

14/41/2010-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

NOTIFICATION

Dated the 9th August, 2011

Preliminary Findings

Subject: - Anti-Dumping Investigation concerning imports of ‘Morpholine’ originating in or exported from China PR, European Union and USA.

No. 14/41/2010-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 AD Rules, received a written application from the M/s. Balaji Amines Ltd., Sholapur, Maharashtra on behalf of the domestic industry, alleging dumping of ‘Morpholine’ (hereinafter also referred to as the subject goods); originating in or exported from China PR, European Union and USA (hereinafter also referred to as the subject countries/territory).
- ii. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation concerning imports of the subject goods originating in or exported from the subject countries/territory. The Authority notified the Representative office / Embassies of the subject countries in India about the receipt of the application containing , *inter alia*, allegations of dumping and consequent injury to the domestic industry before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules. The Authority issued a public notice dated 7th December, 2010 published in the Gazette of India, Extraordinary, initiating Anti-dumping investigation

concerning imports of the subject goods originating in or exported from the subject countries/territory, in accordance with the 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. Subsequently, a corrigendum dated 15th December 2010 was issued on the captioned subject.

- iii. The Authority sent a copy of initiation notification dated 7th December 2010, to the Representative office / Embassies of the subject countries in India, known exporters from the subject countries/territory, 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.
- iv. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Representative office / Embassies of the subject countries/territory in India in accordance with Rule 6(3) supra.
- v. Representative office / Embassies of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country/territory to respond to the questionnaire(s) within prescribed time limit. A copy of the letter and questionnaire(s) sent to the exporters was also sent to them along with the names and addresses of the known exporters.
- vi. The Authority sent questionnaire(s) to elicit relevant information to the following known exporters in subject countries/territory in accordance with Rule 6(4) of the AD Rules:

S.N.	Name of Producer/Exporter
1	M/s.Huntsman Corporation UK Ltd. Llanelli Plant, Bynea Llanelli, Carmarthenshire Sa 149 Te, UK
2	M/s. BASF SE 67056 Ludwigshafen Germany
3	M/s. Huntsman Corporation 10003 Woodloch Forest Drive The Woodlands, Tx 77380. USA
4	M/s. BASF Corporation Geismar Site 8404 River Road, Geismar La-70734, Louisiana. USA
5	M/s. Anhui Haoyuan Chemical Group Co.Ltd No.1 Fukang Road, Fuyang Anhui

	China PR
6	M/s. Puyang Wiilling Chemicals Co.Ltd. Industrial And Commercial Newzone, Puyang, Henan, China PR
7	M/s. Tianyou Pharma Co.Ltd Buliding 4-1-501,Jialv Beiyuan, Hangzhou,China PR

vii. In response to the above notification, following interested parties including exporters/ producers/ Association have responded:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union
4	M/s. Anhui Haoyuan Chemical Group Co. Ltd	China PR

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

S.N.	Company's Name	S.N.	Company's Name
1	Urmi Chemicals	28	Kantilal Manilal & Co.,
2	Sajjan India Ltd.	29	Orchid Chemicals & Pharmaceuticals Ltd.
3	Thermax Ltd.	30	Surya Pharmaceuticals Limited
4	NOCIL Ltd.	31	Harman Finochem Ltd.
5	Amjey Chemicals	32	Banwarilal Jhanwar & Sons
6	Khyati Chemicals Pvt.Ltd.	33	Hindustan Speciality Chemicals
7	Paramount Minerals & Chemicals Ltd.	34	Leo Chemoplast Pvt .Ltd.
8	Diamond Dye-Chem Ltd.	35	Shakti Chemicals
9	C J Shah & Co.	36	Sanjay Chemicals (India) Pvt.Ltd.
10	Alfa Chemical Corporation	37	Bilag Industries Ltd.
11	Merchem Ltd.	38	Indoco Remedies Limited
12	Unimark Remedies Limited.	39	Cipla Limited
13	Lupin Ltd	40	Thermax Ltd.
14	Harman Finochem	41	Clariant Chemicals (I) Limited
15	Clariant Chemicals (I) Limited	42	BASF India Limited
16	Merchem Limited	43	ION Exchange (India) Limited
17	Aasrti Industries Ltd.	44	PMC Rubber Chemicals India Pvt.Ltd.
18	Lofty Laboratories Pvt Ltd	45	Aurobindo Pharma Ltd
19	Hetero Drugs Limited	46	Surya Pharmaceuticals Ltd

20	Gail India Limited	47	Sri Krishna Drugs Ltd
21	Viswaat Chemicals Ltd.	48	Thermax Ltd.
22	Laffane Petrochemicals Ltd.	49	Reliance Industries Limited
23	Bajaj Hindustan Limited	50	Virchow Laboratories Ltd
24	SMS Pharmaceuticals Ltd	51	Panchsheel Organics Ltd
25	Amines & Plasticizers Limited	52	Dhanuka Laboratories Limited
26	The Waxpol Industries Limited	53	IOCL Mathura
27	Jaipur Scientifics & Chemicals	54	Avon Organics Limited

ix. In response to the above notification, following importers/ users, Association have responded:

S.N.	Importer's Name
1.	M/s BASF India Ltd.
2.	M/s Khyati Chemicals Pvt. Ltd.
3.	M/s NOCIL Ltd.
4.	M/s Bhanwarlal Jhanwar & Sons

- x. A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters/producers and Embassy of China PR in New Delhi. 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, as the applicant pleaded that the information for market economy third country is not available to them. This claim has not been contested by any other interested party. The Authority informed known exporters that it proposes to examine the claim of the applicants in the light of paras 7 and 8 of Annexure I of the AD Rules. The exporters/producers 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 of the Annexure of the AD Rules to enable the Authority to consider whether market economy treatment be granted to co-operative exporters/producers from China PR.
- xi. 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.
- xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, including the period of investigation.

- 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 1st July 2009 to 30th June 2010 (POI). The examination of trends, in the context of injury analysis, covered the periods April 2007-March 2008, April 2008-March 2009, April 2009-March 2010 and the 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. Miscellaneous Issues

Submissions made by domestic industry

2. The exporters have claimed excessive confidentiality without any proper justification. Further, non-confidential version of the questionnaire response has not been given for all the information contained in the confidential version without assigning proper reasons.

Submissions made by other interested parties

- 2.1 The submissions made by interested parties, in brief, are as follows:

- The applicant has claimed excessive confidentiality by not disclosing even the figures which are available in the public domain.
- The period 2006-07 should not be excluded from the injury period as the POI in the present investigation has 9 months overlapping with preceding year. This implies reducing the injury period to three years.

Examination by the Authority

- 2.2 The Authority has taken note of the above submissions. The information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.

- 2.3 As regards the issue that period 2006-07 should not have been excluded from the injury period as the POI in the present investigation has 9 months overlapping with preceding year; the Authority notes that it has followed its consistent practice, which is also in line with Trade notice no. 2 dated 12th May 2004, *inter alia*, issued on the subject.

C. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE

3. The product under consideration is 'Morpholine'. It has been stated that Morpholine is an extremely versatile chemical and is used as a chemical intermediate in the rubber industry, in corrosion control, and in the synthesis of a large number of drugs. It is also used for crop protection agents, dyes and optical brighteners. Morpholine is a solvent for a large variety of organic materials, including resins, dyes and waxes. It can be used as a catalyst.
- 3.1 Morpholine is used in the in toiletry and cosmetic products at concentrations up to 5% (Cosmetic Ingredient). It can be use for / in the several direct and indirect food additive applications. Morpholine is used as intermediates for rubber accelerators and as corrosion inhibitor in steam boiler systems. It is used for optical brighteners in detergent formulations. Morpholine derivatives are used in rubber vulcanization, stabilization and the manufacture of special high-speed tyres. Morpholine may be released during rubber processing. Morpholine has volatility similar to water. Morpholine derivatives such as N-methylmorpholine and N-ethylmorpholine are used as Catalysts for the production of polyurethane foams. Morpholine derivatives are also used as analgesics and local anesthetics, antibiotics, antimycotics and for plaque control in dentistry. Morpholine is used in several direct and indirect food additive applications. Morpholine is used by the cosmetic industry also.
- 3.2 The product falls under customs classification 2933.39.17. It has, however, been contended by the applicant that Morpholine has been imported under several Customs Tariff-head's classifications. Thus, the Customs classification is indicative only and is in no way binding on the scope of the present investigation.

Like Articles

Submissions made by domestic industry

4. The applicant has claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject goods. The two are technically and commercially substitutable and hence should be treated as 'like article' under the AD Rules.

Examination by the Authority

- 4.1 The Authority notes that the above claim has not been disputed by any other interested parties. Thus, for the purpose of these preliminary findings, the Authority determines that the subject goods produced by the applicant domestic industry is like article to the product under consideration in accordance with the AD Rules.

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

5. Rule 2(b) of the AD Rules defines domestic industry as under:

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

- 5.1 The Application has been filed by M/s. Balaji Amines Ltd. on behalf of the domestic industry. As per information available on record, M/s. Balaji Amines Ltd. is the sole producer of the subject goods in India

Submissions made by other interested parties

- 5.2 The following submissions, in brief, have been made by the other interested parties :
- The applicant is not the sole producer and that there is one more producer, namely M/s. Amines and Plasticizers Limited, which has not been disclosed at all to Authority.
 - From the perusal of the information given on the websites named www.tradeindia.com and www.indianindustry.com, it can be seen there are number of buyers and sellers of Morpholine in India. In spite of the said information being readily available in the public domain, the Applicant has sought to exclude other Indian Producers of the PUC/like product from the ambit of 'domestic industry'
 - A bare perusal of websites will establish that there are several other domestic producers and the claim of Petitioner being sole producer in India falls flat. The petitioner may not have the locus to file the present petition as they may not have the required 25% share in Indian Production.
 - Petitioner being an importer of subject goods from subject countries has no locus to file the petition. Further, it has imported around 92 MTS from the said exporter in 2008.

Submissions made by domestic industry

5.3 They are the sole producer of Morpholine in India. An e-mail received from Mr. A.D. Mate, Vice President, Materials, M/s-Amines and Plasticizers Limited was filed by them confirming that they do not produce Morpholine. The domestic industry has stated that in fact M/s. Amines and Plasticizers Limited purchases Morpholine from them and produces derivatives of Morpholine. Reference in this regard has been made to the transaction-wise sales details during the POI to substantiate the point.

Examination by the Authority

5.4 The Authority has noted the arguments raised by the interested parties. In response to the allegation that M/s. Amines and Plasticizers Limited is also a domestic producer of the subject goods; the applicant has submitted an E-mail received from Vice President of M/s. Amines and Plasticizers Limited, clarifying that the company does not produce the subject goods. In fact, it was clarified that the company purchases Morpholine from the applicant and produces derivatives of the same. Besides, the Applicant has also submitted customer-wise sales wherein it can be seen that M/s. Amines and Plasticizers Limited has purchased 56,000 KG of Morpholine from the Applicant in POI which gives credence to the claim of Domestic Industry that they are the only producer of the subject goods in India.

5.5 As regards the enterprises referred to in the web-sites, the Authority wrote to the companies. *inter alia*, eliciting information whether they produce the subject goods. However, no response thereto was received from them communicating that they do produce the subject goods.

5.6 As regards imports made by the Applicant from the said exporter during 2008; the Applicant has stated that they had imported *** MT of Morpholine from China PR during the year 2008-09 because they had faced a problem in procuring DEG (the major raw material to produce Morpholine) during some period of this year and as the company had pending order in hand and thus had to execute these orders, so it had imported the PUC. The Authority further notes that no imports of the subject goods have been made by the Applicant during the POI.

5.7 As per the evidence available on record, the production of M/s. Balaji Amines Ltd. is the sole producer of the subject goods and accounts for the entire domestic production of the like article. Thus, the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s. Balaji Amines Ltd. is being treated as 'domestic industry' within the meaning of Rule 2(b) of the AD Rules for the purpose of present findings.

E. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

Submissions made by interested parties

6. M/s. Khyati Chemicals Pvt. Ltd., in brief, has submitted as follows:

- The methodology stated in the initiation notification for the determination of Normal value for USA and EU is different from the claim made by the Applicant in the petition.
- The raw material prices taken for constructing Normal value are not for POI. Hence, normal value is not for POI.
- The constructed normal value for China PR cannot be higher than the cost of production in India and the same cannot be higher than the normal value of other subject countries.
- The various adjustments claimed by petitioner to arrive net export price are highly inflated, unrealistic and they have not provided any evidence of the same.
- With regard to the determination of normal value in case of USA and EU on the basis of exports price, there is no prescribed methodology in the ADD rules.
- The landed price of applicant's export cannot be fit for the determination of normal value as the imports made by the subject countries can be for exports.
- The DEG prices from DGCI&S for the construction of normal value are incorrect. The reason being from month by month analysis it is evident that prices are abnormally high in some month. Therefore, transaction by transaction analysis should be done in order to have fair comparison.
- After revising normal value and export price on the above basis, the dumping margin is coming negative in respect of subject countries.

Submissions made by M/s. Huntsman Corporation, UK Ltd. and M/s Huntsman Petrochemical Corporation, USA

6.1 The following submissions, in brief, have been made by the companies:

- The normal value determined by the Applicant is based on conjectures. The normal value on the U.S. and EU market was calculated based on the Applicant's own export price. This methodology is not permitted under the Rules.
- There is absence of proper comparison between normal value and export price as the Applicant has taken landed prices in the exporting countries before adjustments whereas export price is net of a large number of adjustments.

Examination by the Authority

6.2 The Authority notes that the Applicant domestic industry is required to provide information that is reasonably available to it and sufficient information was made available to justify initiation of the investigation in the instant matter.

6.3 As regards the issue of methodology used stated in the initiation notification for the determination of Normal value for USA and EU is different from the claim made by the Applicant in the petition; the Applicant had submitted that China PR is a NME country and that they could not determine the Normal value on the basis of price or constructed value in

a market economy third country as the relevant information is not available to them. It was further submitted by them that India is an appropriate surrogate country for Chinese producers. Therefore, Normal value was determined by them on the basis of cost of production of India. However, the Authority moderated these claims considering the difference between the international prices of the raw-materials *vis a vis* the price of these inputs as procured by domestic industry and adopted the lesser value. It was thus determined that there was sufficient evidence of record in this respect to justify initiation of the investigation.

- 6.4 As regards the determination of Normal value for EU and USA; the Applicant had contended that they have made all possible efforts to get information/evidence of price of the subject goods in the domestic market of USA and EU but could not succeed. However, as they had exported the subject goods to both USA and EU in substantial volumes; and as the export price to these countries would also reflect the prevailing domestic prices of the subject goods in these countries; the Normal values for EU and USA was determined on the basis of the landed price in these countries. The Authority noted that ordinarily the domestic selling prices of the subject goods in EU and USA should be higher than the landed values, assuming that the goods were not sold at a loss.
- 6.5 The Authority, however, notes that it expects concerned exporters/producers from the subject countries to co-operate in the investigative process by filing their exporter' questionnaire response for facilitating appropriate determination of the dumping margins.
- 6.6 A perusal of the exporters' questionnaire' response shows that the dumping margin is significantly positive.
- 6.7 As regards the issue of DEG prices; the international prices of this input were obtained and compared with the prices at which the input was obtained by the domestic industry; the lesser price has been considered while constructing the Normal values.

NORMAL VALUE

- 6.8 The Authority sent questionnaire to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. Response to the questionnaires were received from the following:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union
4	M/s. Anhui Haoyuan Chemical Group Co. Ltd	China PR

Examination of Market Economy claims in respect of China PR by the Authority

- 6.9 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.
- 6.10 As per Paragraph 8 of Annexure I of 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 co-operating 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 of Annexure I of the AD Rules in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether: -
- 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;
 - 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;
 - such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
 - the exchange rate conversions are carried out at the market rate.
- 6.11 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 Annexure I of the AD Rules. The applicant has submitted that they have not been able to access information from a market economy third country for the purposes of determination of Normal value in respect of China PR and has pleaded that India can be considered as an appropriate market economy third country for determination of normal value in China PR. The Authority informed known exporters/producers from China PR that it proposes to examine the claim of the Applicant in the light of para 7 and 8 of Annexure I of the AD Rules. The exporters/producers of the subject goods from China PR were therefore requested to furnish, *inter alia*, necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure I of the AD Rules to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers from China PR.

- 6.12 The Authority notes that consequent upon the initiation notice issued by the Authority; one Chinese producer/exporter, namely M/s. Anhui Haoyuan Chemical Group Co. Ltd has submitted its questionnaires' responses including the market economy questionnaire response and has sought to rebut the non-market economy presumption. The questionnaire responses and the market economy response of the respondent were examined for determination of Normal value of the responding producer/exporter of the subject goods from the subject country and deficiencies in the submissions were pointed out and clarifications were sought. From a perusal of the response, it was seen that M/s Shanxi Jincheng Anthracite Mining Group ("Jincheng Group") has significant (35%) shareholding in M/s. Anhui Haoyuan Chemical Group Co. Ltd. The Authority notes that M/s Shanxi Jincheng Anthracite Mining Group is wholly owned by Shanxi provincial government and that M/s Shanxi Jincheng Anthracite Mining Group is controlled by the State-owned Assets and Administration Commission of Shanxi province. Besides, clarification was sought from the company to ascertain whether major inputs procured by them for manufacturing the subject goods substantially reflect market values.
- 6.13 In its response, M/s. Anhui Haoyuan Chemical Group Co. Ltd has stated that from the year 1970 to 2002, Haoyuan Chemical's name was Anhui Fuyang Chemical Factory and from the year 2002 to 2007, Haoyuan's name was Anhui Haoyuan Chemical Co., Ltd ("Haoyuan Chemical"). In the year 2002, there were certain individuals who held shares in the Company. At that point of time the shareholding ratio of Haoyuan Chemical was about 80% State-owned and 20% private owned. At the end of the year 2003, all of Haoyuan Chemical's State owned shares were transferred to individuals and employees of company. During the said time, the capital of the Company was also increased. From the year 2003 onwards, the Company has become a privately held company. In the year 2002, Anhui Fuyang Chemical Factory's asset and debts were transferred to Haoyuan Chemical. The factory's assets (including land using right) were valued, and an Assets Valuation Report for land was provided. Furthermore, the operation of assets transfer from to Haoyuan Chemical was on the market price. It has been claimed that presently, there is no State interference in the operation of Haoyuan but it has also been acknowledged that M/s Shanxi jincheng Anthracite mining Group ('Jincheng Group') has 35% of the shares of the Company.
- 6.14 However, the Authority notes that Article 2 of Chinese 'Supervision and Administration of Enterprise State-owned Assets Tentative Regulations' dated May 27 2003 specifies that these Regulations shall apply to the supervision and administration of the State-owned assets of enterprises owned, controlled or participated in by the State.
- 6.15 Considering the above facts, State interference in the decisions of the company regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment etc cannot be ruled out. Thus, the Authority at this stage notes that M/s. Anhui Haoyuan Chemical Group Co. Ltd has not been able to rebut the NME presumption in the instant matter, subject to further investigation and verification.

Determination of Normal value in respect of Exporters / Producers from China PR

6.16 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.

6.17 The Authority notes that sufficient information and evidence is not available on record in respect of the price or constructed value of a market economy third country that has the comparable level of development *vis a vis* China PR, particularly considering the subject goods. Thus, in view of the above facts, the Authority, for the purpose of preliminary determination, proceeds to provisionally determine the Normal value in respect of exporters/producers from 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 product under consideration have been provisionally determined based on constructed costs of production, duly adjusted. The Normal Values have been constructed as per the methodology described below:

Methodology adopted for constructing Normal Value in case of China PR

6.18 Accordingly, the Authority has constructed Normal value for producers in China PR on the following basis:

- a. Price of Ammonia has been considered on the basis of international price prevailing during the POI, i.e. World export price to China as per World Trade Atlas.
- b. Price of DEG has been considered on the basis of domestic industry as international price, prevailing during the POI, as per World Trade Atlas are abnormally high.
- c. Efficient consumption norms of raw materials of domestic industry considered in NIP have been considered.

- d. The utilities cost and conversion costs of the domestic industry considered in NIP have been adopted.
 - e. After arriving total cost of production for CNV as above, 5% profit has been allowed.
- 6.19 For the purpose of preliminary findings, the normal value so determined comes to *** US\$/kg.

Normal value in respect of EU and USA – responding exporters

6.20 Response to the questionnaire were filed by the following companies:

S.N.	Name of Producer/Exporter	Country/Territory
1	M/s. Huntsman Corporation UK Ltd.	European Union
2	M/s. Huntsman Petrochemical Corporation	USA
3	M/s- BASF SE	European Union

6.21 However, M/s. Huntsman Corporation UK Ltd. vide their communication dated 27th July 2011 has stated that they have decided not to host the on-site verification to be conducted by the investigating team of the DGAD. It was clarified to them that in such an event it is proposed not to determine individual Dumping Margin for the Company. As regards other respondents, the Authority has determined individual dumping margin in respect of these companies. The methodology adopted for determination of Normal values is as follows:

General methodology followed for the responding exporters for determination of Normal Values

6.22 It was first seen, whether the domestic sales of the subject goods by the responding exporters/producers in their domestic markets were representative and viable for permitting determination of Normal values on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents. In their responses, the respondents have provided transaction-wise details of sales made of the subject goods in their home markets. The information so provided has been provisionally relied upon to determine separate weighted average domestic selling price of the subject goods, subject to further investigation and verification. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been provisionally accepted, subject to further investigation and verification. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of total sales, the weighted average price of all the domestic sales have

been taken into consideration. However, wherever the profitable sales volume was found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

Determination of Normal value in respect of Co-operative Exporters / Producers from EU and USA

M/s Huntsman Petrochemical Corporation, USA

- 6.23 From the perusal of the response of the company it is seen that the owner and principal shareholder of Huntsman Petrochemical Corporation is Huntsman Corporation, and the owner and principal shareholder of Huntsman International LLC is Huntsman Corporation.
- 6.24 It has been contended by the company that Morpholine used in rubber accelerator (RA) manufacture commands a much lower price in the United States than Morpholine sold into all other applications such as water treatment, optical brighteners, pharmaceuticals, UV absorbers, waxes, corrosion inhibitors, etc. It has been further contended that RA manufacturers in USA compete with low cost RA manufacturers in Asia and if they were required to purchase Morpholine at the price paid by all other end users, they would be forced to exit the RA business. In order to properly take into account the effect of the demand for Morpholine based rubber accelerators, the export sales to India must only be compared to Huntsman's US sales to RA customers in the in the United States. The Authority, however, notes that contention that the domestic sales be determined on end-use application basis cannot be accepted as per the relevant rules and regulation on the subject.
- 6.25 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. The information/data filed by the company has been provisionally accepted subject to verification. Accordingly, the Normal value has been determined after carrying out the sufficiency and OCT test. The adjustments as claimed by the company have been provisionally accepted, subject to verification. Accordingly, the normal value for the exporter has been determined which works out as US \$ ***/Kg.

M/s BASF, SE

- 6.26 From the perusal of the response of the company it is seen that there is no difference whatsoever between the Morpholine sold domestically vs. the Morpholine sold into non-domestic markets. All input products used for manufacturing the subject goods were captively produced by BASF.
- 6.27 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. The information/data filed by the company has been provisionally accepted subject to verification. Accordingly, the Normal value has been determined after carrying out the sufficiency and OCT test. The adjustments as claimed by

the company have been provisionally accepted, subject to verification. Accordingly, the normal value for the exporter has been determined which works out as US \$ ***/Kg.

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

- 6.28 The Authority notes that none of the other exporters/producers from EU and USA have responded to the exporter' questionnaire. Therefore, the normal value in their cases has been determined on the basis of 'facts available'.

F. EXPORT PRICE

Export price for the responding exporters

M/s. Anhui Haoyuan Chemical Group Co. Ltd., China PR

- 6.29 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of freight, insurance, clearing charges & VAT have been claimed and are provisionally being accepted subject to further investigation and verification.

M/s. Huntsman Petrochemical Corporation, USA

- 6.30 The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of inland freight, ocean freight, marine insurance, handling & other expenses, packing, credit expenses have been claimed and are provisionally being accepted subject to further investigation and verification. The issue of SGA expenses of the trading entities would be looked into during the course of on-the spot verification.

M/s BASE, SE

- 6.31 The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of inland & ocean freight, packing & alloc. selling expenses have been claimed and are provisionally being accepted subject to further investigation and verification.

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

- 6.32 Since no other response has been received from any other producer/exporter of the subject goods; the Authority has determined the 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.

G. DUMPING MARGIN

6.33 Considering the Normal values and Export prices as determined above, the dumping margins have been determined as follows:

In US\$/Kg

S.No.	Country- Producer/Exporter	Normal Value	Net Export Price	Dumping Margin	Dumping Margin %
1.	China PR				
2.	M/s. Anhui Haoyuan Chemical Group Co. Ltd	***	***	***	25-30
3.	All producers and exporters	***	***	***	50-55
4.	USA	***	***	***	
5.	M/s. Huntsman Petrochemical Corporation	***	***	***	50-55
6.	All other producers and exporters	***	***	***	80-85
7.	EU	***	***	***	
8.	M/s- BASF SE	***	***	***	30-35
9.	All other producers and exporters	***	***	***	55-60

H. INJURY AND CAUSAL LINK

Submissions made by other interested parties

M/s. Khyati Chemicals Pvt. Ltd.

7.1 The company, in brief, has submitted the following:

- a. The Application is not in the form and manner prescribed. Complete information has not been given. There are lots of inaccuracies/contradiction in the application. There is apprehension that there is a doubling of transactions reported in the IBIS data. The justification given for adoption of IBIS data instead of DGCI&S are factually incorrect as there is no significant difference and there is doubling of transaction reported in IBIS.
- b. The applicant has claimed desired rate of return as per Performa IVA. Therefore, for calculating NIP the actual return on capital employed as claimed by the applicant should be considered.

- c. The applicant has superb performance in Post POI. The import price has started increasing once again.
- d. The cost of production claimed by the applicant is too high as they have started the production of the subject goods a few years back.
- e. The production capacity of various amines produced by the company is common so proper allocation of expenses needs to be done.
- f. There is absence of causal link as the decline in market share is due to the capacity limitation of the applicant and therefore cannot be attributed to dumped imports.
- g. There is no injury on account of production, capacity utilization, sales, productivity, wages - all shows positive increase.

M/s Bhanwarlal Jhanwar & Sons

The capacity of Indian manufacturer is very limited at present and they are not able to meet the requirement in India. Besides, the prices of Morpholine have gone up now as compared to last year.

M/s. Huntsman Corporation, UK Ltd. and M/s Huntsman Petrochemical Corporation, USA

7.2 The companies, in brief, have submitted the following:

- a. There is no significant increase in the share of imports in relation to demand and production in India. In fact, the subject countries have taken share of third countries imports.
- b. There is no relationship between sales price of the applicant and import prices as in POI the sales price increased by 30% whereas import price increased by only 20%. Moreover, in 2010 the sales price is lower than landed price of imports.
- c. There is no evidence of price undercutting or price suppression. The prices of imports could not have suppressed prices to the extent that increases in costs could not be reflected with an increase in the sales prices of the applicant.
- d. The data shown in the application shows an increase in sales volume and improvement in production and capacity utilization.
- e. Applicant has never been able to fulfill demand in India as its capacity is lower than demand. Not only this it uses capacity of Morpholine production equipment in Tamalwadi to produce more profitable product i.e. methyl amines
- f. The loss of share in market share of the applicant is due to the strategic decision taken by him to concentrate in export market instead of domestic market.
- g. The decline in profitability is substantially disproportionate to the decrease in sales price. However, if there is any decline in profitability then it must be due to increase in cost.
- h. The prices of major raw material i.e. DEG which constitutes at least 60% of the total cost of production has shown steadily increased over the years. Furthermore,

the exporters are producing the raw material on its own and have cost advantage whereas the applicant has not got this benefit due to not having own production.

- i. The increase in cost is due to increase in raw material price, more than double of wage cost and thus cannot be due to alleged dumped imports.
- j. The applicant' claim of decline in productivity is self contradictory as at one place it is shown as increase and in other place it is shown as decline due to production.
- k. The conditions of competition between imports originating in US and the EU differ. The import volume trends have developed very differently as it can be seen that volumes from EU has shown increase over the injury period whereas the volume from USA has shown decline. The major reason of decline in USA imports is that Diamond Dye chem.(the second largest producer in India) has become BASF entity and has started procuring from BASF. In view of above two situations, cumulative assessment of imports should not be done.
- l. Global economic crises in tyre sector lead to the decline in prices of Morpholine as major portion of the sales of Morpholine is in tyre industries.
- m. Petitioner's Morpholine does not display a consistent quality. Further, it is not matched with the desired specifications.
- n. The imposition of ADD is not in the public interest for the reasons stated as the applicant is the sole producer in India and does not have capacity to meet demand of India. The production method is capital intensive which creates barriers for the new entrants.
- o. Petitioner is unlikely to produce Morpholine because of high volatility in the prices of DEG. The major interest of the applicant is in the production of methyl amines which is the necessary raw material of NMP. Not only this, it produces Morpholine only when DEG prices comes low and methyl amines becomes less profitable.
- p. Morpholine produced by Petitioner is of lower quality.
- q. The prices of Morpholine in the export market are higher as compared to the domestic market. Thus, it would increase its supply in export market in order to get better price and limits in domestic market. The impact of increase in prices will be borne by consumers only.

Submissions made by BASF SE

7.2.1 The company, in brief, has submitted the following:

- a. Evidence presented by the applicant to prove dumping and effects of dumping on the market for Morpholine in India does not stand a verification based on the figures disclosed and on published information. The claim of decline of market share of the applicant is not supported by the reported figures in the application. The marginal deviations of the sales development of one single domestic producer do not justify the claim of declining market share. As the demand of the local market has grown considerably, it is natural, that with rather constant market shares of the suppliers, the absolute volumes of imports would increase. The success of the Indian producer on the European market proves the principles and

dynamics of global trade based on the free choice a customer makes amongst various suppliers. The constitution of a case claiming that the Indian producer is being pushed to overseas markets is not convincing.

- b. As regards price differential of imported Morpholine versus domestically produced Morpholine; average raw material costs for DEG in India are considerably higher than in other regions. In order to gain an adequate margin, Morpholine based on local DEG has to be higher priced.
- c. There is no convincing evidence of price suppression; the domestic selling price is independently set compared to the landed price of imports. The claim of decline of domestic production, capacity utilization and sales is highly questionable, since the domestic production has nearly doubled, whereas the domestic demand increased by 40%.
- d. The sharp decline in profitability of the domestic producer in 2009 and during the POI is not explainable by the facts given in the application. It is difficult to understand, why capacity utilization was increased nearly by a factor of 2 from 2008 to 2009, when the profitability in 2009 was so low.

M/s. Anhui Haoyuan Chemical Group Co. Ltd., China PR

7.3 The company, in brief, has submitted the following:

- Petition does not clearly specify whether import data is based on sales contracted or sales realized.
- The Petitioner has claimed injury without supporting the same without any evidence and it has not suffered any material injury as may be evident from analysis of the injury parameters.
- The minor decline in market share of domestic industry in 2009-10 is due to frequent shutdown of Plants.
- Moreover, the company was still undertaking R&D activities on Morpholine. From the annual report of petitioner, it can be seen that they are investing huge money in infrastructure, R&D etc.
- Injury if any is due to other factors; it is due to the unsuccessful development and quality of the developed PUC by the petitioner.
- The commercial production of PUC was not successfully undertaken in the year 2007-08 as can be seen from Annual report.
- Petitioner has imported raw material from one of the subject country i.e. USA. This has led to increase in cost of production. Therefore, injury if any is self inflicted,
- Petitioner has been failed to establish causal link between dumped imports and injury suffered by DI.

Submissions of the Applicant domestic industry

7.4 The following submissions, in brief, have been made by the domestic industry:

- It is incorrect to state that DGCI&S data was available up to June 2010 in Oct, 2010 as June-2010 import data was released by DGCI&S on their website on 29th Dec, 2010.
- In respect of argument that 2006-07 period should not be excluded from the injury period, reference is invited to the corrigendum to the initiation notification dated 15th December, 2010 where in the period of injury was modified, which is in line with the application filed and the Trade notice No-2/2004 dated 12th May, 2004 .
- As regards contention that IBIS data should have been adopted instead of DGCI&S; it is submitted that consideration of IBIS data was justified as Import data as per DGCI&S was on a lower side as compared to IBIS data. Imports are being reported in many other classifications in spite of the fact that the product has a dedicated classification. While filing the petition DGCI&S data was available till March, 2010 where as the POI was proposed till June, 2010. It is pertinent to note that imports of this product are being reported under a no. of customs classifications.
- The argument that the cost of production being too high on account of significant amount spent in R&D is not correct as no research and development expenses is reflected in the annual report for 2009-10. Neither petitioner has claimed any such expenses during POI.
- In respect of argument that applicant is not capable to meet demand as its capacity is less than the demand in India and preference is in export market; inability of the Domestic Industry to meet domestic demand cannot justify dumping and cannot prevent the Domestic Industry from seeking protection under Anti dumping law. Winning an award is based on exports made for all the products produced by the company and this does not mean that petitioner has created its capacity for exports. Increase in export price and export volume shows that Indian market has lower realization due to pressure of dumping resorted by foreign producers of subject countries. If the Authority removes the dumping from Indian market thereafter domestic industry can realize reasonable price and more volume. Since the product is being dumped in the country, domestic industry is not in a position to increase its market share in India and hence is exporting the product.
- The increase in price of the subject goods is in line with increase in cost of production. Applicant is a multi-product company producing more than 50 products; hence any investment made for some other products cannot be treated as investment made for the PUC.
- Having a cost advantage does not justify dumping in any other country.
- The news items relied up on is relating to other products and not relating to Morpholine. The importer is misleading the authority by providing news relating to other products.

- The domestic industry is suffering injury on many parameters such as:
 - a) Increase in imports both in absolute term and in relation to production and consumption in India.
 - b) Decline in production resulting in decline in capacity utilization.
 - c) Decline in volume of domestic sales
 - d) Decline in profit, PBIT, ROI and cash profit.
 - e) Significant price undercutting and underselling.
 - f) Decline in productivity
 - g) Negative growth in many of the parameters.
 - h) Decline in market share in demand.
- Imports both from USA and EU have increased during the injury period with an exception in the year 2008-09 where in imports from USA had declined. it would be appropriate to assess injury to the domestic industry cumulatively from subject countries as:
 - i. The margins of dumping from each of the subject countries are more than the limits prescribed,
 - ii. The volume of imports from each of the subject countries is more than the limits prescribed,
 - iii. Cumulative assessment is appropriate in view of the following factors :-
 - a. The goods involved are like articles and are competing in the same market;
 - b. The imported products are being sold through the comparable channel of distribution and to comparable category of customers;
 - c. Products from the subject countries are undercutting the prices of the domestic industry in the market.
 - d. Imports from subject countries are increasing.
- The argument that global economic crises in tyre sector led to the decline in prices of Morpholine is without the supporting data. As can be seen from the petition the demand for the subject goods has increased over the years.
- The production of Morpholine is not reduced when prices of DEG increase as could be seen from their production data. Applicant produces the goods based on the orders in hand and keeping in mind the regular orders that keeps coming every month.
- As regards the argument that domestic industry's Morpholine does not display a consistent quality; they disagree with this statement. Assuming the above statement is correct than the exporters product should fetch a better price than the applicant', in fact the positive undercutting proves that the landed price is lower that the petitioners price in Indian market.

Examination by the Authority

- 7.5 The Authority has taken note of various submissions of the interested parties on injury to the domestic industry and has analyzed injury to the domestic industry considering the facts available on record and applicable law as follows:
- a. The Authority notes that an interested party must substantiate its claim with appropriate evidence while making its submissions. The Authority notes that the allegation that the application is not in the form and manner and contains inaccuracies/contradiction has not been substantiated. As regards the transactions reported in IBIS, there does not appear to be any repetition.
 - b. As regards the issue of adoption of IBIS data *vis a vis* DGCI&S is concerned; it is noted that as per information available on record, the imports volume as reflected in the data of IBIS is more than that reflected in the DGCI&S data and hence the IBIS data has been adopted for the purposes of present findings.
 - c. As regards the import data; the same is based on the data as reflected in the questionnaires' responses and the IBIS data.
 - d. As regards the issue of the applicant's performance in Post POI is concerned; the Authority notes that post POI data is not considered for undertaking either dumping or injury analysis.
 - e. The Authority notes that AD Rules do not require that the Applicant must be able to fulfill demand in India and have adequate capacity to this end, before seeking redressal of injury caused to it on account of dumping.
 - f. As regards the issue of desired rate of return, the Authority determines the NIP as per its consistent practice and the same has also been followed in the instant matter.
 - g. As regards the frequent shutdowns of Plant of the Applicant; the domestic industry has clarified that the plant was shut down due to maintenance for a period of *** days and due to lack of orders from customers, the company was forced to stop its production for *** days.
 - h. As regards the R&D activities; the Applicant has clarified that neither it has claimed any R&D expenses nor are they reflected in their annual report so far as the subject goods are concerned. The Authority further notes that no R& D expense has been considered while computing the NIP for the domestic industry.
 - i. As regards the quality claims, the contentions made by the interested party have not been substantiated. The Authority notes that adjustment on account of any

difference in the quality could be duly considered while determining the injury margin.

- j. As regards the contention that commercial production of PUC was not successfully undertaken by the applicant in the year 2007-08; the Authority notes that it has been the consistent practice of the Authority to examine domestic industry' claim of injury during the POI over the injury period.
- k. As regards the contentions relating to imports of raw material from USA and the loss of share in market share of the applicant is due to exports; the Authority notes the contentions have not been substantiated.
- l. As regards the contention that global economic crises in tyre sector led to the decline in prices of Morpholine; the Authority notes the contentions have not been substantiated.
- m. As regards the issue that production of Morpholine is reduced when prices of DEG increase; the Authority has verified their production data, and would determine its findings accordingly.
- n. As regards the contention that the sharp decline in profitability of the domestic producer in 2009 and during the POI is not explainable as capacity utilization was increased nearly by a factor of 2 from 2008 to 2009, when the profitability in 2009 was so low; the Authority notes that the capacity of the applicant has remained the same during the injury period and hence the contention needs to be substantiated by the interested party making it.
- o. Other injury related issues such as pertaining to cost of production, production capacity of various amines produced by the applicant company, market share, capacity *vis a vis* demand, relationship between sales price of the applicant and import prices, price undercutting or price suppression, profitability, productivity, increase in cost of raw materials and wages, absence of causal link etc have been examined appropriately in the relevant sections of these findings.

Cumulative assessment

7.5.1 Annexure II para (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 (or more) of the import of like article or where the export of individual countries is less than three percent, the

imports collectively accounts for more than seven percent of the import 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.

7.6 The Authority notes that:-

- The subject goods are being dumped into India from a number of countries.
- The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;
- The volume of imports from each of the subject countries is more than the *de-minimis* limits prescribed;
- Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market, which is evident from the following:-
 - a. The products manufactured by the producers from the subject countries and the products manufactured by the Applicant have comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are *inter-se* like articles.
 - b. There are common parties who are resorting to use of the imported subject goods from various sources and the goods produced by the domestic industry. Both, the imported and the domestic subject goods, are being used interchangeably and there is direct competition between the domestic product & imported products and *inter-se* amongst imported products.
 - c. The exporters from the subject countries and domestic industry have sold the product in the same periods to the same set of customers. The sales channels are comparable.
 - d. The volume of imports from each of the subject countries is significant.

The Authority notes that imports made on account of any extraneous consideration such as affiliation should not be impacting the above perspective.

7.7 In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries

7.8 Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has

been significant price undercutting by the dumped imports as compared to the price of the like article 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.

- 7.9 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.”

Demand and Market Share

- 7.10 The applicant has claimed that for the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry have been added to the total imports into India, which has been summarized as under.

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Imports from					
Subject Countries	MT	2,989	2,906	4,389	4,815
Other Countries	MT	184	199	32	-
Total Imports	MT	3,174	3,106	4,421	4,815
Sales of Domestic Industry	MT	***	***	***	***
Demand	Indexed	100	97	138	146

- 7.11 The Authority notes that demand has shown a positive trend and increased significantly in the period of investigation as compared to the base year. The growth in the demand during period of investigation was about 46% as compared to the base year. The sale of domestic industry during the POI has increased by 20% as compared to the base year. However, the sales of domestic industry did not proportionately increase *vis a vis* the increase in demand.

Import volumes and market share

- 7.12 Annexure-II (ii) of the AD Rules provides that “while examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports either in absolute term or relative to production or consumption in India ...” Thus, with regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

7.13 The applicant has claimed that subject goods are being imported in different Customs classifications. Further, the imports of the product under consideration reported in the IBIS data is significantly more than what has been reported in the DGCI&S data and therefore the volume of imports has been assessed on the basis of the IBIS data and the data of the co-operating exporters.

7.14 The Authority notes that:

- (a) The imports from the subject countries have increased significantly in absolute terms in the period of investigation as compared to the base year as per the table below.

Imports from	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
China PR	MT	426	1,220	492	511
USA	MT	1,202	348	1,387	1,419
EU	MT	1,361	1,339	2,510	2,885
Other Countries	MT	184	199	32	-
Subject Countries	MT	2,989	2,906	4,389	4,815
Total Imports	MT	3,173	3,106	4,421	4,815

- (b) It is seen that market share of subject countries have increased during the POI as compared to the base year, whereas the market share of domestic industry has declined as compared to the base year as shown in the table below.

Market Share in Demand	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Subject Countries	Indexed	100	100	106	110
Other Countries	Indexed	100	111	13	0
Domestic industry	Indexed	100	98	95	82

7.15 From the above table, it is noted that:

- The market share of dumped imports from the subject countries have increased during POI as compared to the base year.
- The imports from the subject countries have increased in POI as compared to the base year and in relation to the total imports.
- The share of the domestic industry has declined in POI.

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 to 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. In order to assess the extent of price undercutting, the Authority has compared the net sales realization of the domestic industry with the landed value of the imports. The net sales realization was arrived, after deducting all rebates and taxes. 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. The position is as follows.

Particulars	Landed Value (Rs./Kg)	Price Undercutting (Rs./Kg)	Price Undercutting (%) Range
NSR Rs.*** Per/ KG			
Country/Territory			
China PR	***	***	1-5
USA	***	***	5-10
EU	***	***	1-5
Subject Countries as a whole	***	***	1-5

7.16 The Authority has also determined price undercutting cumulatively from the subject countries as a whole, which is as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
Average landed import price	Rs./Kg	***	***	***	***
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Price undercutting amount	Rs./Kg	***	***	***	***
Price undercutting %	Range	5-10	(10-15)	0-5	0-5

Price Suppression/ Price Depression

7.17 In order to assess whether the imports from the subject countries were suppressing/ depressing the prices of the domestic industry, the Authority has compared the cost of production and the net selling price of the domestic industry along with the average landed price of the imports over the injury period, which is given in the following table:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Cost of Sales	Rs./Kg	***	***	***	***
Trend	Indexed	100	89	93	99
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Trend	Indexed	100	98	83	87
Profit/Loss	Rs./Kg	***	***	***	***
Trend	Indexed	100	162	12	(6)
Average landed price of subject countries	Rs./Kg	***	***	***	***
Trend	Indexed	100	119	86	91

7.18 From the above, it is apparent that there is decrease in both the cost of sales and the selling price of the domestic industry during the POI as compared to the base year. However, the decrease in the net selling price is proportionately higher as compared to the decrease in the cost of sales, thereby reflecting price depression.

Economic parameters of the domestic industry

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

7.20 The various injury parameters relating to the domestic industry are discussed herein below:-

Production, sales, capacity and capacity utilization

7.21 The production, domestic sales, capacity & capacity utilization of the domestic industry has been stated as follows:

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
Capacity	MT	***	***	***	***
Trend	Indexed	100	100	100	100
Production	MT	***	***	***	***
Trend	Indexed	100	120	231	229
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100	120	231	229
Domestic Sales	MT	***	***	***	***
Trend	Indexed	100	95	132	120
Demand	MT	***	***	***	***
Trend	Indexed	100	97	138	146
Domestic Sales in % of Demand	%	***	***	***	***
Trend	Indexed	100	98	95	82

7.22 From the above, it is noted that:

- a) The domestic industry has maintained the same level of installed capacities throughout the injury period.
- b) The production, capacity utilization has increased during the POI as compared to the base year. The demand has increased by 46% during POI as compared to the base year, whereas the sale of the domestic industry has increased by 20% during the POI as compared to the base year.

Profitability

7.23 The cost of production, net sales realization & profit/loss of the domestic industry are as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Cost of Sales	Rs./Kg	***	***	***	***
Trend	Indexed	100	90	93	99
Net Selling price of the domestic industry	Rs./Kg	***	***	***	***
Trend	Indexed	100	98	83	87
Profit/Loss	Rs./Kg	***	***	***	***
Trend	Indexed	100	162	12	(6)
Profit/Loss Domestic Sales	Rs.lacs	***	***	***	***
Trend	Indexed	100	154	16	(7)

PBIT on Domestic Sales	Rs.lacs	***	***	***	***
Trend	Indexed	100	142	39	20

7.24 It is noted that profitability of the domestic industry for the subject goods has improved till 2008-09. However, from 2009-10, it has started declining and the profitability of the domestic industry declined significantly in the POI leading to significant financial losses, during the POI.

Return on investments and Cash flow

Particulars	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
ROI- GFA Basis	%	***	***	***	***
Trend	Indexed	100	148	36	19
ROI - NFA Basis	%	***	***	***	***
Trend	Indexed	100	157	36	19
Cash Profit	Rs. Lacs	***	***	***	***
Trend	Indexed	100	156	36	18
Depreciation	Rs. Lacs	***	***	***	***
Trend	Indexed	100	162	120	120

7.25 The Authority notes that return on investment and cash profit of the domestic industry deteriorated significantly during the POI as compared to the base year as would be apparent from the above table. The return on investment has been determined considering PBIT and capital employed for the product. Impact on cash flow has been determined considering profit before depreciation but after interest cost. The cash profit has shown a significant decline in the POI as compared to the base year. It is noted that the depreciation has increased during the POI as compared to the base year. The depreciation after 2008-09 is almost in the same region, whereas the profits have declined. The Authority notes that the decline in profits is not due to increase in depreciation expenses.

Market Share

7.26 From the table below, it is seen that demand for the subject goods in India has shown an increasing trend except decline during 2008-09. However, the market share of subject countries in demand of the product in India has increased significantly and that of the domestic industry has declined in the POI compared to the base year.

Market Share in Demand	Unit	2007-08	2008-09	2009-10	July'09- June'10 [POI]
Subject Countries	Indexed	100	100	106	110

Other Countries	Indexed	100	111	13	0
Domestic industry	Indexed	100	98	95	82
Demand	MT	***	***	***	***
Trend	Indexed	100	97	138	146
Domestic Sales in % of Demand	%	***	***	***	***
Trend	Indexed	100	98	95	82

Employment, wages and productivity

7.27 The data relating to employment, wages and productivity is as follows:

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
No. of Employees	Nos.	***	***	***	***
Trend	Indexed	100	100	86	86
Wages	Rs.lacs	***	***	***	***
Trend	Indexed	100	117	222	218
Productivity per day	Mt/day	***	***	***	***
Trend	Indexed	100	120	230	228
Productivity per employee	MT	***	***	***	***
Trend	Indexed	100	120	266	264

It is seen from the above that there has been decrease in the number of employees and also increase in wages during period of investigation as compared to the base year. However, it is seen that the company is a multi-product company and hence its performance on these counts may not be appropriate in the instant analysis.

Inventories

7.28 The data relating to inventories shows as follows:-

Particulars	Unit	2007-08	2008-09	2009-10	July'09-June'10 [POI]
Average Inventories	MT	***	***	***	***
Trend	Indexed	100	21	263	197
Capacity Utilization	Indexed	100	120	231	229

7.29 From the above table, it is seen that average inventory has increased in the POI as compared to the base year. Apparently, due to presence of dumped imports from the subject countries, the domestic Industry has not been able to sell its goods.

Growth

7.30 Growth of the domestic industry in terms of inventories and market share was negative, while the same in respect of production, capacity utilisation and sales volume was positive during POI as compared to the base year. Growth in terms of price parameters, viz. profits, cash profits and return on investment has been negative.

Ability to raise funds

7.31 It is noted that the company is a multi-product company and hence its performance on these counts may not be appropriate in the instant analysis.

Conclusion on material injury

7.32 It is thus seen that:

- a) Imports from subject countries have significantly increased in absolute terms.
- b) The imports have increased in relation to imports in India, production and consumption in India.
- c) The imports are significantly undercutting the prices of domestic industry.
- d) The selling prices of the domestic industry have decreased. Although the cost of production of the domestic industry also decreased yet the decrease in the selling price was higher than the decrease in the cost of production thereby causing significant price depression.
- e) The domestic industry's domestic sales increased over the injury period but the increase in the sales was proportionately lower than the increase in demand. Despite the increase in demand, the domestic industry was not able to sell the subject goods produced leading to increased inventories.
- f) The market share of the dumped imports has increased and that of domestic industry has declined.
- g) The profits, return on investment and cash profits of the domestic industry have deteriorated significantly.
- h) The domestic industry has claimed to have undertaken exports to liquidate the inventories.
- i) Dumping margins are significant.

In view of the above, the Authority is provisionally of the view that the domestic industry has suffered material injury.

I. Causal Link

Submissions made by the Domestic Industry

The Domestic Industry has submitted that their market share has declined significantly in the POI, whereas share of the subject countries imports has increased.

Submissions made by other interested parties

There is absence of causal link as the decline in market share is due to the capacity limitation of the petitioner and therefore cannot be attributed to dumped imports.

8. As per the AD Rules, the Authority, *inter alia*, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It was examined whether these other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It was found that:-
 - a. **Volume and Price of imports from third countries:** The Authority notes that imports from third countries are either negligible or their volume is *de-minimis* during previous years. In fact, there are no imports in POI. Thus, imports from third countries could not have caused injury to the domestic industry.
 - b. **Contraction in Demand and Changes in pattern of consumption:** It is noted that the demand of the subject goods has increased by 46% in the period of investigation as compared to the base year. There is also no indication of any change in the consumption pattern.
 - c. **Trade Restrictive Practices of and Competition between the Foreign and Domestic producers:** The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed price of subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.
 - d. **Development of Technology:** None of the interested party has raised any issue with regard to developments in technology as being the cause of injury to the domestic industry. No information, in respect of any significant development in technology is on record that could be the principal cause of injury to the domestic industry.

e. Export Performance: The Authority notes that the export volume of the domestic industry has increased during the POI. Thus, possible decline in exports is not a factor which could have attributed injury to the domestic industry. Further, the domestic industry has contended that they are being forced to export only because of lack of demand for their product in the Country because of presence of the dumped imports in the Indian market.

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

- a) Imports of the product under consideration have increased significantly and the market share of the subject countries increased, whereas that of the domestic industry's share decreased.
- b) Apparently, the domestic industry has lost its sales volumes due to the presence of the dumped subject goods in India.
- c) The imports, from the subject countries as a whole, are significantly undercutting the prices of the domestic industry.
- d) The imports are significantly depressing the domestic prices.
- e) The deterioration in the domestic industry's profits and return on capital employed are apparently as a result of the dumped imports.
- f) The domestic industry's performance has become negative in respect of a number of parameters.

Magnitude of injury and injury margin

8.2 The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the AD Rules, as amended.

Co-operating Exporter

Particulars	Unit	M/s.Huntsman Petrochemical Corporation(USA)	BASF SE(EU)	M/s. Anhui Haoyuan Chemical Group Co. Ltd(China PR)
NIP	US\$/KG	***	***	***
Landed Price	US\$/KG	***	***	***
Injury Margin	US\$/KG	***	***	***

Injury Margin range	%	20-25	10-15	10-15
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Non-Co-operating Exporter

Particulars	Unit	China PR	USA	EU
NIP	US\$/KG	***	***	***
Landed Price	US\$/KG	***	***	***
Injury Margin	US\$/KG	***	***	***
Injury Margin(%) range	%	30-35	40-45	30-35

J. Conclusions:

9. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority provisionally concludes that:
 - a. The product under consideration has been exported to India from the subject countries below associated normal values, thus resulting in dumping of the subject goods from the subject countries.
 - b. The domestic industry has suffered material injury in respect of the subject goods.
 - c. The material injury to the domestic industry has been caused by the dumped imports of the subject goods from the subject countries.

K. Indian industry's interest & other issues

10. 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 countries in any way, and, therefore, would not affect the availability of the subject goods to the consumers.
- 10.1 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 anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping measures

would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

L. Recommendations

11. 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 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 the subject goods originating in or exported from the subject countries in the form and manner described hereunder.

12.1 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 margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

Duty table

Sl. No	Heading/ Sub-heading	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.	2933.39.17	Morpholine	China PR	China PR	M/s. Anhui Haoyuan Chemical Group Co. Ltd	M/s. Anhui Haoyuan Chemical Group Co. Ltd	0.29	Kg	US\$
2.	-do-	-do-	China PR	China PR	Any other than combination at Sr. No.1		0.63	Kg	US\$
3.	-do-	-do-	Any country other than the subject	China PR	Any	Any	0.63	Kg	US\$

			countries						
4.	-do-	-do-	China PR	Any country other than the subject countries	Any	Any	0.63	Kg	US\$
5.	-do-	-do-	European Union	European Union	M/s BASF SE	M/s BASF SE	0.35	Kg	US\$
6.	-do-	-do-	European Union	European Union	Any other than combination at Sr. No.5		0.68	Kg	US\$
7.	-do-	-do-	Any country other than the subject countries	European Union	Any	Any	0.68	Kg	US\$
8.	-do-	-do-	European Union	Any country other than the subject countries	Any	Any	0.68	Kg	US\$
9.	-do-	-do-	USA	USA	M/s.Huntsman Petrochemical Corporation	M/s.Huntsman Petrochemical Corporation	0.50	Kg	US\$
10	-do-	-do-	USA	USA	Any other than combination at Sr. No.9		0.81	Kg	US\$
11	-do-	-do-	USA	Any country other than the subject countries	Any	Any	0.81	Kg	US\$
12	-do-	-do-	Any country other than the subject countries	USA	Any	Any	0.81	Kg	US\$

M. Further Procedure

12.2 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.

(Vijaylaxmi Joshi)
Designated Authority