country are undercutting the prices of domestic industry to a significant extent. The import price is undercutting the domestic price, in spite of low prices already offered by the domestic industry.
- d) Production and sales of the domestic industry have shown improvement up to 2009-10, declined in 2010-11 and then increased in the POI. The capacity shows a similar trend, however, it has remained underutilized.
- e) Performance of the domestic industry with regard to profits, return on investment and cash profits has deteriorated significantly to such an extent that the domestic industry suffered financial losses, negative return on investment and negative cash profits.
- f) Wages and productivity have improved.
- g) Dumping margin as a measure of impact of dumping is quite significant.
- h) Growth of the domestic industry was negative in terms of price parameters and stagnating in respect of volume parameters.
- i) With regard to the contention of the importer that there has been no substantial increase in the volume of imports from China; it is submitted that there is increase in the imports over the period. The present petition is not for imposition of safeguard duties and, therefore, surge in imports is not the requirement.
- j) The Designated Authority is required to consider injury period. The interested party has

selectively compared only investigation period with preceding year. This is not an objective assessment of injury to the domestic industry. The increase in 2008-09 was not abnormal. The increase followed the increase in the prices of yellow phosphorus. The domestic industry is at present suffering significant financial losses, as is clearly established from the information provided by the domestic industry. There is no merit in the argument that the analysis should be done either considering prior or subsequent period. The Designated Authority has in the past refused to consider longer period when the same has been requested by the domestic industry concerned.

- k) The deterioration in performance of the domestic industry in terms of profit, return on investment, cash flow clearly establishes consequent adverse impact of dumped imports on the domestic industry. Imports are significantly undercutting the domestic prices; as a result of which domestic industry is suffering price underselling. Further, imports are having significant suppressing effect on the prices of the product in the market.
- l) Market share of domestic industry has remained at current level because of sub-optimal price offered by the domestic industry. The injury in the present case is in terms of material deterioration in profits, return on investment and cash flow.
- m) Both demand and production increased. However, increase in production was less than increase in demand. Further, whereas production increased, profits declined. With rising production and capacity utilization, profits should have increased. However, profits declined despite increase in production. Thus, profits of the domestic industry have deteriorated due to dumping of the product in the Country.
- n) Between 2008-09 and investigation period, whereas costs declined by 32%, import price declined by 39%. Thus, the decline in the import prices was more than the decline in costs. It is also relevant to point out that there was too significant price difference between the domestic price and import price and, therefore, the domestic industry was under tremendous pressure to reduce the prices. Despite such significant price reduction, the landed price of imports continues to be lower than selling price of the domestic industry.
- o) With regard to the contention of the importer that information of MEPCO is required to be discarded; it is submitted that the Authority cannot ignore any constituent of the domestic industry. In any case, domestic competition has nothing to do with the cost of production differences. Domestic competition may have impact on the prices, but cannot impact cost of production. Notwithstanding, in any case, the Designated Authority is required to consider domestic industry as a whole.
- p) Petitioners have claimed injury on the basis of verifiable information. It would be seen from such information that the claims made by the interested parties are factually incorrect and without any basis.
- q) The selling price of the domestic industry has been far higher than landed price of imports. The extent of price undercutting was too significant. Given the price difference, it is obvious that the domestic industry reduced the prices even when import prices increased. Even after such reduction in prices, the imports were cheaper as compared to domestic industry prices.
- r) Imports are undercutting the domestic prices. The domestic industry is suffering price underselling. Further, whereas cost of production and selling price both have increased,

the increase in selling price is lower than the increase in the cost of production. As a result of significant price undercutting, the domestic industry has not been able to increase its price in proportion to and to the extent of cost increases, as a result of which performance of domestic industry has significantly deteriorated in respect of profits, return on capital employed and cash profit.

- s) The issue that the whole import of Red Phosphorous is only around Rs.12 Crore is entirely irrelevant to the present case. The Authority is required to consider information relating to product under consideration. Each business in the company is an independent business and if the same is suffering from dumping of the product, the industry is entitled for redressal of the same. Annexure II to the Rules clearly provides that Designated Authority shall consider information relating to the product under consideration alone. Available data has been segregated with regard to product under consideration alone which clearly establishes that the domestic industry is suffering injury in respect of product under consideration.
- t) Information and evidence provided by the petitioner clearly establishes that the product under consideration has been exported at dumping price and the domestic industry has suffered injury. Anti dumping duty is required to be imposed at the earliest.
- u) Post disclosure, the domestic industry has requested the Authority to confirm the scope of the domestic industry, standing, determination of dumping margin and injury margin and the facts regarding injury and causal link as disclosed in the disclosure statement, in the final finding. They have submitted that the anti dumping duty may be imposed as fixed quantum of anti dumping duty (fixed form of duty), expressed as duty US\$/kg. as major raw material involved in the present case is Yellow Phosphorous and its price fluctuates significantly. Further, customs port authorities lack a mechanism to ensure correctness of import price reported by an importer and it is neither feasible nor practicable for the port authorities to verify the import price. It has been submitted that the duty should be imposed in a manner where it does not become futile. There have been a number of cases where the Designated Authority first recommended benchmark form of duty and thereafter modified the same through midterm review on finding that the benchmark form of duty did not prevent dumping and consequent injury to the domestic industry. They have requested that duty should be imposed in terms of US\$ only

G.2 Views of the Other Interested Parties:

39. Agrosynth Chemicals Ltd. has contended that:

- a) Domestic producers are over-pricing their product in the garb of importation of white phosphorous from China and that local producers are claiming excessive profit margin, further seeking to eliminate competition by this exercise.
- b) Red phosphorous produced domestically is 30% more expensive than Chinese imports.
- c) There has been no substantial increase in the volume of imports from China during the period of investigation, as compared to the previous year. The volume of imports, as a proportion of consumption in India, has not increased, as per the petition. Therefore, there is no surge in imports to justify the claim of injury.
- d) The import prices have increased during the period of investigation, as compared to the

previous year. In fact, after an abnormal increase in prices in 2008-09, the prices have stabilized and are on an increasing trend. In fact, if a trend analysis is to be done, it should cover either the period prior to 2008-09 or should commence only from 2009 onwards.

- e) The parameters relating to injury do not reflect any circumstances showing that there has been any adverse impact from the imports.
- f) The domestic sales of the petitioner have increased by about 10%, during the period of investigation as compared to the previous year. The market share of domestic industry has remained constant indicating no potential decline in sales of domestic industry.
- g) The production of the petitioner has been increasing consistently.
- h) The capacity utilization has increased from 55% in 2010-11 to 63% during the period of investigation.
- i) Profit: The cost of sales of the petitioner has gone down significantly (25%) in the period of investigation as compared to 2009-10. During the same period, the landed value of imports has increased by 10% to 15%. Therefore, in a situation where the costs in India are declining, import prices are increasing, the net sales realization of the domestic selling price ought to have increased. The failure of the petitioners to increase their prices to the level of the imports prices indicates that no injury has been caused by the imports.
- j) The petition shows that whereas the cost of production of UPL has been consistently declining, as have its losses, the cost of production of MEPCO have increased. The information of MEPCO is required to be disregarded, as it appears to be suffering on account of the domestic competition and its inability to reduce costs.
- k) The cost of sales appears to have been grossly inflated. The petitioners are importing yellow phosphorous from Vietnam and China at an average landed price of US \$ 3000-3300 PMT. The conversion cost does not exceed Rs.50/- per kilo. Therefore, the cost of production is around Rs.200/- per kilo, whereas the landed value of imports during this period are between Rs.225-250 per Kg. The claim of injury, with regard to price underselling is totally false and misleading.
- l) Although the import prices have been consistently increasing since 2009, the domestic sale price has not increased. These facts suggest that there were other factors, which prevented the petitioner from raising their prices and injury, if any is on account of these factors.
- m) Absence of causal link between the import and injury, if any, to the petitioner. The landed value of imports is far above the sales price of the domestic industry, which indicates that there is no causality between the import and the sale prices of the domestic producers. The landed value of imports is also higher than the cost of production of the petitioner.
- n) The investigations are required to be terminated forthwith, as there is no dumping or causal injury from the subject imports.
- o) The whole import of Red Phosphorous is only around Rs. 12 Crore which should not be a matter of concern for the Company such as UPL having a much higher turnover.

- p) The increase in prices of Red Phosphorus consequent to duties, will affect adversely only ACL because we have to supply final product 'Aluminium Phosphide' and Zinc Phosphide to Govt. organization at a pre-fixed price and will have to compete with UPL and others at the time of finalization of selling price with govt. organizations.
- q) Post disclosure, importer M/s Agrosynth has reiterated the issue regarding cartelisation of UFL and MEPCO for increasing the price of red phosphorus, the issue of yellow phosphorus for making Aluminium phosphide being outdated technology, and the fact that process for manufacturing red phosphorus from yellow phosphorus is outdated technology. They have also asked why two other producers have been kept away from the proceedings in this investigation. They have disputed the facts in the disclosure statement stating that there is no adverse volume and price effect in this case and the fact that domestic industry has failed to increase its price in line with import prices suggests that there is no nexus between the import and injury. Further, they have submitted that NIP has not been correctly determined in that cost of production has not been taken for industry as a whole. They have submitted that base year in this case was incorrectly taken. They have requested the Authority to terminate the present investigation.

G.3. Examination by the Authority

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

41. 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.

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

43. The Authority has considered the views of the interested parties and addressed the same appropriately. The specific submissions of interested parties have been dealt with by the

Authority at appropriate places in these findings while examining the injury parameters to the domestic industry.

44. The Authority has analyzed injury parameters in accordance with the rules. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been treated as 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.

45. With regard to submission of M/s Agrosynth that the imported product is coarser as compared to domestic product, it is noted that the company has not established that there is a difference in cost and price of coarser product. Further, the investigation has also not shown that coarser product shall have significantly lower cost in order to call for a price adjustment. Further, it is noted that the domestic industry is producing and selling both the types. More over, it is also noted that the import transactions does not identify separate import transactions of coarser product. The Authority has therefore proceeded with analysis of determination of dumping margin, injury margin on the basis of the all imports of product under consideration as a whole and all sales of domestic like product in India.

46. With regard to fact that M/s Agrosynth has disputed the claim of the petitioner that petition has been supported by other domestic producers, it is noted that Shri Magenta Chemicals has supported the petition a copy of which is on record. M/s Kalpataru Chemicals, another producer of subject goods however has not responded to the Authority nor has the company supported imposition of anti dumping duty.

47. With regard to the submission of one of the interested party who has disputed the claim of the petitioners as a domestic industry and has contended that the process carried out by petitioners does not constitute a manufacturing process, it is noted that during investigation proceedings, the Authority has undertaken on the spot verification at the premises of both the petitioner companies, including verification at the plants where manufacturing process for the product under consideration was examined in detail. Further, the cost structures for production of the product provided by the petitioners and verified by the authority shows that significant value addition takes place in production of red phosphorus from yellow phosphorous. The value addition undertaken by the petitioners is found quite significant. The Authority therefore holds that the process carried out by the petitioners constitute production and the petitioners are engaged in production of the product concerned.

48. With regard to submissions made by one of the interested parties that there is no injury to domestic industry and also the volume parameters of the domestic industry does not show injury suffered by the domestic industry, it is noted that the consequent impact of dumped imports on the domestic industry can be either in terms of adverse volume effect or adverse price effect or both. In the instant case, it is found that the effect of dumped imports on the domestic industry is in respect of adverse price effect and its impact on the operating performance of the domestic industry.

49. With regard to contention of one of the interested parties that import prices have remained high and have shown increase in the POI, and there is no price undercutting or price suppression in this case, and NIP has been inflated, it is noted that the investigation has established existence of significant price undercutting by the dumped imports. The landed value

of the subject goods have been less than selling price of the domestic like product during the injury period. Further, while cost of production increased in the POI as compared to preceding year, the selling prices declined. As regards fixation of NIP, it is clarified that the Authority has determined NIP based on the rules as per Annexure III of the anti dumping rules, considering the information given by the domestic industry and on the spot verification and investigations conducted by of the authority. Further, it is also noted that the profitability of the domestic industry deteriorated significantly over the injury period. This shows that imports were having suppressing and depressing effect on the prices of the product in the market.

50. With regard to submission by one of the interested parties that conversion cost of Shri Magenta Chemicals or Kalpataru Chemicals should be adopted as their operation is only limited to red phosphorous, it is noted that Shri Magenta Chemicals or Kalpataru Chemicals have not preferred cooperation with the authority. Further, there is no evidence on record to suggest that conversion costs of the petitioner companies are higher or conversion costs of Shri Magenta Chemicals or Kalpataru Chemicals are lower. Shri Magenta in fact has supported the petition and has contended that the consumers switched to imported product when prices from China are found lower. Shri Magenta has specifically referred to injury being caused because of dumped imports. In any case, the Authority has considered conversion costs after due investigations and verification.

51. It has been contended that cost of production has consistently declined whereas sales realization has remained stagnant or marginally declined. It is, however, noted that whereas cost of production declined by Rs.123.61per Kg, the selling price declined by Rs.203.74 per kg over the period. Thus, profitability of the domestic industry changed by Rs. 80.13 per Kg over the period.

52. It has been contended by one interested party that 2008-09 is not an appropriate period and the Authority should consider either earlier year or from 2009-10. It is noted in this regard that the authority has been consistently considering performance of the domestic industry in the POI and comparing the same with preceding three years. The consistent approach of the authority has been applied in the present case as well.

53. One of the interested parties has contended that volume of imports into India is quite low and insignificant as compared to the volume of exports from China to various countries globally, which clearly shows that Chinese producers will not resort to dumping of the product in the country. The matter has been examined and it is noted that the share of exports to India in total exports from China is not relevant in deciding whether such exports made to India caused injury to the domestic industry.

54. It has been contended that M/s MEPCO was able to sell the product at a price higher than the import price. The Authority, however, notes that financial performance of MEPCO also clearly shows significant deterioration in profitability of the company over the injury period in respect of the product under consideration.

55. One of the interested parties has contended that the selling price should not exceed Rs.275-300 per kg and the petitioners are charging Rs.350/- per kg. It is noted in this regard that the net sales realization of the domestic industry in fact is below even Rs.275 per kg and the same is below the cost of production of the domestic industry.

56. With regard to comments of the importer after the disclosure statement about the lack of nexus between import prices of subject goods from subject country and net selling price of the

domestic industry and the fact that one of the constituent of the domestic industry was selling at higher price than the landed price of subject goods from China PR, it is noted from the facts examined and verified after investigation that landed prices of subject goods were consistently below the net selling prices of the domestic industry throughout the injury period. With regard to trends of net selling price vis a vis landed prices of subject goods from China PR, it is noted that these have broadly followed the same trend and landed prices of the subject goods have always tended to put pressure on the net selling prices of the domestic industry. It is also noted that there is no significant difference in the net selling price of the two constituents of the domestic industry, and the landed price of the subject goods from China PR were consistently undercutting the net selling prices of both producers of the domestic industry. With regard to some variations in the net selling prices of the two constituents of the domestic industry, it is noted that because of geographical locations of two producers, there could be minor variations in the prices of subject goods sold by domestic industry. On the basis of the examination, it is noted that the domestic industry has suffered adverse price effect on account of dumped imports from subject country.

G.3.1 Volume Effect of dumped imports and Impact on domestic Industry

a) Import Volumes and share of subject country

57. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India.

58. It is noted that the imports from China PR have recorded a significant increase in absolute terms during injury period i.e. from 267.5 MT in 2008-09 to 370 MT during POI. On the other hand, the imports of the subject goods from other countries have shown declined during the investigation period compared to base year in absolute terms to the extent that no imports from third countries have been reported in 2010-11 and POI. The base year has been taken consistent with the Authority practice. There is a clear evidence of significant increase in imports from the subject country, in absolute terms.

Particulars	Unit	2008-09	2009-10	2010-11	POI
Imports -					
• China PR	MT	267.5	352.6	372.2	370.0
• Other Countries	MT	12.0	0.5	-	-
• Total Imports	MT	279.5	353.1	372.2	370.0
Imports from subject country relative to total Imports	%	95.7	99.9	100.0	100.0
Indian Production	MT	673.5	827.3	820.2	933.0
Domestic Industry	MT	472.5	575.3	557.2	647.0
Other Indian Producers	MT	201.0	252.0	263.0	286.0
Imports from subject country relative to Indian Production	%	39.7	42.6	45.4	39.7
Domestic Sales	MT	587.6	732.3	742.9	815.5
Domestic Industry	MT	386.6	480.3	479.9	529.5
Other Indian Producers	MT	201.0	252.0	263.0	286.0
Demand	MT	867.1	1,085.4	1,115.1	1,185.5
Imports from subject country relative to Consumption	%	30.85	32.49	33.38	31.21

59. It is noted from the above table that the imports have increased in absolute terms during the injury period. Further, the subject imports have remained significant throughout the injury period in relation to consumption and production in the country.

b) Sales and Demand

60. The Designated Authority has determined demand as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods in India from all sources. The demand so assessed is shown in the following table. It is seen that demand for the subject goods has been growing consistently during the injury period.

Demand	Unit	2008-09	2009-10	2010-11	POI
Sales of Domestic industry	MT	386.6	480.3	479.9	529.5
Subject countries-Imports	MT	267.5	352.6	372.2	370.0
Other Countries-Imports	MT	12.0	0.5	-	-
Other Indian Producers	MT	201.0	252.0	263.0	286.0
Total demand	MT	867.1	1,085.4	1,115.1	1,185.5
<i>Indexed</i>		<i>100.0</i>	<i>125.2</i>	<i>128.6</i>	<i>136.7</i>
Market Share in Demand					
Domestic Industry	%	44.58	44.25	43.04	44.67
Subject countries-Imports	%	30.85	32.49	33.38	31.21
Other Countries-Imports	%	1.38	0.05	-	-
Other Indian Producers	%	23.18	23.22	23.59	24.12

c) Market Share

61. It is noted that the market share of the domestic industry as well as that of the subject country has remained at the same level throughout the injury period. Even though imports have increased marginally in relation to consumption in India, the volume of imports has remained quite significant in relation to consumption in India.

Demand	Unit	2008-09	2009-10	2010-11	POI
Total demand	MT	867.1	1,085.4	1,115.1	1,185.5
<i>Trend</i>	Indexed	100.0	125.2	128.6	136.7
Market Share in Demand					
Domestic Industry	%	44.58	44.25	43.04	44.67
Subject countries-	%	30.85	32.49	33.38	31.21
Other Countries-Imports	%	1.38	0.05	-	-
Other Indian Producers	%	23.18	23.22	23.59	24.12

G.3.2 Price Effect of the Dumped imports on the Domestic Industry

a) **Price Undercutting**

62. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules

lays down as follows:

"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."

63. With regard to the effect of the dumped imports on prices, it has been examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product 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. In this regard, a comparison was made between the landed value of the product concerned and the selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex factory level. This comparison showed that during the period of investigation, the subject goods originating in the subject country were imported in the Indian market at prices which were materially lower than the selling prices of the domestic industry. It is, thus, noted that imports of subject goods were undercutting the domestic prices and margin of undercutting is considered significant.

64. The price undercutting margin is determined as below:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Net Selling Price	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>65.1</i>	<i>56.1</i>	<i>56.9</i>
Landed price of imports	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>55.8</i>	<i>53.3</i>	<i>60.9</i>
Price Undercutting	Rs./Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting %	Range	25-35	45-55	30-40	20-30

b) **Price Suppression and Depression**

65. The cost and price movement of the domestic industry have been compared over the injury period to examine whether the effect of dumped imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree.

Particulars	Unit	2008-09	2009-10	2010-11	POI
Net Selling Price	Rs./KG	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>65.1</i>	<i>56.1</i>	<i>56.9</i>
Cost of Sales	Rs./KG	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>86.6</i>	<i>66.8</i>	<i>69.7</i>
Landed price of imports	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>55.8</i>	<i>53.3</i>	<i>60.9</i>

66. The Authority notes that the selling price of the subject goods produced by the domestic industry declined by 43% over the injury period as against 30% decline in the cost of sales of

the subject goods produced by the domestic industry. During the same period, the landed price from subject country has shown a 39% decline during the same time. Thus, imports of subject goods during the injury period have caused price suppression, and the domestic industry has been forced to sell goods below its cost of production.

67. There has been decline in the net selling price of the domestic industry which has led to price depression during the injury period.

c) **Price underselling**

68. The Authority has also examined price underselling if any, suffered by the domestic industry on account of dumped imports from the subject country. After examination, it is found that the landed price of imports is materially lower than the non injurious price determined. Imports are thus resulting in significant price underselling in the market.

Particulars	Unit	POI (2011-12)
Non Injurious Price Rs/Kg	Rs/Kg	***
Landed Price	Rs/Kg	***
Price underselling	Rs/Kg	***
Price underselling	%	***
Price underselling	Range	20-30

G.3.3 Economic parameters of the domestic industry:

69. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

(a) **Capacity, Production, Capacity Utilization and sales**

70. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2008-09	2009-10	2010-11	POI
Capacity	MT	***	***	***	***
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>121.8</i>	<i>117.9</i>	<i>136.9</i>
Capacity Utilization	%	***	***	***	***
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>124.3</i>	<i>124.1</i>	<i>137.0</i>

71. It is noted that the production and capacity utilization of domestic industry have

increased over the injury period with some decline during 2010-11. The domestic industry contended that despite increase in demand, the domestic industry could utilize only 63% of its capacity in the POI.

(b) **Domestic Sales**

72. It is noted that the domestic sales as well as demand in India have increased over the injury period. It is further noted that the domestic industry has increased its export sales in the POI.

Particulars	Unit	2008-09	2009-10	2010-11	POI
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>124.3</i>	<i>124.1</i>	<i>137.0</i>
Export Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>92.5</i>	<i>67.5</i>	<i>171.8</i>
Demand	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>125.2</i>	<i>128.6</i>	<i>136.7</i>

(c) **Inventories**

73. The inventory level of the domestic industry has been examined for the injury period, which is given below. It is noted that the inventory of the domestic industry has significantly increased during the injury period.

Stock (Volume)	Unit	2008-09	2009-10	2010-11	POI
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>143.8</i>	<i>220.4</i>	<i>198.8</i>

(d) **Profits, Return on Capital Employed and Cash Profit**

74. The profits, return on investment and cash profit of the domestic industry has been examined as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Cost of Sales	Rs/KG	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>86.6</i>	<i>66.8</i>	<i>69.7</i>
Selling price	Rs/KG	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>65.1</i>	<i>56.1</i>	<i>56.9</i>
Profit/loss per Unit	Rs/KG	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>-69.6</i>	<i>-10.6</i>	<i>-23.1</i>
Profit/loss	Rs. Lakh	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>-86.5</i>	<i>-13.2</i>	<i>-31.6</i>
Profit before Interest	Rs. Lakh	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>-46.7</i>	<i>15.2</i>	<i>-6.5</i>
Return on capital employed	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>-61.2</i>	<i>24.1</i>	<i>-14.2</i>
Cash Profit	Rs. Lakh	***	***	***	***

Particulars	Unit	2008-09	2009-10	2010-11	POI
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>-79.2</i>	<i>-8.7</i>	<i>-26.5</i>

75. The profitability of the domestic industry in respect of domestic sales of subject goods has been examined. The Authority notes the following:

(i) The profitability of the domestic industry for the subject goods declined significantly during the injury period and the domestic industry has been suffering financial losses since 2009-10.

(ii) The cash profits of the domestic industry have seen a trend similar to that of the profitability. Cash profits earned by the domestic industry declined significantly. Further, the domestic industry has been suffering cash losses since 2009-10.

(iii) The return on capital employed has been determined considering profit before interest and capital employed for the product concerned. It is noted that both profit before interest and return on capital employed have significantly deteriorated in POI. Further, the domestic industry suffered negative return on capital employed during 2009-10 and POI.

(e) **Employment and wages:**

76. The status of employment levels and wages of the domestic industry has been as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>130.2</i>	<i>145.3</i>	<i>117.1</i>
Wages	Rs. Lakh	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100.0</i>	<i>119.4</i>	<i>134.5</i>	<i>145.3</i>

77. It is noted that the employment level with the domestic industry increased during the injury period. The wages have also increased over the same period and increase in wages during the injury period was significant.

(f) **Productivity**

78. The productivity of the domestic industry is given in the following table:

Productivity	Unit	2008-09	2009-10	2010-11	POI
Per day	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>122</i>	<i>118</i>	<i>136</i>
Per employee	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>94</i>	<i>122</i>

79. It is noted that the productivity has improved during the injury period.

(g) **Growth**

80. On examination of various economic parameters of the domestic industry, the Authority notes that while the volume parameters such as production and sales show positive growth over injury period, the price parameters of the domestic industry, such as profits and return on investment show negative growth. Further, the market share of the domestic industry has not

shown any significant growth despite existing capacities in the Country. Thus, overall growth of the domestic industry has been adversely effected due to dumping of subject goods from subject country.

Growth (Year on Year)	Unit	2008-09	2009-10	2010-11	POI
Production	%		22%	-3%	16%
Sales Volume	%		24%	0%	10%
Profit/Loss per unit	%		-170%	85%	-117%
Return on Investment	%		-161%	-139%	-159%
Market Share	%		-1%	-3%	2%

(h) Factors Affecting Domestic Prices

81. Consideration of the import prices from the subject country and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material from the subject country is below the selling price of the domestic industry, causing significant price undercutting in the Indian market. It is further noted that there is hardly any imports of subject goods from other countries. There is no viable substitute to this product. It is also noted that demand for the subject goods has been showing significant increase during the injury period. Thus, the principal factors affecting the domestic prices are the landed value of subject goods from the subject country and the cost of raw material.

(i) Ability to raise capital

82. With regard to ability to raise investments, it is noted that the domestic industry has not been able to utilize the existing capacities during injury period. It is further noted that the existing capacity in India is sufficient to meet the demand of the product in the country.

(j) Magnitude and Margin of Dumping

83. It is noted that the imports into India from the subject country are above the de-minimis level of dumping margin. The dumping margin determined from subject country is considered significant.

F.4 Magnitude of Injury and Injury Margin

84. The Authority has determined non-injurious price for the domestic industry taking into consideration cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports to determine injury margin. Landed value of imports for the purpose is the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975. The injury margins have been worked out as follows:

Particulars	Rs./Kg	US\$/Kg
Exchange Rate		48.14
Non-injurious Price	***	***
Landed Price	***	***

Injury Margin	***	***
Injury Margin%	***	***
Injury Margin (Range) %	20-30	20-30

G.5 Causal Link

85. As per the AD Rules, the Designated Authority is, inter alia, required to examine any known factors other than dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. The Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry. The examination of causal link has been done as follows:

(a) **Imports from third countries and other Known Factors**

86. During the POI, all the imports of subject goods from China PR. Therefore, imports from third countries could not have caused injury to the domestic industry.

(b) **Contraction in demand and / or change in pattern of consumption**

87. The Authority notes that the demand for the subject goods has shown significant increase during the injury period. Therefore, the domestic industry could not have suffered injury on account of contraction in demand. From the available information, no change in the pattern of consumption was noted.

(c) **Trade Restrictive practices of and competition between foreign and domestic producers**

88. It is noted that there is a single market for the subject goods where dumped imports from the subject country compete directly with the subject goods supplied by the domestic industry. It is noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(d) **Developments in Technology**

89. There is no allegation of developments in technology, nor has the investigation shown that possible injury to the domestic industry could have been caused by developments in technology.

(e) **Export performance**

90. The petitioners have exported the subject goods. Export volumes have increased in POI. However, the Authority has considered only domestic operations and domestic profitability for the purpose of injury analysis.

(f) Productivity of the Domestic Industry

91. It is noted that there is no material change in productivity of the domestic industry. Possible decline in productivity cannot be the reason for the established injury to the domestic industry.

F.5.1 Parameters establishing injury and causal link

92. The Authority notes that while listed known other factors do not show that injury to the domestic industry has been caused by these factors, following parameters show that injury to the domestic industry has been caused by dumped imports.

- a) Imports are causing significant price undercutting in the domestic market. As a consequence, the domestic industry is forced to lower its selling price and is suffering from price depression. Further, in POI, the imports were suppressing the domestic prices.
- b) Landed price of imports were undercutting and underselling the prices of the domestic industry. As a result of the price undercutting, price underselling and significant volume of imports from the subject country, the overall profitability of the domestic industry has declined.
- c) The deterioration in performance of the domestic industry in respect of profits, cash profits and return on capital employed is due to dumped imports.

F.6 Conclusion on Injury and causation

93. After examining the issues raised and the submissions made by the interested parties and facts made available before the Authority, it is noted that the subject goods have entered the Indian market from the subject country below associated normal values, thus resulting in dumping of the subject goods and the dumping margins of the subject goods imported from the subject country is above de-minimis. . There has been an increase in the volume of dumped imports from subject countries throughout the injury period in absolute terms and in relation to consumption in India. The dumped imports were undercutting the prices of the domestic industry in the market. It is also determined that the dumped imports have had significant adverse price effect in terms of price suppression and price underselling. It is noted that dumped imports of subject goods from subject country have adversely impacted profitability, cash profits and return on investments. Therefore, the Authority concludes that the domestic industry has suffered material injury as a result of dumped imports from the subject country.

G. Indian industry's interest & other issues:

94. Post disclosure, it has been submitted that if anti dumping duty is imposed, there will be high increase in the price of red phosphorus and it will have a major impact on the other industries using the product and impact large no of families. 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.

95. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some

influence on relative competitiveness of the product. However, fair competition in the Indian market will not be reduced by the anti-dumping 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 in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

H. Recommendations

96. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

- a) The product under consideration has been exported to India from the subject country below normal value, thus resulting in dumping of the product in the Country.
- b) The domestic industry has suffered material injury.
- c) The material injury to the domestic industry has been caused by the dumped imports of subject goods from the subject country.

97. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information, inter alia, on the aspects of dumping, injury and causal link. Having initiated and conducted a detailed investigation into dumping, injury and the causal link thereof in terms of the anti-dumping rules and having established positive dumping margins as well as injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive duty is required to offset dumping of subject goods into India and consequent injury caused to domestic industry. Taking into account the factual matrix of the case and submissions made by various interested parties, it is considered appropriate to recommend anti dumping duty by way of fixed quantum basis in US \$. Therefore, the Authority considers it necessary and recommends imposition of definitive anti-dumping duty on imports of the subject goods from the subject country in the form and manner described hereunder.

98. 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 margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed on all imports of subject goods originating in or exported from China PR.

Duty table

1	2	3	4	5	6	7	8	9	10
S. No.	Heading/ sub- heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount of duty	Unit	Currency
1	2804 7020	Red Phosphorus*	China PR	China PR	Any	Any	1.200	Kg	US\$
2	2804 7020	Red Phosphorus*	China PR	Any	Any	Any	1.200	Kg	US\$
3	2804 7020	Red Phosphorus*	Any	China PR	Any	Any	1.200	Kg	US\$

*'Red Phosphorous, excluding red phosphorus used in electronic applications'

Further Procedure

99. 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.

(J S Deepak)
Designated Authority