

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

**NOTIFICATION**

New Delhi the 18<sup>th</sup> August 2009

**Preliminary Findings**

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

No. 14/3/2009 -DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred as the AD Rules);

**A. PROCEDURE**

2. The procedure described herein below has been followed:

- i. The Designated Authority (hereinafter referred to as the Authority), under the above Rules, received a written application from the Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai on behalf of the domestic industry, alleging dumping of 'Certain Phosphorous based chemical compounds' namely PCL3, PCL5, TMP and TPPI (hereinafter referred to as the subject goods) originating in or exported from China PR (hereinafter referred to as subject country) and POCL3 (hereinafter referred to as the subject goods) originating in or exported from China PR and European Union (hereinafter referred to as subject countries).
- ii. The Authority notified the Chinese Embassy/ Office of Delegation of European Union in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry issued a public notice dated 13<sup>th</sup> February, 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of subject goods originating in or exported from subject countries, in accordance with the sub-rule 6(1) of the AD Rules to

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

- iv. The Designated Authority sent a copy of initiation notification dated 13<sup>th</sup> February, 2009 to the Chinese Embassy/ Office of Delegation of European Union in India, known exporters from subject countries, known importers/ users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- v. Request for extension of time to file the questionnaires' response was received from some interested parties. The Authority granted the time extension, keeping in view the time constraints.
- vi. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Chinese Embassy/ Office of Delegation of European Union in India in accordance with Rule 6(3) supra.
- vii. The Chinese Embassy / Office of Delegation of European Union in India were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country/territory to respond to the questionnaire within prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.
- viii. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rules 6(4).

**Producers/Exporters in China PR**

S.N.	Company's Name
1.	Jiangsu Changyu Chemical Co. Ltd
2.	Jiangsu Changyu Chemical Co. Ltd
3.	Changzhou Cuiqiao Weixing Chemical Co., Ltd
4.	China Haohua Chemical (Group) Corporation
5.	Jiangsu Jinmei International trade Co Ltd.
6.	Xuzhou Jianping Chemical Co.Ltd.

7.	Shanghai Huayi Group Huayuan Chemical Industry Co Ltd
8.	Shandong Dacheng Chemical Group

**Producers/Exporters in European Union**

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

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

S.N.	Company's Name	Country	Status	Product
1.	M/s Xuzhou Jianping Chemical Co. Ltd. – “Jiangping”	China PR	Producer	PCL3, PCL5, POCL3
2.	M/s Sancaitang Chemical Industry & Technology Co., Ltd. HB – “Sancaitang”	China PR	Producer	TMP
3.	M/s Luohe Huipu Chemistry Industry Factory – “Huipu”	China PR	Producer	TMP
4.	M/s China Haohua Chemical (Group) Corporation – “Haohua”	China PR	Exporter	PCL3, PCL5, POCL3, TMP
5.	M/s Sinochem International Corporation – “Sinochem”	China PR	Exporter	PCL3, PCL5, POCL3, TMP

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

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

- xi. In response thereof, following have responded:

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

- xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xiii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xiv. Investigation was carried out for the period starting from 1<sup>st</sup> October 2007 to 31<sup>st</sup> December 2008. The examination of trends, in the context of injury analysis, covered the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the Period of Investigation (POI).
- xv. \*\*\* in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

**B. PRODUCTS UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLES**

3. The products under consideration are 'Certain Phosphorous based chemical compounds', viz:

- (1) Phosphorous trichloride (PCL3)
- (2) Phosphorous pentachloride (PCL5)
- (3) Phosphorous oxychloride (POCL<sub>3</sub>)
- (4) Triphenyl phosphite (TPPI)
- (5) Trimethyl phosphite (TMP)

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

Product name	Synonym name
Phosphorus Trichloride (Pcl3)	Phosphorus(III) chloride, Phosphorus Chloride
Phosphorus Oxychloride (Pocl3)	Phosphoryl chloride
Phosphorus Pentachloride (Pcl5)	Phosphorus(V) chloride
Triphenyl Phosphite (TPPI)	Phosphorus acid triphenyl ester, TPP
Trimethyl Phosphite (TMP)	Phosphorus acid trimethyl ester, Phosphonic acid trimethyl ester, Methyl Phosphite

3.2 PCL5, POCL3 and PCL3 are inorganic chemicals, classifiable under Chapter 28, whereas, TMP and TPPI are organic chemicals, classifiable under Chapter 29. Customs classification of each of the subject goods is as follows:

Subject Product	Customs Classification
PCL3	28121021
PCL5	28121022
POCL <sub>3</sub>	28121030
TMP	29209041
Other (TPPI)	29209099

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

## **EXAMINATION BY THE AUTHORITY**

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

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

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

3.6 Thus, the Authority is of the view that products under consideration produced by the domestic industry are like articles to the subject products under consideration in accordance with the AD Rules.

### **C. SCOPE OF DOMESTIC INDUSTRY & STANDING**

4 Rule 2(b) of the AD Rules defines domestic industry as under:-

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

4.1 The Application has been filed by Association of Small & Medium Chemical Manufacturers (ASMECHEM), Mumbai on behalf of the domestic industry. M/s. United Phosphorus Limited has provided injury information, whereas M/s. Punjab Chemicals and Crop Protection Ltd, M/s. Sandhya Industrial Chemicals, M/s. Sandhya Dyes & Chemicals, M/s. S.M. Chemicals, M/s. Excel Industries Limited, M/s. Cheminova India Ltd and M/s. Pharma Chemicals Industries have supported the petition. None of the opposing interested parties has raised any issue in this regard.

4.2 The Authority notes that (a) production of each of the subject goods by M/s. United Phosphorus Limited constitute a major proportion of the Indian

production (b) Production of each of the subject goods by the M/s. United Phosphorus Limited along with that of the supporters constitute more than 50% of the Indian production (c) that the application has been made by or on behalf of the domestic industry in terms of the AD Rules. Thus, M/s United Phosphorus Limited constitutes domestic industry for each of the products under consideration within the meaning of the Rule 2(b) read along with Rule 2(d) of the AD Rules.

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

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

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

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

### **Submissions made by Chinese exporters/producers**

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

- 5.1 It has been stated that M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) is a producer and domestic seller of the product concerned, but is not an exporter. M/s Jianping sells the product concerned to two Chinese trading companies named China Haohua Chemical (Group) Corporation ("Haohua") and Sinochem International Corporation ("Sinochem"). Then Haohua and Sinochem resell (export) the products to India. M/s Jianping is the producer & supplier and M/s Haohua and M/s Sinochem are the exporters. They are not related to each other. M/s Jianping along with M/s Haohua and M/s Sinochem have responded to the questionnaire. M/s Jianping only produces PCL3, PCL5, POCL3 and does not produce TPPI and TMP. So the response refers to PCL3, PCL5 and POCL3 only.

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

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

- 5.2 It has been stated that M/s Luohe Huipu Chemistry Industry Factory (Huipu) is a producer and domestic seller of the product concerned, but is not an exporter. M/s Huipu sells the product concerned to one Chinese trading company named M/s Sinochem International Corporation (Sinochem). Then Sinochem resells (exports) the products to India. M/s Huipu is the producer and supplier, whereas M/s Sinochem is the exporter. The two are not related.
- 5.2.1 M/s Huipu only produces TMP, and sells TMP in domestic market, and sells TMP to India through Sinochem. So response refers to TMP only. It has been stated that there is no variation between the product under consideration in the country of export and the product under consideration exported to India.
- 5.2.2 The assets used to produce TMP were purchased by the shareholder in 2004 from Yancheng Chemical Factory which was an insolvent State-owned enterprise. There was no assets evaluation report made during the course of purchase of the assets. The Company acquires major raw materials from several suppliers. All the materials and relevant inputs are purchased locally from several suppliers, including from State owned companies.

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

- 5.3 It has been stated that M/s Sinochem International Corporation is the exporter/trader of the product concerned, but is not the producer of the products concerned. M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) and Luohe Huipu Chemistry Industry Factory (Huipu) are the suppliers of M/s Sinochem.
- 5.3.1 All of the PCL3, PCL5 and POCL3 exported to India during the POI were supplied by M/s Jianping. All of the TMP exported to India during the POI was supplied by M/s Huipu. M/s Jianping and M/s Huipu have responded the questionnaire. M/s Jianping, M/s Huipu and M/s Sinochem are not affiliated. However, Sinochem only exported PCL3, PCL5, POCL3 and TMP to India during the POI. So in this questionnaire response, the products concerned refer to PCL3, PCL5, POCL3 and TMP.
- 5.3.2 It has been stated that the subject goods sold in domestic market by M/s Jianping and M/s Huipu are identical in physical/ technical / chemical characteristics with those exported to India by M/s Sinochem. M/s Sinochem is the subsidiary of M/s Sinochem Corporation, which is 100% owned by the State-owned Assets Supervision and Administration Commission of the State Council of China PR.

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

- 5.4 It has been stated that M/s Sancaitang is a producer and domestic seller of the product concerned, but is not an exporter of the subject goods. Sancaitang sells the product concerned to one Chinese trading company named China Haohua Chemical (Group) Corporation ("Haohua"). Then Haohua resells (exports) the products to India or other countries. Thus, Sancaitang is the producer and Haohua is the exporter. The two are not

related. Both Sancaitang and Haohua have responded to the questionnaire. Sancaitang only sells TMP to India through Haohua, so the questionnaire response refers to TMP only.

- 5.4.1 It has been stated that there is no variation between the product under consideration in the country of export and the product under consideration exported to India. The assets used to produce TMP were purchased by the shareholders in 2004 from Jingzhou Additive Factory which was an insolvent State-owned enterprise. There was no assets evaluation report made during the course of purchase of the assets. The Company acquires major raw materials from several suppliers. All the materials and relevant inputs are purchased locally, including from State owned company.

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

- 5.5 It has been stated that M/s China Haohua Chemical (Group) Corporation (hereinafter referred to as “Haohua” or “the Company”) is the exporter/trader of the product concerned, but is not the producer of the product concerned. M/s Xuzhou Jianping Chemical Co., Ltd. (Jianping) and Sancaitang Chemical Industry and Technology Co., Ltd. HB (Sancaitang) are the suppliers of M/s Haohua. All of the PCL3, PCL5 and POCL3 exported to India during the POI were supplied by M/s Jianping. All of the TMP exported to India during the POI was supplied by M/s Sancaitang. They are not affiliated to each other.

- 5.5.1 M/s Haohua only exported PCL3, PCL5, POCL3 and TMP to India during the POI. So the response refers to PCL3, PCL5, POCL3 and TMP only. It has been stated that there is no variation between the product under consideration in the country of export and the product under consideration exported to India.

- 5.5.2 M/s Haohua is 100% owned by China National Chemical Corporation which is a State-owned company.

### **Views of the domestic industry**

- 6 It has been contended by the domestic industry that China PR should be treated as non market economy country, *inter alia*, stating that:

- **Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity** – It has been contended by the Domestic industry that the European Commission has consistently held that possibilities of State interference cannot be ruled out in cases, where there is significant share of a State owned/controlled entity. It has been contended that it is not only the question of past interferences alone, but also possibilities of potential State interference in the future after the imposition of anti dumping duties that is relevant for granting market economy treatment.
- **Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values**: It has been contended by the Domestic industry that

“substantially reflect market values” has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market. The Domestic Industry contends that the fact that such prices are comparable to the price prevailing in China PR is grossly insufficient.

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

responding Chinese companies and thus the Normal value should be determined in accordance with Para-7 of the Rules.

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

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

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

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

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

6.4 The Authority notes that in a situation where one the company is a State owned/controlled entity, possibilities of State interference cannot be ruled out, requiring further investigation, including spot verification. Further, the responding Chinese producers have not provided any evidence to establish that prices of basic inputs substantially reflect market values, particularly in the context that some inputs

have also been procured from State-owned companies. The producers have named the raw materials suppliers and identified their legal status, some of which are State-owned. The respondents have not provided any evidence to establish that the inputs have been procured at prevailing international prices. Besides, it is also seen that in some cases, assets used to produce the products were acquired from insolvent State-owned enterprises. These also call for further investigation, including spot verification.

6.5 Thus, the Authority is unable to grant market economy treatment to the Chinese exporters at this stage, pending further investigation including spot verification.

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

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

6.8 Considering the China PR as NME for the purposes of these preliminary findings, the Authority has determined Normal values for the products that are like articles to the exported products. No difference has been claimed between the products sold by the exporters in their domestic market and the products exported by them to India.

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

7.1 As noted above, there are significant issues of market economy determination in respect of the responding exporters from the subject country that requires further examination and verification. Therefore, pending further examination and verification of the claims made by the responding exporters and producers from China PR, in respect of their market economy claims and individual treatment claims; for the purposes of the preliminary finding, the Authority has provisionally estimated the Normal value in China on the basis of Para-7 to Annexure-I to the Rules.

7.2 Para 7 of Annexure I of the AD Rules provides that

*In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time*

*of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

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

7.3.1 In view of significant changes in the price of yellow phosphorus within the period of investigation, a major raw-material to manufacture the subject goods, the price of yellow phosphorus at the time of exports has been considered on a monthly basis. The Normal value has been determined accordingly on the basis of international prices of major raw materials, consumption norms of the responding exporters, conversion costs as per domestic industry duly adjusted, to include selling, general & administrative expenses and reasonable profit margin, except in case of TPPI, wherein even the consumption norms of the domestic industry have been adopted as no producer/exporter from China PR has responded to the questionnaires.

7.4 The Authority has noted that no difference has been claimed by any producer/exporter regarding the product under consideration that has been sold to India and like articles that has been sold in their domestic market. Pending further examination of the issues, for the purpose of preliminary determination, the Authority proceeds to provisionally determine the Normal value in China PR on available reasonable basis, in terms of second proviso of para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the products under consideration have been provisionally determined based on costs of production in India, duly adjusted. Since the exporters have not established any difference in the characteristics of the products under consideration exported to India and goods sold by the domestic industry, the Normal Values have been constructed taking into account international price of major inputs, consumption norms of the responding exporters; conversion costs and SGA expenses of the domestic industry duly adjusted and a reasonable profit margin of 5% for PCL3, PCL5, POCL3 & TMP. As regards TPPI, no producer/exporter from China PR has responded to the questionnaires; therefore Normal value has been constructed taking into account international price of major inputs, consumption norms, conversion costs and SGA expenses of the domestic industry duly adjusted and a reasonable profit margin of 5%.

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

8.1. M/s ThermPhos International B.V. from Netherlands responded to the notification and has, *inter alia*, stated that the fundamental are missing to accuse Europe of dumping of POCL3. They have contended that the volumes from Europe are minuscule and that they are not dumping the product under consideration.

### **Examination by the Authority**

8.2 The Authority notes that M/s ThermPhos International BV has neither responded to the questionnaire nor has substantiated any of the claims made by them in their response. As per the data available on record, the volume of imports of the subject goods are more than the prescribed limits laid down under the AD Rules. The Authority would certainly examine the issue further during the course of the investigation, should the evidence be produced to the contrary by the respondent in this regard.

8.3 In respect of European Union, selling price in EU was looked into for determination of the Normal value. This selling price in EU was claimed by the Applicant on the basis of price at which an importer/ consumer in EU has imported the product. Alternatively, the Normal value in EU has also been determined on the basis of constructed value, considering estimates of cost of production, duly adjusted, to include selling, general & administrative expenses and reasonable profit margin. However, the latter determination of Normal Value works out as lower than that determined on the basis of the selling price in EU and the same has been adopted for POCL3 in case of EU.

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

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

## **EXPORT PRICE**

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

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

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

9.1 M/s “Jianping” is a Chinese producer of PCL3, PCL5 and POCL3. M/s Jianping does not directly export PCL3, PCL5 and POCL3 to India and sells the product concerned to unrelated Chinese trading companies, one of which is M/s



9.3.2 Separate weighted average export price to India has been determined for subject goods exported. The adjustments have been made on account of handling charges, ocean freight, overseas insurance, bank charges, VAT and credit charges as claimed by the exporter for the purpose of the preliminary findings. Further the profit margin determined for the trader has been considered for the determination of ex-factory export price, subject to further investigation and spot verification.

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

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

9.4.1 The Authority examined whether the export prices in respect of responding exporter could be determined on the basis of questionnaire responses filed by these interested parties. The export prices have been allowed as claimed by the responding exporter, subject to further investigation and verification.

9.4.2 Separate weighted average export price to India has been determined for subject goods exported. The adjustments have been made on account of handling charges, ocean freight, overseas insurance, bank charges, VAT and credit charges as claimed by the exporter for the purpose of the preliminary findings. Further the profit margin determined for the trader has been considered for the determination of ex-factory export price, subject to further investigation and verification.

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

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

**DUMPING MARGIN:**

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

Producer/Exporter	From	Country	Product	Dumping Margin US\$ per Kg	Dumping Margin as %
China PR					
M/s Xuzhou Chemical (Producer)	Jianping Co. Ltd. through M/s	China PR	PCL3	***	40 - 50%
			PCL5	***	90-100%

(Producer) through M/s China Haohua Chemical (Group) Corporation ("Haohua") (Exporter)		POCL3	***	75-85%
M/s Xuzhou Jianping Chemical Co. Ltd. (Producer) through M/s Sinochem International Corporation ("Sinochem") (Exporter).	China PR	PCL3	***	70-80%
		PCL5	***	115-125%
		POCL3	***	110-120%
M/s Luohe Huipu Chemistry Industry factory (Producer) through M/s Sinochem International Corporation (Exporter)	China PR	TMP	***	40-50%
M/s Sancaitang Industry and technology Co.Ltd. (Producer) through M/s China Haohua Chemical (Group) Corporation, (Exporter)	China PR	TMP	***	45-55%
All Other producers / exporters except specified in the above table	China PR	PCL3	***	70-80%
		PCL5	***	115-125%
		POCL3	***	110-120%
		TMP	***	45-55%
All Producers/Exporters	China PR	TPPI	***	20-30%
All Producers/Exporters	European Union	POCL3	***	Negative

## F. INJURY

### Submissions made by interested parties

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

- Since April 2008, month after month, the two indigenous sources from whom they had been sourcing their requirements had increased the price of Phosphorus Tri Chloride, attributing to steep escalation of import price of Phosphorus. The price of Phosphorus Tri Chloride, went upto Rs. 217/- per kg. adversely impacting the viability of their activity. Moreover, the suppliers were not committing their requirements / schedules.
- Further, the suppliers themselves were also captive consumers of Phosphorus Tri Chloride for their other compounds and obviously, they

would have considered value addition in the interest of their business activity. They have an edge over them, being captive consumers of their own Phosphorus Tri Chloride.

- They were forced to reduce their production for few months substantially and even stop the activity for few months, during the period of the steep increase in the price of Phosphorus Tri Chloride, because it was not viable at that input cost and because they could not offer their finished product to their clients, in comparison with the import price. The viability to manufacture of Tri Phenyl Phosphine was affected.

### **Cumulative assessment in case of POCL3**

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

- (a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively account for more than seven percent of the imports of like article, and;
- (b) Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

12.1 The applicant has claimed that:

- i POCL3 does not have several different grades. The product manufactured by the producers from the subject countries *inter-se* and in comparison to the product manufactured by domestic industry has comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are *inter-se* like articles.
- ii There are limited parties who use this material. Imported and domestic material is being used interchangeably by same segment of the customers.
- iii The exporters from the subject countries and the domestic industry have sold the same product in the same periods to the same segment of customers.
- iv Market share of imports from each of the subject countries is more than *de-minimis*.

- v Domestic producer and exporters from the subject countries sell the like product to the same category of customers and both are competing in the same market. Both are being used by the consumers interchangeably.

12.2 It is noted that none of the interested parties have dispute the above claims. The Authority further notes that:

- (a) The margins of dumping from each of the subject countries are more than the limits prescribed;
- (b) The volume of imports from each of the subject countries is more than the limits prescribed;
- (c) Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market.

12.3 In view of the above, the Authority is of the view that cumulative assessment of the effects of imports is appropriate and has, therefore, assessed injury to the domestic industry in respect of POCL3 cumulatively from the subject countries.

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

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

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

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

### **Import Volume**

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

S.N.	Product	POI (Oct07 to Dec08)
		Volume (MT)
1	<b>PCL 3</b>	57.00
2	<b>PCL 5</b>	1722.00
3	<b>POCL 3 (China PR)</b>	900.00
	<b>POCL3 (EU)</b>	394.5
4	<b>TPPI</b>	64.00
5	<b>TMP</b>	368.00

However, as per the responses received from the responding exporters, the actual exports of the subject goods by them to India are as follows. However, since no response has been received from any exporter/producer from the subject countries in case of TPPI; the data as received from the Applicant from IBIS is being relied upon for the purposes of these preliminary findings:

S.N.	Product	Volume of subject goods imported
		MT
1	<b>PCL 3</b>	93.00
2	<b>PCL 5</b>	1899.00
3	<b>POCL 3</b>	960.00
4	<b>TPPI</b>	64.00
5	<b>TMP</b>	352.00

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

Imports MT	in	2005-06	2006-07	2007-08	POI (Oct'07 – Dec'08)	POI (annualized)
<b>PCL3</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>93</b>	<b>74.4</b>

<b>PCL5</b>	<b>32</b>	<b>0.42</b>	<b>123</b>	<b>1899</b>	<b>1519.2</b>
<b>POCL3 (China PR)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>960</b>	<b>768</b>
<b>POCL3 (EU)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>395</b>	<b>316</b>
<b>TMP</b>	<b>32</b>	<b>32</b>	<b>0</b>	<b>368</b>	<b>294.4</b>
<b>TPPI</b>	<b>80</b>	<b>32</b>	<b>48</b>	<b>64</b>	<b>51.2</b>

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

In PCL5, and TMP, there have been significant imports during the period of investigation. It is seen that imports of PCL5 and TMP increased in absolute terms over the injury period. There have been imports of TPPI throughout the injury period and the same have decreased as compared to the base year but have increased as compared to the immediately preceding year. In case of PCL3 and POCL3, the imports commenced during the period of investigation itself.

It is observed that there were no imports of the PCL3, TPPI and TMP from any other country except China PR. Whereas POCL3 is also being imported from EU (Germany and Netherlands) above the *de-minimis* limits. It has been contended by the Applicant that imports of POCL3 and PCL5 from Hongkong are transshipments from China PR as there is no manufacturing facility in Hongkong for the subject goods. Imports of PCL5 from other sources are below the *de-minimis* level.

### **Demand and Market Share**

#### **PCL3**

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>POI (Oct'07 – Dec'08)</b>	<b>POI (annualised)</b>
Total Chinese Imports in MT	0	0	0	93	74.40
Other Imports	0	0	0	0	0
Sales – domestic industry in MT (including captive)	18,506	17,879	18,866	23431	18,744.80
Sales – Other Producers in MT	1,829	2,101	2,471	2,579	2,063.20
Total Demand in MT	20,335	19,980	21,337	26,103	20,882.40
<b>Market Share in Demand in %</b>					

<b>in %</b>					
Domestic industry	91.01	89.48	88.42	89.76	89.76
Other Indian Producers	8.99	10.52	11.58	9.88	9.88
China PR	-	-	-	0.36	0.36
Other Countries	0	0	0	0	0

### **PCL5**

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (annualised)</b>
Total Chinese Imports in MT	0	0	123	1899	1,519.20
Other Imports	32	0.42	0	144	115.20
Sales – domestic industry in MT (including captive)	1,166	928	834	720	576
Sales – Other Producers in MT	982	875	706	482	385.60
Total Demand in MT	2,180	1,803.42	1,663	3,245	2,596
<b>Market Share in Demand in %</b>					
Domestic industry	53.49	51.46	50.15	22.19	22.19
Other Indian Producers	45.05	48.52	42.45	14.85	14.85
China PR	0	0	7.40	58.52	58.52
Other Countries	1.46	0.02	0	4.44	4.44

### **POCL3**

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (annualised)</b>
Total Chinese Imports in MT	0	0	0	960	768.00
Total EU Imports in MT	0	0	0	395	315.60
Other Imports	0	0	0	136	108.80

Sales – domestic industry in MT (including captive)	2,176	2,817	3,197	3,991	3,192.80
Sales – Other Producers in MT	2,160	1,324	1,106	486	388.80
Total Demand in MT	4,336	4,141	4,303	5,968	4,774
<b>Market Share in Demand in %</b>					
Domestic industry	50.18	68.03	74.30	66.88	66.88
Other Indian Producers	49.82	31.97	25.70	8.14	8.14
China PR	0	0	0	16.09	16.09
EU	0	0	0	6.61	6.61
Other Countries	0	0	0	2.28	2.28

### TMP

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (annualised)</b>
Total Chinese Imports in MT	32	32	0	368	294.40
Other Imports	0	0	0	0	0
Sales – domestic industry in MT (including captive)	2,842	4,153	4,467	5,816	4,652.80
Sales – Other Producers in MT	739	910	993	0	0
Total Demand in MT	3,613	5,095	5,460	6,184	4,947.20
<b>Market Share in Demand in %</b>					
Domestic industry	78.66	81.51	81.81	94.05	94.05
Other Indian Producers	20.45	17.86	18.19	0	0
China PR	0.89	0.63	0	5.95	5.95
Other Countries	0	0	0	0	0

### TPPI

<b>Demand</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>POI (annualised)</b>
Total Chinese Imports in MT	80	32	48	64	51.20
Other Imports	0	0	0	0	0
Sales – domestic industry in MT (including captive)	882	900	785	790	632
Sales – Other Producers in MT	578	858	899	764	611.20
Total Demand in MT	1,540	1,790	1,732	1,618	1,294.40
<b>Market Share in Demand in %</b>					
Domestic industry	57.27	50.28	45.32	48.83	48.83
Other Indian Producers	37.53	47.93	51.91	47.22	47.22
China PR	5.20	1.79	2.77	3.95	3.95
Other Countries	0	0	0	0	0

It is seen that in case of PCL3, the Chinese product gained a foothold in the Indian market. Whereas in case of PCL5, the Chinese product acquired a significant share as compared to the preceding year. In case of POCL3, the imports from the subject countries acquired a significant market share during the period of investigation. In case of TMP, the imports of the Chinese product showed a significant increase in market share. Whereas in case of TPPI, the market share decreased as compared to the base year and increased as compared to the immediately preceding year.

### **Demand**

Demand or apparent consumption of the products under consideration in the Country has been assessed as the sum of domestic sales (including captive consumption) of the domestic producers and imports from all sources as available on record. It is noted that demand of PCL3, PCL5 and POCL3 has shown increase over the injury period, whereas demand for TPPI has declined. As regards TMP, while the demand has increased as compared to the base year but it has decreased as compared to the years other than the base year.

### **Price effect of imports**

With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped

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

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

<b>Domestic Sales</b>	<b>Unit</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>Oct'07 – Dec'08</b>	<b>Oct'07 – Dec'08 (annualised)</b>
<b>PCL3</b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	98	100	169	169
<b>Domestic Selling Price</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	91	92	197	197
<b>PCL5</b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	90	117	162	162
<b>Domestic Selling Price</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	97	111	177	177
<b>POCL3</b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	107	98	182	182
<b>Domestic Selling Price</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	89	90	221	221
<b>TMP</b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	79	107	157	157
<b>Domestic Selling Price</b>	Rs./Kg	***	***	***	***	***

<b>Trend</b>	Index	100	96	99	130	130
<b>TPPI</b>						
<b>Cost of Sales</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	102	116	122	122
<b>Domestic Selling Price</b>	Rs./Kg	***	***	***	***	***
<b>Trend</b>	Index	100	98	92	125	125

It is seen from the above table that on year to year basis, the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales in the case of PCL3, PCL5, POCL3 and TPPI. In the case of TMP, the cost of sales has increased by 57% in POI when compared to base year and domestic selling price has gone up by 30% during the same period.

The Authority has further compared landed price of imports with the selling price of the domestic industry on month-to-month basis because of wide fluctuations in the input prices during the period of investigation. The weighted average price undercutting has been accordingly determined after considering associated import volumes. It is seen that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting, except in case of POCL3 from EU as may be seen from the following table:

Country	Product	Based on data	Price undercutting (Rs/Kg)	Price undercutting as %
China PR	PCL3	Respondents	***	1-10%
China PR	PCL5	Respondents	***	40-50%
China PR	POCL3	Respondents	***	60-70%
China PR	TMP	IBIS	***	30-40%
China PR	TPPI	IBIS	***	5-15%
European Union	POCL3	IBIS	***	Negative

### **Sales volumes**

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

Domestic Sales	Unit	2005-06	2006-07	2007-08	Oct'07 – Dec'08	Oct'07 – Dec'08 (annualised)
<b>PCL3</b>	MT	1,540	1,999	2,136	2,536	2029
<b>Trend</b>	Index	100	130	139	132	132
<b>PCL5</b>	MT	1,148	928	788	664	531
<b>Trend</b>	Index	100	81	69	46	46
<b>POCL3</b>	MT	1,577	2,413	2,631	3,622	2898
<b>Trend</b>	Index	100	153	167	184	184
<b>TMP</b>	MT	1,070	906	752	601	481
<b>Trend</b>	Index	100	85	70	45	45
<b>TPPI</b>	MT	695	604	741	623	498
<b>Trend</b>	Index	100	87	107	72	72

It is seen from the above that domestic sales of PCL3 have increased as compared to the base year but has decreased as compared to 2007-08 period. Whereas in case of POCL3, the domestic sales have increased over the injury period. However, the domestic sales of PCL5 and TMP have declined over the injury period. As regards TPPI, the domestic sales have declined except in the period 2007-08.

### **Capacity**

As per information available on record, the capacities of the domestic industry for the products under consideration are as under:

Capacity	2005-06	2006-07	2007-08	POI (Oct07 to Dec08)	Oct07 to Dec08 (annualized)
PCL3	***	***	***	***	***
PCL5	***	***	***	***	***
POCL3	***	***	***	***	***
TMP	***	***	***	***	***
TPPI	***	***	***	***	***

The domestic industry has claimed that it has separate/dedicated capacity for each of the products under consideration. There have been no capacity additions over the injury period.

## Production and Capacity Utilization

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>PCL3</b>					
Capacity	***	***	***	***	***
Production	***	***	***	***	***
Capacity utilisation	76.34	75.71	74.32	71.68	71.68
<b>PCL5</b>					
Capacity	***	***	***	***	***
Production	***	***	***	***	***
Capacity utilisation	73.72	64.17	46.56	36.76	36.76
<b>POCL3</b>					
Capacity	***	***	***	***	***
Production	***	***	***	***	***
Capacity utilisation	77.01	71.25	95.14	79.62	79.62
<b>TMP</b>					
Capacity	***	***	***	***	***
Production	***	***	***	***	***
Capacity utilisation	90.67	86.00	76.81	80.41	80.41
<b>TPPI</b>					
Capacity	***	***	***	***	***
Production	***	***	***	***	***
Capacity utilisation	47.97	55.06	42.11	31.11	31.11

It is seen that—

- (a) Production and capacity utilization of PCL3 and PCL5 have declined over the injury period.
- (b) Production and capacity utilization of POCL3 has fluctuated over the injury period, increasing during 2007-08, but declining thereafter during the POI.
- (c) Production and capacity utilization of TMP declined up to 2007-08 and then increased in the period of investigation. The production and capacity utilization has significantly declined as compared to the base year.
- (d) Production and capacity utilization of TPPI improved in 2006-07, but has consistently declined thereafter.

### **Market Share**

The market share of domestic industry declined significantly in respect of PCL5. In case of TPPI, the market share has declined till 2007-08 but has increased thereafter during the POI. In case of TMP, the market share has increased over the injury period. The market share of PCL3 has declined as compared to the base year but has marginally improved as compared to the immediately preceding year. As regards POCL3, the market share increased till 2007-08 but has declined during the period of investigation thereafter.

### **Factor affecting prices**

It is observed that the landed price of imports each of the subject goods are significantly below the selling price of these products by the domestic industry except in the case of imports of POCL3 from European Union as may be seen from the following table:

Country	Product	Based on data	Price undercutting (Rs/Kg)	Price undercutting as %
China PR	PCL3	Respondent	***	1-10%
China PR	PCL5	Respondent	***	40-50%
China PR	POCL3	Respondent	***	60-70%
China PR	TMP	IBIS	***	30-40%
China PR	TPPI	IBIS	***	5-15%
European Union	POCL3	IBIS	***	Negative

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

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>PCL3</b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	66	67	299	299
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	66	69	297	297
Return on investment (%)	***	***	***	***	***
Indexed Trend	100	63	35	90	90

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>PCL5</b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-35	-110	-32	-32
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-18	-91	8	8
Return on investment (%)	***	***	***	***	***
Indexed Trend	-100	2	-65	31	31

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>POCL3</b>					
Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-192	-169	-124	-124
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	-100	-192	-169	-123	-123
Return on investment (%)	***	***	***	***	***
Indexed Trend	-100	-170	-57	-15	-15

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

	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
<b>TPPI</b>					

Profit before tax (Rs./KG)	***	***	***	***	***
Profit before tax (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	-353	-2,840	339	339
Cash Profits (Rs. in lacs)	***	***	***	***	***
Indexed Trend	100	-41	-762	175	175
Return on investment (%)	***	***	***	***	***
Indexed Trend	100	44	-122	89	89

It is seen from the above tables that –

- (a) Profits on domestic sales and cash profits improved in case of PCL3. The return on capital employed remained significantly high over the injury period;
- (b) In case of PCL5, the domestic industry has been suffering financial losses throughout the injury period. The return on capital employed and cash profits were also negative/low till 2007-08 and became positive during the period of investigation.
- (c) In case of POCL3, the domestic industry has been suffering financial losses, which increased in 2006-07 but reduced thereafter. Consequently, return on capital employed and cash profits were also negative earlier but improved after 2006-07. However, profits on domestic sales, cash profits and Return on capital employed remained negative in respect of POCL3 over the injury period;
- (d) In case of TMP, the domestic industry was profitable over the injury period. However, the profits that increased in 2006-07 but deteriorated thereafter. During the POI, the profits were below the base year level. Return on capital employed and cash profits have followed the same trend as that of profits.
- (e) In case of TPPI, the domestic industry has been suffering financial losses till 2007-08 but it became profitable in the Period of investigation. The return on capital employed and cash profits also followed the same trend.

## **Inventories**

Average Inventories	Unit	2005-06	2006-07	2007-08	Oct07 to Dec08	Oct07 to Dec08 (annualized)
PCL3	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
PCL5	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
POCL3	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
TMP	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***
TPPI	MT	***	***	***	***	***
	No. of days inventory	***	***	***	***	***

The information about the inventory levels of different compounds is contained in the above table. It is seen that the inventory levels for the subject goods except PCL5 have declined as compared to the base year.

## **Employment, wages and productivity**

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

## **Ability to raise capital investment**

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

## **Growth**

The production and domestic sales volumes of PCL5 decreased over the injury period. The production and domestic sales volumes of TMP decreased as compared

to the base year. The production and domestic sales volumes of TPPI have shown an adverse growth over the injury period, except that the production of TPPI has increased during 2006-07. In case of POCL3, the production and domestic sales volumes have increased as compared to the base year. However, profitability except in the case of TMP improved over the injury period.

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

It is observed that dumping margins in respect of the subject goods are significantly positive except in the case of POCL3 imported from European Union.

### **Conclusion on material injury**

#### **PCL3**

It is seen that performance of the domestic industry has deteriorated during the period of investigation in terms of production and capacity utilization. However, the domestic sales of PCL3 in absolute terms have shown an improvement. Apparently, the market share has marginally declined, primarily due to increase in the market share of other producers. The Chinese imports gained a minuscule market share of 0.36% during the period of investigation.

It is seen that the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales; thereby no price depression is seen. Though the imports of the PCL3 are undercutting the prices of the domestic industry, but its impact on the domestic industry is not visible.

The profitability of domestic industry has improved and the return on capital employed remained significantly high over the injury period. The domestic industry is able to realise the selling price, which is higher than the non-injurious price determined for the POI. Thus, it cannot be stated that the domestic industry is being injured on account of imports of PCL3.

#### **PCL5**

It is seen that performance of the domestic industry has deteriorated during the period of investigation in terms of domestic sales, production and capacity utilization. The imports of PCL5 started from China PR in 2007-08 with a market share of 7.40% that increased significantly to 58.52% in the period of investigation. While the market share of the China PR increased and that of domestic industry decreased significantly from 53.49% in 2005-06 to 50.15% in 2007-08 and 22.19% in the period of investigation. Hence, the volume effect had been adverse in the case of PCL5.

As regards price effect, it is seen that the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales, thus no price depression is seen. But the imports of the PCL5 are significantly undercutting the prices of the domestic industry. While the profitability in respect of PCL5 improved over the injury period but the selling price of domestic industry remained lower than the non-injurious price.

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

### **POCL3**

The imports of POCL3 from the subject countries commenced in the period of investigation and acquired a significant market share during the period of investigation. The market share of domestic industry declined during POI as compared to immediate preceding year; however, it remained higher than that of the base year. The production and capacity utilization during the period of investigation declined as against the previous year but increased when compared with 2005-06 and 2006-07. Hence no adverse volume effect is seen over the injury period.

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

### **TMP**

In case of TMP, the imports of the Chinese product showed a significant increase in market share during the POI. However, at the same time, the market share of the domestic industry has also gone up. Production has increased as compared to immediate preceding year; however, it declined when compared to 2005-06 & 2006-07. The domestic sales have gone up during the injury period. Hence, no adverse volume effect has been seen in respect of TMP.

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

However, a negative injury margin is seen as regards imports of TMP from China PR. Thus, apparently the causal link is missing.

## **TPPI**

It is seen that performance of the domestic industry has deteriorated during the period of investigation in terms of sales, production, capacity utilization, market share. The decline in the volume parameters is mainly due to decline in the demand for TPPI and increase in market share of other domestic producers. The imports from China PR have also declined both in absolute terms and in relation to the total Indian demand. Apparently, no adverse volume effect is seen on account of the imports.

As regards price effect, the profitability in respect of TPPI improved over the injury period. Besides, the domestic industry was able to increase the domestic selling prices more than the increase in the cost of sales, thus no price depression is seen.

It is seen that there is contraction in demand but the market share of the domestic producers have increased, whereas the market share of the imports from the subject country has declined.

## **Conclusion**

As per the material available on record, the Authority at this stage is of the view that various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury in case of imports of PCL5.

## **G. CAUSAL LINK**

13 It was examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry in case of PCL5, where only it is observed that material injury has been caused to the domestic industry. It was found as follows:

- a) Imports from Third Countries: - In case of imports reported from Hong Kong, the applicant has claimed that these are transshipments of Chinese material only. And that there is no production facility for these products in Hong Kong. While the subject goods are being imported from other countries, but these imports are below the de-minimis level.
- b) Contraction in Demand: - It is noted that the demand of PCL5 has increased as compared to the base year.
- c) Pattern of consumption: - No significant change in the pattern of consumption has been observed.
- d) Conditions of competition: - The applicant has claimed that conditions of competition or trade restrictive practices are not responsible for the claimed injury to the domestic industry. None of the interested parties has disputed this claim.
- e) Developments in technology: - The applicant has claimed that there is no significant change in technology, which could have caused injury to the domestic industry. None of the interested parties has disputed this claim.

- f) Export performance of the domestic industry: - The applicant has significant export activities. However, the entire information has been provided in respect of domestic operations.
- g) Productivity: - The applicant has claimed that changes in productivity are a result of dumping of the product under consideration.

As per the material available on record, the Authority at this stage is of the view that various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury on account of dumped imports of the subject goods from China PR in case of PCL5.

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

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

15.1 It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

#### **J. Recommendations**

16 The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted a preliminary investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having provisionally established positive dumping margins as well as material injury and threat thereof to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury pending completion of the investigation. Therefore, the Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of PCL5 from China PR in the form and manner described hereunder.

16.1 Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty as per amount specified in Col 8 of the table below is recommended to be imposed from the date of

the notification to be issued by the Central Government, on all imports of PCL5 originating in or exported from China PR.

Sl. No	Heading / Subheading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	28121022	Phosphorus Pentachloride (PCL5)	China PR	China PR	M/s Xuzhou Jianping Chemical Co. Ltd.	M/s China Haohua Chemical (Group) Corporation	0.326	Per KG	US\$
2.	-do-	-do-	China PR	China PR	M/s Xuzhou Jianping Chemical Co. Ltd.	M/s Sinochem International Corporation	0.436	Per KG	US\$
3.	-do-	-do-	China PR	China PR	Any combination of producer & exporter except at Sr. No. 1& 2		0.638	Per KG	US\$
4.	-do-	-do-	China PR	Any	Any	Any	0.638	Per KG	US\$
5.	-do-	-do-	Any	China PR	Any	Any	0.638	Per KG	US\$

#### **K. Further Procedure**

17 The following procedure would be followed subsequent to notifying the preliminary findings: -

(a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;

(b) Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the these Preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;

(c) The Authority would hold a hearing to hear the views of various interested parties orally;

(d) The Authority would conduct further verification to the extent deemed necessary;

(e) The Authority would disclose essential facts as per the AD Rules before announcing final findings.

(R. Gopalan)  
Designated Authority

