

**MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
UDYOG BHAWAN, NEW DELHI**

NOTIFICATION

Dated the 2nd February 2006

FINAL FINDINGS

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

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

A. PROCEDURE

1. The procedure described below has been followed with regard to the investigation:

i) The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application filed by M/s. Kanoria Chemicals and Industries Ltd., on behalf of the domestic industry, alleging dumping of Pentaerythritol(hereinafter referred to as subject goods or Penta) originating in or exported from China PR and Sweden (hereinafter referred to as subject countries).

ii) The Authority issued a public notice dated 4.2.2005 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of the subject goods classified under chapter 29 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from China PR and Sweden.

iii) The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the applicant) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):

iv) The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by the applicant) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).

v) Requests were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India for the period of investigation and preceding three years.

vi) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassy/territory of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.

vii) The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):

1. M/s. Hubei Yihua Group Limited Liability Company, China PR
2. M/s. Guizhou Crystal Chemical Co., Ltd., China PR
3. M/s. China National Chemicals Construction Corporation, China PR,
4. M/s. Perstorp Specialty Chemicals, Sweden

viii) A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):

1. M/s. Vibgyor Paints Pvt. Ltd., Mumbai
2. M/s. Sanman Trade Impex Pvt. Ltd., Mumbai
3. M/s. Saraf Chemicals Ltd., Mumbai
4. M/s. Alcon Enterprises, Kolkata
5. M/s. A.V.M. Sales Pvt. Ltd., Kolkata
6. M/s. Ciba Speciality Chemicals (India) Ltd., Mumbai
7. M/s. Decro Paints, Hyderabad
8. M/s. Dujodwala Paper Chemicals Ltd., Raigad
9. M/s. Gargi Industries Prop. Navi Mumbai
10. M/s. Mitsu Industries Ltd., Mumbai
11. M/s. Resins & Pigments, Pithampur (MP)
12. M/s. Chemi Colour Agency, Kolkata
13. M/s. Shalimar Paints Ltd., Hawra
14. M/s. Dujodwala Paper Chemicals, Mumbai
15. M/s. Eastcorp International, Kolkata
16. M/s. Garware Polyester Ltd., Mumbai
17. M/s. H.R. Trading Co., Pvt. Ltd., Mumbai
18. M/s. Leo Chemoplast Pvt., Ltd., Mumbai
19. M/s. Samir Dye Chem. Mumbai
20. M/s. Berger Paints India Ltd., Mumbai
21. M/s. Century Inka Limited, Mumbai
22. M/s. Addison Paints & Chemicals, Chennai
23. M/s. Coates of India Ltd., Mumbai
24. M/s. Hardcastle & Waul Mafg. Co., Ltd., Mumbai
25. M/s. Goodlass Nerolac Paints Ltd., Mumbai

26. M/s. Hero Dye Chem Industries, Mumbai
27. M/s. Hindustan Inks & Resins Ltd., Mumbai
28. M/s. IVP Ltd., Thane
29. M/s. Jenson & Nicholson (I) Ltd., Kolkata
30. M/s. Paras Dyes & Chemicals, Mumbai
31. M/s. Perstorp Aegies Chemicals Pvt. Ltd., Valsad

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

x) Response/information to the questionnaire/notification was filed by the following exporters/producers

1. M/s. Sinochem Jiangsu Import & Export Corporation, China PR(hereinafter referred to as Sinochem)
2. M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR(hereinafter referred to as Hubei)
3. M/s. Shanxi Sanwei Group Co., Ltd., China PR(hereinafter referred to as Shanxi)
4. M/s. Perstorp Speciality Chemicals AB, Sweden(hereinafter referred to as Perstorp)

xi) Response/information to the questionnaire/notification was filed by the following Importers/user/Associations:-

1. M/s Goodlass Nerolac Paint Ltd.

xii) The Authority notified preliminary findings vide its Notification dated the 5th August, 2005 with regard to Anti-Dumping Investigations concerning imports of Pentaerythritol originating in or exported from China PR and Sweden and requested the interested parties to make their views known in writing within forty days from the date of its publication;

xiii) The Authority forwarded a copy of the Preliminary Findings to known interested parties, who were requested to furnish their views, if any, on the Preliminary Findings within forty days of the date of the letter;

xiv) The Authority also forwarded a copy of the Preliminary Findings to the Embassies/ territory of the subject countries with a request to furnish their views on the Preliminary Findings;

xv) The Authority held a public hearing on 21st September, 2005 to hear the interested parties orally, which was attended by representatives of the domestic industry and other interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. Designated Authority in this finding has considered the written submissions thus received from interested parties.

xvi) Arguments raised by interested parties before announcing of Preliminary Findings, which have been brought out in the Preliminary Findings notified earlier have not been repeated herein for sake of brevity. However, arguments raised by the interested parties have been appropriately dealt with in the Preliminary Findings and/or these findings;

xvii) The Authority conducted on-the-spot verification of the domestic industry to the extent considered necessary. Additional details regarding injury were sought from the petitioner, which were also received.

xviii) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings was disclosed on 9/1/2006 to known interested parties and comments received on the same have been duly considered in these Final Findings.

xix) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

xx) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

xxi) ****In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.

xxii) Investigation was carried out for the period starting from 1st October 2003 to 30th September 2004 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2001 - March 2002, April 2002 – March 2003 and April 2003 – March 2004 and the POI;

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

VIEWS OF THE INTERESTED PARTIES

2. M/s Perstorp Aegis have submitted that
 - a) the product being exported by them is a raw material used for production of product under consideration.
 - b) the process used by M/s Perstorp (Chemical route) results in a product of higher purity than the membrane process used by the petitioner, where additional processing is required which increases the cost as well.
 - c) for a product to be eligible for the imposition of anti-dumping duty under the provisions of the Agreement on Anti Dumping, Article 2.1 requires that the dumped product must be “introduced into the commerce of another country”. Perstorp Aegis further argued that the product under consideration is not being introduced into the commerce of India, since the raw materials that are imported from Sweden are substantially different – both in terms of commercial usage and interchangeability as well as in the qualitative and substantive difference in the articles. The product sold by Perstorp in the Indian market is substantially different from the imported raw materials since they have to be re-worked, re-packaged and processed before being sold.
 - d) Perstorp pays excise duty on the “manufacture” of the Product under Consideration.

VIEWS OF THE DOMESTIC INDUSTRY

3. The domestic industry has submitted that
 - a) production process for producing different types of Pentaerythritol largely remain the same.
 - b) less than 2% production in case of petitioner results in nitration grade, whereas the production of dipenta is less than 0.5% and more than 97% production is of technical grade.
 - c) Mono Penta is not a raw material, it is a type of Penta. It would also be seen from the product literature of Perstorp, Sweden that functions and uses of Pentaerythritol-Mono and Pentaerythritol-Technical overlaps with one another. The product literatures of other leading producers of Pentaerythritol world over would also reflect the same position as is reflected by the product literatures of petitioner, Asian Paints and Perstorp, Sweden.
 - d) If the product imported by Perstorp Aegis is the raw material to the product under consideration, then the interests of the company are neither going to be adversely affected, nor the company can claim itself as an interested party. The anti

- dumping duties would be imposed on the product under consideration and not on its raw materials.
- e) The alleged production process undertaken by Perstorp Aegis is nothing but blending & re-bagging penta of two different purities to achieve penta of desired purities, which are then sold in the Indian market.
 - f) Dumping by China do not justify the claim of Perstorp Aegis that they suspended their production and resorting to imports rather they could have sought legal action against such dumping practices. However, they preferred to reduce its own production and resorting to imports from their related Company.
 - g) As a result of alleged production process undertaken by Perstorp Aegis, it is only change in the form, however, the product remains the same.
 - h) Perstorp has stated that Technical Penta 95% has not been imported and has also stated that Tech Penta 90% has been imported. Thus, the only difference between the resold product and imported product is that of purity. Mere difference in purity of the imported and resold product can not be described as not like product, more so when such change in purity has been achieved through blending and bagging of different purities.
 - i) Both the imported product and domestic product have essentially similar physical and chemical characteristics. Further processing activities undertaken by the related importer are not substantial, hence both the products should be treated as like article.
 - j) Mono penta and technical penta imported are used to produce Penta NG, therefore, Penta NG is nothing but different form of the imported product.
 - k) Various accounting and statutory records of Perstorp Aegis clearly establish that Perstorp Aegis is undertaking only blending and rebagging, therefore, such blending and rebagging can not render the two products as dislike products even if the production process constitutes production within the meaning of excise Rules. SION norms for Pentaerythritol of different grades are the same.

EXAMINATION BY THE AUTHORITY

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

5. It can be produced by electrolysis separation technology or fractional crystallisation technology. There is no difference, however, in the product properties produced through these two technologies. It can be of technical grade or nitration grade. The principal difference in the two grades is in purity, crystal size and uniformity of crystals. Both the grades are produced out of the same process, however, it is only a matter of gradation, after production and at the stage of analytical testing of the product. “**Pentaerythritol**” was derived from “**erythritol**” to indicate the presence of four hydroxyl groups and the prefix “**Penta**” to show that there are five carbon atoms in the molecule. Pentaerythritol is manufactured by the reaction of acetaldehyde and formaldehyde in aqueous phase in presence of an alkaline condensing agent. Technical specifications of the product are described in terms of appearance, content of Monopentaerythritol, melting point and ash content etc. Pentaerythritol having purity above 98% and better crystal formation can be used in the explosive industry and therefore, this grade has been designated as “Nitration Grade” in commercial parlance. However, Pentaerythritol considered as “Nitration Grade” can also be used for production of Alkyd Resins and other products (where the other grade “Technical Grade” Pentaerythritol is used). The domestic industry has submitted that the production process, however, largely results in production of “Technical Grade” and less than 2% production results in nitration grade whereas the production of Di-penta is less than 0.5%. Di-pentaerythritol is not the product to be considered in this investigation.

6. The applicant has submitted that product being sold by Perstorp in India is Technical Pentaerythritol 95%, which is nothing but mixture of Pentaerythritol of two different purities, i.e. Technical Pentaerythritol 88% (30%) and Pentaerythritol Mono Grade 98% (70%). They have further argued that different customers require Pentaerythritol of different purities, ingredients and melting points to suit their process requirements and the product of required parameters is being supplied to the customers by mixing the product. Pentaerythritol Technical Grade, which contains Monopentaerythritol 89% is used in the manufacture of the same products as that are manufactured from Pentaerythritol (Mono) Grade containing Monopentaerythritol 98%. The purity of Pentaerythritol (mostly defined in terms of Monopenta) and other ingredients varies depending upon the molar ratio used for manufacture of the product and other process conditions. The purity of Pentaerythritol varies from min. 92% to max. 98%. Pentaerythritol of different purity are nothing but one like product and are within the scope of the present investigations. The Perstorp has submitted that they are one of the major domestic producer of the subject goods in India and manufacturer of technical Penta 95% and imports its raw materials such as mono penta 98% and technical penta 89 – 90% from Sweden. They have also argued that all these three Penta are of different grades can not be considered as like product.

7. On examination of the submissions filed by the interested party, it is noted that the claim of Perstorp Aegis that the imported raw materials are further processed to manufacture the subject goods under investigation was not substantiated with evidence and during the on the spot verification visit at their unit, it was found that different purities of Penta ranging from 89%-98% were supplied to the paint industry. In addition to various material provided by interested parties, the Authority relies upon verification

conducted at the premises of Perstorp Aegis. It was found that the company had undertaken blending and re-bagging of Pentaerythritol of two different purities of the subject goods under consideration. It was also found that in the process of blending the imported products neither the essential product characteristics underwent a significant change nor the company employed a significant plant & equipment, investment therein, manufacturing process, and production activities. The technical literature available on the product distinguishes Pentaerythritol and Dipentaerythritol as two different products. However, sufficient evidence was not been brought by Perstorp Aegis to establish their claim that monopenta and technical penta are two different products, having different product properties, production process, functions & uses, differ significantly in terms of pricing. On the contrary, investigations revealed that the two types have essential similar product properties, produced using same production process, similar functions & uses and fall under the same customs classification. The domestic industry has placed the SION norms for Penta (all grades) which implies the various grades of Penta are one like product and it was supplemented by the response of the user industry also. The technical literature available on this subject distinguishes Pentaerythritol and Dipentaerythritol as two different products not between monopenta and technical penta and none of the interested parties produced any evidence on monopenta and technical penta as two different products. The Authority notes that Pentaerythritol can be of two grades known as technical grade (TG) or nitration grade (NG), however there is no material difference found between these two grades and both the grades are produced out of same process. During the course of verification of costing and sales information of the domestic industry it was established from their sales and excise register that Paint Industry is using different purities of Penta in their manufacturing setup. During the verification visit, the domestic industry had shown that during the production process less than 2% of entire production of Penta results into the production of nitration grade whereas more than 97% constitutes as technical grade and they are the like product within the meaning of AD Rules. On the basis of information made available before Authority, it is noted that merely changes in the purity along with name (which varies between 92%-98%), the imported product does not become different from product under consideration, i.e., Pentaerythritol. It is also noted, even though the product resold by Perstorp Aegis may be different from imported product and may have been processed before selling, the resold product remains Pentaerythritol only and no verifiable evidence was placed by Perstorp Aegis which could establish that the imported product and resold products are not like products within the meaning of the AD Rules.

8. Rule 2(d) of the AD Rules specifies that "Like Articles" means an article which is identical or alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination. In this context of this Rules, no significant/material evidence were provided to establish the difference between the subject goods manufactured by the domestic industry and the imported product from subject countries. The subject goods produced by the applicant is found comparable to the imported product in terms of a number of parameters which includes product properties, production process, functions & uses, pricing, customs classification. The domestic product is found commercially and technically substitutable to the imported product. On the basis of the evidence brought

before the Designated Authority, the Authority holds that the goods produced by the domestic industry are like articles to the goods imported from the subject countries.

9. The Authority conducted an on-the-spot verification at the plant of M/s Perstorp Aegis in order to verify the claims of the company. It was found that the Unit-II (where the imported product is blended) at Silvassa is not in operation. The company was asked to explain in detail the production activities carried out by them and also provide information with regard to the following:-

- Production technology
- Plant & equipment installed
- Investment
- Production process
- List of raw materials consumed and details of consumption as per format A of the costing information and per unit consumption as per format B of the costing information
- Specifications of the “raw materials” consumed / the “finished product” produced
- Various functions & uses of the penta imported/ penta sold in the domestic market

10. The company did not provide full information. It was found that the production process is mere a blending of penta of two different purity which results in penta of a different purity. It could neither be established by Perstorp that the imported product and resold product was significantly different nor they could establish that the process employed by them resulted in a different product. The company was also asked to provide separate details of cost of production of the Pentaerythritol produced at two different plants. However, no such information regarding the cost of production was provided. In view of the above, it could not be established that imported Pentaerythritol and Pentaerythritol produced and sold by the company at two different units and Pentaerythritol supplied by the domestic industry are not like products.

11. The Authority notes that even though the company claimed that it is also a domestic industry, they did not provide any information with regard to injury to the domestic industry. The company could neither able to establish that the goods imported by them are not like product to the goods sold by them nor the company could establish that the goods imported by them and goods produced and sold by the domestic industry (Kanoria Chemicals) are not like products.

C. DOMESTIC INDUSTRY

VIEWS OF THE DOMESTIC INDUSTRY

12. The domestic industry has submitted that;
- a) There are three producers of the product under consideration, which includes the petitioner, Perstorp Aegis and Asian Paints.
 - b) Perstorp Aegis can not be considered as domestic industry on the grounds that (i) the company is itself a major importer from one of the subject countries; (ii) the company is related to the foreign producer in Sweden; (iii) the company reduced its own production and increased imports; (iv) the company sold its own production and imported product interchangeably in a mixed manner;(v) company did not provide relevant injury information to the Authority in spite of all claims of cooperation.
 - c) Production of Asian Paints to the extent of captive consumption should not be included on the grounds that (i) such captive consumption does not compete with the dumped imports in the merchant market and therefore the company is unaffected by the dumping practices to such an extent; (ii) They have not actively participated in the present investigations only because they are affected by the dumping to the extent petitioner is affected; (iii) the WTO decision on this subject does not state that captive consumption can not be excluded, it merely states that injury examination can not be restricted to one type if the “domestic industry” is having both captive and merchant market.

VIEWS OF THE INTERESTED PARTIES

13. M/s Perstorp Aegis have submitted that;
- a) Perstorp Aegis is the producer of the subject goods therefore,they may be considered as domestic industry;
 - b) Perstorp Aegis should not be excluded from being considered as domestic industry only because they are related to an exporter in the subject countries;
 - c) Perstorp Aegis has imported raw materials of the subject goods therefore, its imports can not be treated as imports of product under consideration;
 - d) The goods imported by the company do not compete with the goods supplied by the petitioner in the domestic market.

EXAMINATION BY THE AUTHORITY

14. M/s. Kanoria Chemicals and Industries Limited have filed the application, on behalf of the domestic industry. It is a multi product company and is involved in production of number of products. The applicant has not imported the subject goods during the past three years and exporting the subject goods to number of countries. The applicant has submitted that M/s Perstorp Aegis is the producer of the subject goods, however, they are the major importer of the subject goods from Sweden and related to the sole producer/exporter in Sweden. As regards the relationship of domestic producer to the exporter/ importer has been examined in view of the following,

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

15. On examination the submissions of the interested parties regarding their claim that goods imported by Perstorp Aegis are raw materials and not the subject goods under investigation, the Authority found that the goods imported by Perstorp Aegis were nothing but Pentaerythritol of various grades. The Authority further notes that Perstorp Aegis, an importer of the subject goods and related to an exporter of the subject goods, in itself is sufficient to exclude them from the constituent of the domestic industry. Therefore, the Authority considers that exclusion of the company is justified since they have imported significant quantity of subject goods from their related company and did not provide any costing or injury information for their claim of being treated as domestic industry inspite of requests made by the Designated Authority. Asian Paints is another producer, producing the product substantially for its own captive requirements. The applicant has submitted that the production of Asian Paints should be excluded since the production of Asian Paints may not compete in merchant market and they may not have experienced injury from such dumping of subject goods in Indian market. On examination of the arguments of the applicant, the Authority has found appropriate to include production of Asian Paints for determining standing of the applicant. The Authority notes that Perstorp, Sweden and Perstorp Aegis, India are related to each other in view of Rule 2(b) of AD Rules. Since Perstorp, India is a subsidiary of Perstorp, Sweden and therefore the later is in a position to control the former hence it was found appropriate to exclude as a constituent of the domestic industry. In view of the above, the Authority holds that the applicant fulfils the requisite criteria to satisfy standing and constitutes domestic industry, as required under Rule 5(a) and (b) and Rule 2(b) of AD Rules.

D. OTHER ISSUES

D.1 APPEAL AGAINST THE INITIATION

16. Perstorp Aegis had filed an appeal against the initiation of the Authority before Hon'ble Mumbai High Court challenging the anti dumping investigation on the grounds that (a) it is not related to Perstorp, Sweden; (b) the imported product is different from the product resold in India. The Hon'ble High Court is of the view that after considering the

material on record, the Authority initiated the anti-dumping investigation in respect of Pentaerythritol originating in or exported from China PR and Sweden after excluding Perstorp as a part of domestic industry. The Hon'ble Court had upheld the action of the Authority that initiation has correctly been made on the basis of information made available to the Authority and stated that it is open to the Perstorp to establish that there is no dumping of Pentaerythritol from Sweden and there is no injury caused to the domestic industry by such imports from Sweden. The Authority notes that during the course of investigation Perstorp did not provide information/evidence to establish its claims even provided sufficient time to justify their claim. Even though the company claimed that it is also a domestic industry, the company did not provide any information with regard to injury to the domestic industry. The company could neither able to establish that the goods imported by them are not like product to the goods sold by them nor the company could establish that the goods imported by them and goods produced and sold by the domestic industry (Kanoria Chemicals) are not like products.

SUBMISSIONS OF NON-CONFIDENTIAL INFORMATION

17. The domestic industry has argued that exporters have resorted to excessive use of confidentiality and the information provided by the exporters on non-confidential basis does not permit any meaningful understanding of the same. They have further stated that the exporters have filed entire submissions with complete disregard to the requirement of non-confidential version. The exporters have argued that domestic industry did not provide adequate meaningful summary of non-confidential version enabling the exporters to effectively and meaningfully defend their interest thereby violating Article 6.5.1 of the WTO Anti-dumping Agreement. Both the domestic industry and exporters have argued that the non-confidential version of their respective responses was inadequate and number of information / data were kept confidential. The arguments of the interested parties were examined and it is noted that the non-confidential responses provided by the interested parties were kept in the public file and were made available to all the interested parties. Respective interested parties kept the number of information concerning prices and costing of their submissions confidential and the Authority treated these as confidential.

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

E.1. VIEWS OF THE DOMESTIC INDUSTRY

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

i) The domestic industry submitted that China is a non market economy country and Indian Designated Authority has also treated China as a non market economy country in anti-dumping investigations. Similarly USA and European Commission have also treated China as a non-market economy country in anti-dumping investigations.

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

E.2 EXAMINATION BY THE AUTHORITY

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

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

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

country in the anti- dumping investigations. In the instant case, China PR has been considered as non-market economy Country.

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

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.”

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

“8 (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)

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

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

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

a) the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in

relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

d) the exchange rate conversions are carried out at the market rate;

23. For the purpose of ascertaining whether the responding Chinese companies could be granted market economy treatment, Authority addressed a MET questionnaire to these companies. The companies were advised to provide relevant evidence in support of their claims of MET. It was made known to the companies that the onus to establish that the companies were entitled to market economy treatment was on the respective companies and it is not for the Authority to establish existence of State interference rather it is for the companies to establish absence of State interference.

24. The Authority sought some general and certain specific information with regard to the following parameters from the responding exporters:-

- Ownership details
- Shareholding patterns
- Information on promoter/holding company/companies
- Constituents of Board of Directors, appointment of directors, their legal status and person/party being represented by them.
- Raw Material Inputs and Costs:-
- information on major inputs required for production of the product under consideration, power, steam, water. This included information on sources of supply of these items, identity and structure of the suppliers and price at which these were supplied and information on the market value of these inputs.
- whether the inputs were sourced against short term or long term contracts.
- whether there was any State interference, control or intervention in respect of raw materials, inputs, utilities and costs. A clarification was called for (1) the market prices prevailing during the POI, and (2) on what basis it was established that these prices were determined by market supply and demand.
- details of purchaser of each cost component indicating (1) quantity purchased (2) value thereof (3) source of purchase (4) details of supplier. (5) length of relationship with supplier
- it was found that a number of inputs were being captively produced by these companies. In these cases, the companies were advised to provide detailed statement showing cost of production, selling price, profit/loss and transfer price of captive consumption.
- the companies were advised to establish how the prices of major inputs, including items of utilities substantially reflected market values.
- the existence or otherwise any minimum wage stipulation by the State and if the enterprises are free to decide wages as per market demand.
- Production Facilities and Costs

- Loans and subsidies
- Barter Trade/ Counter Trade
- Profit Distribution
- Bankruptcy and property laws
- Exchange rates conversions

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

25. Shanxi argued that they are operating in market conditions and, therefore, market economy treatment should be accorded to them in view of the fact that China has been treated as a market economy by many authorities around the world but they did not provide any supporting documents to establish its claim. Shanxi claimed that they satisfy the requirements of paragraphs 7 and 8 of Annexure –1 to AD Rules for grant of market economy status. The exporter has claimed that the principal shareholders of the company are not engaged or related to the production and sales of subject goods.

26. On examination of the submissions filed by Shanxi, it was observed that substantial holding of the company is with the State owned companies. M/s. Shanxi Sanwei Hua Bang Group Co. Ltd., M/s. Shanxi Economic Construction and Investing Company and M/s. Shanxi Economic and Trading Asset Management, State owned entities are having major share holding in Shanxi. The company has admitted that they have started the process of disinvestments of State owned share to the public from June 1997 but substantial holdings are still with the State owned companies during the POI. In other words, it was conceded that substantial shareholding remained with the State even during the investigation period and the process of disinvestments was being carried out during the investigation period. On the basis of above information, even after the alleged process of disinvestments, possibilities of State interference cannot be ruled out, particularly when the investigations are carried out not only against instances of actual past State interference but also possibilities of such interference in future.

27. As regards the directors in the company it is observed that majority of the directors are appointed from the State owned companies which holds the majority shares, therefore, any kind of State involvement in decision making in the company can not be denied. Since Chief executives in the company are also from State owned companies therefore, the significant interferences of State owned companies in the day to day control over the operation of the company can not be ruled out. M/s. Shanxi Sanwei Hua Bang Group Co., Ltd., is a State owned company which is having the majority shares of State owned assets supervision and administration commission of Shanxi province, thereby the influence or significant interference on their part cannot be denied on the part of claim made by the Chinese company. The exporter, vide response to the verification report, has merely reiterated its earlier submissions and have not provided any evidences etc. in support of their claim. The cost of production /sales of Penta as per company's records

were seen from January 2004 to December 2004 and not December 2005 as erroneously reported in the verification report.

28. Regarding the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values, Shanxi could not establish that the cost and pricing structures are market oriented. The company could not demonstrate that prices of major inputs were reflective of market values, particularly when majority of inputs and utilities are drawn from State owned/controlled enterprises.

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

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

30. It was noted in the preliminary findings that the names of suppliers of major raw materials and their business licences were not provided to demonstrate whether the procurement of raw materials was being made on the market driven prices and whether the costs of inputs substantially reflect market values. Subsequent to the preliminary findings, the company provided detailed information with regard to major items of inputs, including utilities. On comments to the disclosure statement M/s. Hubei has submitted that they are eligible for market economy treatment and based on the information of the company normal value may be determined on the domestic selling price in their home market. On examination of the information and on the spot verification conducted by the Authority it was found that coal is the major raw material for producing the subject goods and the price of coal may not reflect market value in view of the fact that coal is listed under the following under Accession Treaty of China,

- a) Provision of low-price inputs for special industrial sectors
- b) Subsidies provided to certain state-owned enterprises which are running at a loss
- c) Products subject to state trading (export), and
- d) Subsidies from central budget provided to certain state-owned enterprises which are running at a loss

31. The Chinese company has themselves claimed that the electricity has been supplied by a State owned entity. Electricity and Caustic Soda (a major input in production of Pentaerythritol) have a very significant cost in production of the subject goods. The company could not establish that prices of electricity were reflective of fair market value and more so when the company purchases electricity from State owned enterprise which appeared grossly on the lower side. Steam is a major item of utility in production of Pentaerythritol. It was found that the company was captively producing steam and the cost of steam was grossly on the lower side. The cost of sodium formate has been considered from the cost statement of methanoic acid and reduced from the cost of production of the subject goods. Production cost statements in respect of methanoic acid and caustic soda do not include any costs on account of financial/interest expenses and SGA. Methanoic acid cost statement includes no costs on account of direct labor, whereas caustic soda cost statement reflects unreasonably low cost on account of direct labor. The cost of production in respect of captively consumed inputs remained incomplete in so far as selling price and profit/loss is concerned and therefore the Authority could not verify whether the transfer price is representative of the price at which the company has sold these inputs. Acetaldehyde, another major input in production of Pentaerythritol was procured from State owned enterprise. Comparison of the price of Acetaldehyde claimed by the company with the other information available with the Authority showed that the price claimed by the company is significantly low. It was found that the cost of formaldehyde production cost statement did not show all expenses and also did not provide the selling price. The company did not provide any justification regarding its claim that cost of production was representative of the fair market value. It is found that the claimed cost of production was significantly below the price reported by the domestic industry. Comparison of average production value with the cost of production statement showed significant differences. Information provided by the company itself showed that there was significant difference between the captive cost of production (at which the inputs were transferred) and the price at which these inputs were purchased from the market.

32. It is noted that the company is managed by the share holders of the State owned entity therefore any involvement of the State in the social security programme in respect of employees of the companies can not be ruled out. It may be argued that the substantial costs are being incurred on account of State undertaking massive social security programme towards the employees of erstwhile State owned companies. It is noted the erstwhile State owned Chinese companies are now acquired the status of limited liability

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

33. It was noted in the preliminary findings that their parent company M/s. Hubei Yihua Group Ltd., Liability Company, State owned enterprises provided short term loan and long term loan to the company under investigation. M/s. Yichang Finance Bureau also provided a interest free long term loan to the company. The land has been given on lease by the parent State owned company M/s. Hubei Yihua Group Ltd., Liability Company, State owned enterprises and they have not provided the land lease amounts rentals for its claim of independent functioning without any significant interference of the State. The company did not provide any evidence refuting these averments in the preliminary findings.

34. Regarding the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values, it is noted that the company could not demonstrate that possibilities of State interference was ruled out, nor could the company demonstrate that the prices of major inputs, including utilities (which form a very significant part in production of the product concerned) substantially reflect market values.

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

35. Sinochem Jaingsu Import & Export Corporation, China PR (exporter) filed grossly incomplete information. Further, the producer of the subject goods concerned did not file any response to the prescribed questionnaires. Sinochem did not provide information with regard to cost of production and the domestic selling prices in the home market for determination of normal value.No information was filed as regards the claim of market economy treatment. The exporter was advised to file complete information and a detailed deficiency letter was sent to them. In its reply to the queries raised, the exporter stated that since the producer of the subject goods has not provided the information required for the investigation, the relevant information could not be supplied. The responding exporter who is exporting the subject goods manufactured by M/s. Yuan

Tian Hua Group has not filed the response which is required to be filed as per the details provided in the questionnaire. The exporter has claimed the market economy treatment but not filed the MET questionnaire response to the Authority for its claim.

36. Subsequent to the preliminary findings, no communication was received from the exporter and did not participate in the public hearing proceedings. In view of non-submission of complete documents and lack of sufficient cooperation, the Authority neither examined their claim for market economy treatment nor the response to the questionnaire filed by the exporter could be used for the purpose of determination of normal value and dumping margin.

37. In view of the examination of the responses filed by the Chinese companies, it is noted that the Chinese companies could not provide sufficient evidence in support of their claim of MET. It is further noted that it could not be established that the costs and prices reflected the correct price of the product. Investigations conducted by the Authority, including on the spot verification of information/data filed by the exporters and other information shown at the time of spot verification could not also establish that the companies could be granted market economy treatment and normal value determined based on their responses. The Authority is, therefore, unable to apply the principles set out in paragraphs 1 to 6 of Annexure-I for determination of normal value for these Chinese companies. The normal value in respect of all exporters / producers from China PR is determined as per rules relating to non-market economies as contained in Para 7 of Annexure-1 of AD Rules.

38. With regard to consideration of prices available in a market economy third country for determination of normal value, it is noted that applicant has not provided evidence of price or constructed value in a market economy third country. Prices from a market economy third country to other countries were also not made available and it is noted that prices from market economy third country to India could not be adopted for the reasons that (a) price adjustments to determine ex-factory prices were not available, (b) no information was available with regard to cost of production in these countries and therefore the Authority can not determine whether these prices are in the ordinary course of trade. While disputing the claim of the domestic industry to treat Chinese producers as non-market economy for determination of normal value, the Chinese producers, or importers or any other interested party did not provide any evidence either with regard to price or constructed value in a market economy third country. Under these circumstances, it was found appropriate to determine normal value considering price actually paid or payable in India for the like product, duly adjusted, to include a reasonable profit margin. Price actually paid in India could not have been considered for the reason that the same were below cost of production. Therefore, the Authority found it appropriate to consider

cost of production in India, duly adjusted, to reflect international raw material prices, optimum conversion costs, selling, general & administrative expenses and reasonable profit.

39. In view of the aforesaid and the fact that the respondent companies did not provide sufficient evidence to substantiate their claim for MET, a determination of normal value as per provisions contained in Section 9A (1) (c) (I) and sub-rule 2 (i) and (ii) of Annexure-I of the Anti-Dumping Rules cannot be made. The Authority is, therefore, unable to apply the principles set out in paragraphs 1 to 6 and is constrained to proceed as per as per Rule 7 and 8 of the Anti-Dumping Rules as amended. The normal value has therefore been determined on a reasonable basis considering also the price actually paid or payable in India for the like product duly adjusted to include a reasonable profit margin. The Authority has considered the raw materials for manufacturing Pentaerythritol at the international price, the consumption norms of the domestic industry (which were compared and correlated with the consumption claimed by the Chinese exporters), estimates of conversion costs, selling, general & administrative expenses and reasonable profit for constructing the normal value for all exporters/producers of China PR. The normal value is therefore, constructed as US\$****/MT.

EXPORT PRICE

40. Shanxi has provided invoice wise details of exports of subject goods to India during the period of investigation. They have exported 517.50 MT of Pentaerythritol during the POI and it has been considered for determination of export price. In their comments to the disclosure statement, they have suggested some minor correction in the export price which has been carried out based on the verified data. In order to arrive at the ex factory export price the company has claimed adjustments on account of inland freight, which was verified and found appropriate. The Authority has arrived at ex-factory export price of Pentaerythritol exported to India during the period of investigation. The Authority has determined the ex-factory export price as US\$ ****/MT.

41. Hubei has provided invoice wise details of exports of subject goods to India during the period of investigation. They have exported 723.50MT of Pentaerythritol during the POI, which has been considered for determination of export price. In order to arrive at the ex factory export price the company has claimed adjustments on account of inland freight, handling, ocean freight and overseas insurance, which was verified and found appropriate. The Authority has determined the ex-factory export price as US\$ ****/MT.

OTHER EXPORTERS/PRODUCERS FROM CHINA PR

NORMAL VALUE

42. The Authority has constructed the normal value as per para 7 of Annexure-I of AD Rules for all other exporters/producers from China PR as raw materials at the

international price, the consumption norms of the industry and reasonable profit. In view of this the normal value is, therefore, constructed as US\$MT****/MT.

EXPORT PRICE

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

SWEDEN

NORMAL VALUE

44. M/s. Perstorp Speciality Chemicals AB, Sweden has filed the three page response without giving any information or data with regards to exporters questionnaire as devised by the Authority. They have provided the list of corporate office, India office and provided list of subsidiaries and related companies. They have neither provided any information regarding domestic selling price in their home market nor the cost of production for the subject goods. In absence of any information with regards to normal value the Authority considers that it is not feasible to determine normal value in respect of the exporter based on their own information to determine individual dumping margin. The Authority therefore considers that it is not feasible to determine individual dumping margin in respect of Perstorp and has constructed the normal value for all exporters/producers from Sweden based on best facts available as per Rule 6(8) of AD Rules. In view of this, the normal value has been constructed for all exporters/producers from Sweden based on international raw material prices, consumption norms of the industry, estimates of conversion costs, selling, general & administrative expenses and reasonable profit margin. In view of this the normal value is, therefore, constructed as US\$ *****/MT.

EXPORT PRICE

45. The exporter did not file any information regarding the exports of subject goods into India during the POI. In absence of any reply to the exporters questionnaire the Authority is constrained to rely on import statistics made available by DGCI&S. The data made available by DGCI&S has been considered for determination of export price and it has been reported the imports of 2639 MT during the POI. To arrive at ex-factory export price the Authority considered the adjustments claimed by the domestic industry for the

purpose of preliminary determination. The ex-factory export price is determined as US\$ *****/MT for all exporters/producers from Sweden.

DUMPING- MARGIN

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

Exporter/Producer	Normal Value (US\$/MT)	Export Price (US\$/MT)	Dumping margin as % of Export Price
M/s. Shanxi Sanwei Group Co., Ltd., China PR	****	****	50.95%
M/s. Hubei Yihua Chemical Industry Co., Ltd., China PR	****	****	42.7%
Other exporters/producers from ChinaPR	****	****	80%
All exporters/producers from Sweden	****	****	56.3%

F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

F.1 VIEWS OF THE DOMESTIC INDUSTRY

47. The domestic industry has submitted that

i) they were earlier suffering injury from dumped imports from Canada, Japan and Taiwan. The domestic industry had filed an application for imposition of anti-dumping duty from these sources in September, 2001 and the interim duties were notified by the Ministry of Finance on 27th March, 2002. In view of the above, the period 2000-01 and 2001-02 may not be considered as base year for injury analysis, as this was the period when the industry was suffering dumping from different sources and the Authority already has information on record by virtue of previous case,

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

iii) the volume of imports from China has been determined based on the responses of two cooperative exporters which is higher than the reported import figures by DGCI&S but the export volumes of the non cooperative exporter have not been considered.

iv) imports from subject countries have increased in absolute terms and were significant during the POI. The share of dumped imports from the subject countries increased in relation to demand/consumption and production of the domestic industry.

v) the export prices from the subject countries have declined during the entire injury period. Production and capacity utilization increased during the POI, however, sales volume declined during the POI.

vi) selling price of the domestic industry increased from 2000-01 to 2003-04 but declined during the POI. The anti-dumping duty imposed on imports from other sources on 27th March, 2002 enabled the domestic industry to realize a better selling price. Selling price however declined in the POI due to dumped imports from new sources which is being investigated.

vii) the market share of the domestic industry has declined due to dumped imports from subject countries.

viii) Profitability has improved upto 2002-03 and started declining thereafter to such an extent that the domestic industry suffered financial losses during the POI.

ix) the import price from subject countries was undercutting the domestic sales price significantly.

x) the cash flow during the Period of investigation is negative.

xi) the productivity of the company has improved during the POI, inspite of which the domestic industry was facing financial losses.

F.2 VIEWS OF THE EXPORTER / IMPORTER

48. M/s. Perstorp Aegis has submitted that

i) it has not been disclosed by the Designated Authority whether the indicated capacity of the Petitioner's plant is dedicated to the subject goods and whether the same can be/ has been used for manufacturing other products.

ii) while the installed capacity of the Petitioner has remained constant, the production and production has gone up from 5081 MT during 2000-2001 to 6316 MT during 2003-2004.

iii) the capacity utilization of the Petitioner has also substantially grown from 85 in the year 2001-2002 to 105 during the period of investigation as per indexed figures.

iv) the domestic sales have recorded lower sales during the Period of investigation as compared to the previous years. It is to be verified whether any losses being passed from the operations of other goods being produced by the Petitioner.

49. The views of other exporters/importer have been summarised below;

- It is submitted that the decline in the market shares of the domestic industry is very marginal during the period of investigation. In fact the information submitted by the petitioner does not show any surge in imports or a decline in the market share of the domestic industry.
- The petitioner operated at a capacity utilization of 106% during the POI.
- The sales of the petitioners have been increasing, including in the year 2003-2004.
- The production of the petitioner has gone upto to 6316 MT. The stocks available with the company at the end of the period of investigation are quite low.
- The losses incurred by the petitioner are on account of its high cost of production and its inability to compete in local or international markets.
- The petitioner appears to have unduly high cost of production due to which it is claiming under cutting.
- The productivity of the petitioner appears to have been at its highest in the year 2002-2003, declined in the subsequent year and again increased during the period of investigation.
- The cash flow position of the petitioner is positive and does not reflect any injury. The return of investment appears to be healthy and does not reflect any injury.
- M/s. Shanxi Sanwei has submitted that a detailed examination of the captive market was required to be made. The non-injurious price should be determined keeping in view the cost of production of Asian paints also.
- M/s. Hubei has submitted that the domestic industry has not suffered any injury due to alleged dumping by them during the POI. They have also submitted that the domestic industry is suffering injury due to dumping from Sweden.
- M/s. Hubei has also argued that the domestic industry has shown improvement in production, capacity utilization, sales and many other factors and at the same time loss may be shown due to other products manufactured by the domestic industry.

F.3 EXAMINATION BY THE AUTHORITY

Cumulative assessment of injury:

50. As per annexure-II (iii) of AD Rules, in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the

imports from each country is 3% of the total imports of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic product. It is noted that the margin of dumping in respect of subject countries is more than 2%. The volume of imports from these subject countries collectively are more than 85% of total imports and individually more than 3% of the total imports.

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

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

“A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.”

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

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

Volume and market share in dumped imports

53. The interested parties have argued that the import volumes have been considered from different sources and the evidence of which has not been disclosed. The arguments

of the interested parties have been examined and it is noted that DGCI&S transaction wise import data and information from co-operative exporters have been considered for the purpose of determination of volume of imports. In view of the above, volume of dumped imports from the subject countries and other countries have been as under:-

Imports (MT)	2001-02	2002-03	2003-04	POI
China	56	72	1494	2034
Sweden	636	259	1145	2639
Subject countries	692	331	2639	4673
Countries having AD duty	553	432	699	639
Other countries	806	771	462	192
Total imports	2051	1534	3800	5504
Imports (%)				
China	2.73	4.66	39.31	36.96
Sweden	31.01	16.88	30.13	47.94
Subject countries	33.74	21.54	69.45	84.90
Other countries	66.26	78.46	30.55	15.10
Total imports	100	100	100	100

54. It is noted that the volume of dumped imports of subject goods from subject countries has increased from 692 MT during 2001-2002 to 4673 MT during the POI. The share of imports from China has increased from 2.73% during 2000-2001 to 36.96% during POI, whereas the share imports from Sweden has increased from 31.01% to 47.94% during the same period. Cumulatively, the share of imports from the subject countries in total imports has increased from 34% to 84.90%.

Market share in demand

55. The domestic consumption/demand of the subject goods has been determined on the basis of domestic sales of the Indian industry and total imports of the subject goods into India. The demand of the subject goods including captive consumption has increased from 16030 MT during 2001-02 to 18227 MT during the POI whereas the demand of the subject goods excluding captive consumption has also increased from 13739 MT to 15287 MT during the same period. It is noted that demand has increased by 14% during the POI whereas dumped imports from subject countries have increased by 50% during the same period.

Demand including captive (MT)	2001-02	2002-03	2003-04	POI
Total imports	2051	1534	3800	5505
Sales (domestic industry)	5062	5328	5344	4907

Sales (Other producers)	8917	9870	8496	7815
Total demand	16030	16732	17640	18227
Demand excluding captive (MT)				
Total imports	2051	1534	3799	5505
Sales (domestic industry)	5062	5328	5344	4907
Sales (Other producers)	6626	7248	5531	4875
Total demand	13739	14110	14675	15287

56. The market share of dumped imports in demand including captive from subject countries has increased from 4.32% during 2001-02 to 25.64% during the POI whereas the market share of domestic industry has decreased from 31.58% to 26.92% during the same period. Similarly the market share of dumped imports in demand excluding captive from subject countries has increased from 5.04% during 2001-02 to 30.57% during the POI whereas the market share of the domestic industry has decreased from 36.84% to 32.10% during the same period. It is noted that with the decline in sales volumes in the investigation period and increase in demand over the period, the market share of the domestic industry declined .

Demand including captive (%)	2001-02	2002-03	2003-04	POI
Subject countries	4.32	1.98	14.96	25.64
Other countries	8.48	7.19	6.58	4.56
domestic industry	31.58	31.84	30.30	26.92
Other producers	55.63	58.99	48.16	42.88
Total demand	100	100	100	100
Demand excluding captive (%)				
Subject countries	5.04	2.34	17.98	30.57
Other countries	9.89	8.53	7.91	5.44
domestic industry	36.84	37.76	36.42	32.10
Other producers	48.23	51.37	37.69	31.89
Total demand	100	100	100	100

Market share of dumped imports in production to the domestic industry

57. It is observed that the dumped imports from subject countries have increased in relation to the production of the domestic industry through out the investigation period, except declined during 2002-03 since anti-dumping duty was in place on dumped imports from other sources. It is noted that the share of dumped imports from the subject countries has increased to the quantum of production by the domestic industry during the POI, which may seen from the following table;

(MT)	2001-02	2002-03	2003-04	POI
China	56	71	1493	2034
Sweden	636	259	1145	2639
Subject countries	692	330	2638	4673
Production of domestic industry	****	****	****	****
Dumped Imports in relations to production (%)	14	5	44	73

Capacity, production & Capacity utilisation

58. The production of the domestic industry has increased in the increasing demand of the subject goods under consideration. The production has increased from 100 to 124 during the POI in the increased demand from 100 to 114 during the same period. The capacity utilisation of the domestic industry has also increased from 85% during 2001-02 to 105% during the POI.

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

Growth

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

Evaluation of price over the period under consideration.

60. The CIF export price from China has decreased by 87% during the POI from 2002-03. This decline in CIF price during the POI has impacted the volume of subject goods of domestic industry, which constitutes 37% of the total imports and roughly 12% market share in the total demand. The CIF export price from Sweden has decreased by 23% during the POI from 2002-03 and this decline in the price during the POI has impacted the volume of subject goods of domestic industry which constitutes 48% of the total imports and roughly 14.5% market share in the total demand.

Price undercutting

61. A comparison of the domestic selling price of the subject goods was made with the landed value of imported product to understand the phenomenon of undercutting. The net sales realisation was arrived after making adjustments regarding all rebates and taxes. The landed value of the subject goods was compared with net sales realization of the domestic industry and it was found that the landed value is undercutting the selling price of the domestic industry significantly. The undercutting for cooperative exporter were also examined and found that the landed value of the dumped imports is undercutting the selling prices of the domestic industry. The undercutting margin from China was within a range of 12% to 30% during the POI. The undercutting margin from Sweden was within a range of 20% to 25% during the POI.

Price Underselling

62. Price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared the same with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI. In order to eliminate inefficiencies, capacity utilisation has been normated. The analysis shows that the landed value of subject goods from subject countries is much below the non-injurious price determined for the domestic industry during the period of investigation. The underselling margin was within a range of 18% to 28% from China and 22% to 30% from Sweden during the POI.

Sales

63. The sales of the domestic industry in volume terms have increased during 2002-03 and 2003-04 compared to the base year, however it has declined during the POI in the increasing demand of the subject goods. The export sales of the domestic industry have increased during the injury period however, the domestic sales of the domestic industry have declined during the POI. The demand has increased from 100 during 2001-02 to 114 during the POI whereas the domestic sales volume of the domestic industry has declined from 100 to 97 during the same period. It is seen that sales volumes of the domestic industry increased between 2001-02 and 2003-04 and declined thereafter during the POI

even though the production of the domestic industry increased over the injury period, sales volumes declined.

(MT)	2001-02	2002-03	2003-04	POI
Sales(Domestic)	****	****	****	****
<i>Indexed</i>	100	105	106	97
Sales(Exports)	****	****	****	****
<i>Indexed</i>	100	45	135	231
Total Sales	****	****	****	****
<i>Indexed</i>	100	99	108	110
Demand	16030	16732	17640	18227
<i>Indexed</i>	100	104	110	114

Factors affecting domestic prices

64. It is noted that the costs to make and sell of subject goods have increased from 100 during 2001-02 to 114 during the POI whereas selling prices of the domestic industry has increased from 100 to 111 during the same period. It is noted there is no exterior factor which could have affected the domestic prices rather it is dumped imports which has suppressed the domestic selling price of the domestic industry. The Authority notes that the increase in the cost of production was due to increase in the prices of critical inputs.

65. Perstorp Aegis has argued that the goods imported by them do not directly compete with the goods offered the domestic industry, however the investigations revealed that the company blends Pentaerythritol of different purities and repacks the same and competes in the domestic market. Perstorp Aegis did not provide any information with regard to its resale price, processing cost which could have assisted the investigation to arrive at the impact of dumped imports on the prices in the domestic market.

Magnitude of margin of dumping

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

2003-04 (POI)	China	Sweden
Dumping Margin	42% to 80%	56%

Evidence of lost contracts

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

could not conclude any findings with regard with injury to the domestic industry on account of this parameter.

Inventory

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

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

Return on capital employed and ability to raise capital

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

	2001-02	2002-03	2003-04	Period of investigation
Profit before interest (Rs. Lacs)	****	****	****	****
Indexed	-100	774	585	-10
Capital Employed(Rs.Lacs)	****	****	****	****
Indexed	100	114	142	139
Return on Capital Employed considering NFA (%)	-4.15	28.13	17.14	-0.30

Profit/Loss

70. The profitability of the domestic industry has declined while the production has increased during the POI in the increased demand. The cost of production has increased from 100 during 2001-2002 to 114 during the POI due to the increase in raw material prices whereas the selling price did not increase in that proportion during the same period. It is observed that the cost of production has increased whereas the selling price

of the product has declined in the same period and because of this reason the industry which recovered from a loss during a base year to a reasonable profit upto 2003-04, again went in loss during the POI. Even when the domestic industry optimized its production to the maximum extent, its profitability deteriorated from a situation of profits during 2003-04 to a situation of financial losses. It is noted that the profitability of the domestic industry improved during 2002-03 and 2003-04 due to antidumping duty was in place since March,2002 against dumped imports from Taiwan, Canada and Japan.

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

71. The trend of profit/loss inter-se investigation period by comparing the same on quarterly basis was also examined. It is noted that the profits of the domestic industry continuously declined within the investigation period.

Employment

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

Employees	Unit	2001-02	2002-03	2003-04	POI
No. of employees	Nos.	****	****	****	****
Volumes and sales per employee	MT	****	****	****	****
Indexed		100	104	110	102

Productivity

73. Productivity of the domestic industry, as reflected in terms of production per employee, has improved during 2002-03 and again deteriorated during the POI. The productivity per employee has improved from 100 during 2001-02 to 119 during 2003-04

but deteriorated during the POI. It cannot, therefore, be said that the domestic industry has suffered injury due to decline in productivity.

Productivity	Unit	2001-02	2002-03	2003-04	POI
No. of employees	Nos.	****	****	****	****
Production	MT	****	****	****	****
Productivity per employee	MT	****	****	****	****
Indexed		100	125	119	114

Wages & Salary

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

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

Cash Flow

75. The domestic industry is a multi product company involved in production of other products also. Cash flow of domestic industry is reflective of operations relating to company as a whole. However, the performance of the domestic industry in terms of cash profit in relation to product under consideration was examined. It is noted that decline in the selling prices of the domestic industry in the investigation period and increase in the input costs in the cost of production has resulted in cash losses to the domestic industry once again in the investigation period. On examination of the cash profit of the domestic industry it was observed that the cash profit of the company has improved during the 2002-03 when anti-dumping duty was levied on dumped imports from other sources, however it deteriorated due to dumped imports from China PR and Sweden and became negative during the period of investigation. The cash profits of the domestic industry in relation to the product under consideration have been given below.

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

flow(Rs./Lacs)				
Index	-100	179	197	-93

Ability to raise capital/investment

76. It is noted that the applicant is a multi product company and ability to raise investment may not be an indicator of impact of dumping on the domestic industry.

F.4 Conclusions on Injury

77. On examination of injury parameters, the following conclusions are made with regards to injury suffered by the domestic industry;

- a) The profitability of the domestic industry has deteriorated during the POI. The return on capital employed and cash profits have also deteriorated during the POI after a improvement during 2002-03 and 2003-04 due to dumped imports from subject countries;
- b) Imports from the subject countries have increased significantly in absolute terms as also relative to production and consumption in India;
- c) Dumped imports are significantly undercutting the selling prices of the domestic industry;
- d) Domestic industry was facing price suppression during the investigation period as dumped imports were preventing price increases necessitated as a result of increase in input prices;
- e) Sales volumes, market share, productivity, profitability, return on capital employed and cash flow deteriorated over the injury period, after improving upto 2002-03;
- f) Even though production, capacity utilization, inventories, employment, wages show positive trend, the deterioration in other parameters is more significant than improvement in these parameters.
- g) It is thus concluded that the domestic industry has suffered material injury.

G. Causal Link And Other Factors

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

78. The share of dumped imports from subject countries have increased significantly by 53% during 2001-02 and the POI. It is noted that the market share of dumped imports in total demand has increased significantly over the injury period, as a direct consequence of which market share of the domestic industry has declined. Sales volumes of the domestic industry have also declined in spite of about 14% increase in demand during the POI. It was found that even when the production of the domestic industry kept increasing, the sales volumes declined during the investigation period to such an extent that the same were below the base year.

79 In examining the price effect whether the dumped imports have significantly undercut the price of the like product in India, it is noted that the landed value of the subject goods from subject countries was lower than the selling price of the domestic industry thereby undercuts the selling price of the domestic industry significantly. Moreover, undercutting to the domestic prices did not show the full impact of the dumped imports since the domestic prices were suppressed due to low landed value. It is found that the price undercutting and the pricing behavior of landed value of imports has forced the domestic industry to reduce the prices even less than the cost of production, resulting in financial losses to the domestic industry. The domestic industry could not increase the selling price as a result of increase in the cost of production due to dumped imports and suffered financial losses during the POI. The undercutting along with price suppression in effect eroded the profitability of the domestic industry. As a consequence of the significant price undercutting, the domestic industry was forced to reduce its prices whereas the prices should have increased as a result of increase in input costs. As a consequent impact of the decline in the domestic selling prices, the profitability, return on capital employed and cash flow of the domestic industry deteriorated after showing an improvement with the imposition of measures on other countries. The domestic industry has suffered material injury due to dumped imports of subject goods from subject countries during the POI.

EFFECT OF OTHER FACTORS

(a) Performance of Other Domestic producers:

80. There are two other domestic producers of the subject goods apart from the applicant. M/s. Asian Paints, one of the producer of the subject goods consumes a significant part of its production. M/s. Perstorp Aegis, the other Indian Producer, gradually reduced its production and increasingly resorted to import of the subject goods from Sweden, blending of the same in India and selling in Indian market. Perstorp Aegis claimed that they were forced to reduce the production of the subject goods and resorted to imports due to dumping from China. None of the other Indian Producers has provided information relevant to injury assessment. Even though submissions were made by

Perstorp Aegis on various aspect of the investigation, it is noted that the company did not provide any information with regard to injury suffered by them. Under the circumstances, the impact of any injury suffered by these Indian Producers could not be assessed.

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

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

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

82. It is noted that there is no contraction in the overall demand during the period under consideration. On the contrary, the overall demand has increased by 14% during the POI. The demand of the subject goods has increased during the POI in both the situation including captive and excluding captive consumption, therefore, the possible decline in demand is not a factor which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, therefore it has not been impacted any injury to the domestic industry.

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

83. It is noted that the imports from countries other than subject countries are below the de minimis limits except imports from Taiwan which is attracting anti dumping duty since March, 2002. According to the available information, the total import volumes of subject goods originating in countries other than subject countries decreased by 53% and their market share in demand has come down from 8.48% during 2001-02 to 4.34% during the POI. Therefore, it is noted that import from non-subject countries has not contributed any injury to the domestic industry.

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

84. None of the interested parties has raised any issue regarding the technology being a factor of injury to the domestic industry. Further, the investigation has not revealed that technology for production of the subject goods has undergone any significant change. Therefore, it is considered that possible developments in technology do not appear to be a cause of injury to the domestic industry. In view of this, it is noted that the technology used by the domestic industry is also used by the foreign producers of the subject countries, therefore, could not be a cause of injury to the domestic industry.

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

86. Productivity of the domestic industry declined over the injury period. However it is noted that the performance of the domestic industry shows deterioration even if the productivity is assumed at most optimum level achieved. The productivity per se could not be the cause of injury to the domestic industry.

H. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

87. It is noted 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.

88. The Authority also recognizes that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and would help in maintaining availability of wider choice of the subject goods to the consumers.

I. LANDED VALUE

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

J. CONCLUSIONS:

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

i) Subject goods originating in or exported from subject countries have been exported to India below its normal value.

ii) The domestic industry has suffered material injury.

iii) The injury has been caused to the domestic industry by dumped imports of subject goods originating in or exported from the subject countries.

iv) The applicant domestic industry has in comments to the disclosure statement has submitted that anti dumping duties may be levied in terms of fixed amount since the cost and prices of the subject goods has varied significantly within the injury period and increased compared to the prevailing cost and prices during the POI and at the same time dumping is still continuing beyond the post POI. They have also argued that the raw material prices have increased globally over the injury period therefore, imposition of duty on reference price basis will not able to address the injury to the domestic industry. It may also be noted that in the investigations relating to Canada, Japan and Taiwan on the same product, the anti dumping duty was imposed on the fixed amount and the deviation at this stage is not desirable. One of the exporter M/s. Hubei has submitted that since the volume and price of each of the exporters from the subject countries is substantially different it will not be fair for the Authority to recommend any determinative anti-dumping duty on the basis of a NIP guided uniform reference price. They have further submitted that uniform anti-dumping duty is not fair generally to cooperating exporters and rewards non-cooperation and extend the benefit of lower margin to the non-cooperating exporters. On examination of the arguments made by the interested parties, the Authority felt it appropriate to consider and recommend the duty on the fixed amount based on the lower of the margins determined in this investigation.

v) The Authority thus considers necessary to recommend final anti-dumping duty on imports of subject goods falling under Chapter 29 of Customs Tariff Act originating in or exported from the subject countries.

vi) The Authority proposes to recommend the amount of anti dumping duty not exceeding the margin of dumping or the margin of injury whichever is less and, which if

levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the non injurious selling price of the applicant company determined for the period of investigation.

vii) Accordingly, the Authority recommends that the final anti dumping duties be imposed from the date of issue of notification by the Central Government on all imports of Pentaerythritol falling under chapter 29 of Custom Tariff Classification Act 1975, originating in or exported from China PR and Sweden. The anti dumping duty shall be the amount mentioned in Column No. 9 of the following table to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of subject goods falling under Chapter 29 of Customs Tariff Act, originating in or exported from the countries mentioned below,

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
2.	2905	Pentaerythritol	Any	China	China	M/s. Shanxi,China	M/s. Shanxi,China	440.73	MT	US\$
3.	2905	Pentaerythritol	Any	China	China	M/s. Shanxi,China	Any exporter	440.73	MT	US\$
4.	2905	Pentaerythritol	Any	China	China	Any producer	M/s. Shanxi,China	440.73	MT	US\$
5.	2905	Pentaerythritol	Any	China	China	M/s. Hubei,China	M/s. Hubei,China	387.87	MT	US\$
6.	2905	Pentaerythritol	Any	China	China	M/s. Hubei,China	Any exporter	387.87	MT	US\$
7.	2905	Pentaerythritol	Any	China	China	Any producer	M/s. Hubei,China	387.87	MT	US\$
8.	2905	Pentaerythritol	Any	China	China	Any producer	Any exporter	554.95	MT	US\$
9.	2905	Pentaerythritol	Any	Sweden	Sweden	Any producer	Any exporter	449.83	MT	US\$

vii) An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Christy Fernandez)
Designated Authority