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**File No. 14/47/2016 - DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)  
Jeevan Tara Building, 4<sup>th</sup> Floor 5, Parliament Street, New Delhi-110001**

**NOTIFICATION**

Dated: 05 March, 2018

**FINAL FINDINGS**

**Case No OI 17/2017**

**Subject: Anti-dumping investigation concerning imports of 'Phosphorus Pentoxide' originating in or exported from China PR.**

**F. No. 14/47/2016-DGAD:** Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof, M/s Sandhya Dyes & Chemicals Pvt. Limited (herein after referred to as the applicant/domestic industry) had filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act, and the Rules, alleging dumping of Phosphorus Pentoxide (hereinafter referred to as the subject goods or P<sub>2</sub>O<sub>5</sub>), originating in or exported from China PR (herein after also referred to as subject country) and requested for initiation of an investigation for levy of anti-dumping duties on the subject goods.

2. AND WHEREAS, the Authority, on the basis of sufficient *prima facie* evidence of dumping, injury and causal link submitted by the applicant, issued a public notice dated 17<sup>th</sup> March 2017, in accordance with Rule 6(1) of the Rules, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, 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.

**A. PROCEDURE**

3. Procedure described below has been followed with regard to this investigation:
- i. In terms of Rule 5(5), the Authority notified the Embassy of the subject country in India about the receipt of the application from the domestic industry requesting for initiation of anti-dumping investigation.

- ii. The Authority issued a Notification dated 17<sup>th</sup> March, 2017, published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
- iii. The Embassy of the subject country in New Delhi was also informed about the initiation of the investigations in accordance with Rule 6(2).
- iv. The Designated Authority sent copy of initiation notification to the Embassy of the subject country in India, known exporters from the subject country, known importers in India and other interested parties, as per the information available with it, as well as the domestic industry. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within 40 days of the initiation notification in accordance with Rule 6(2) of the AD Rules.
- v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the Embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules.
- vi. The Authority sent exporter's questionnaire to the following known producers/exporters in the subject country, whose details were made available by the applicant, to elicit relevant information in accordance with Rule 6(4) of the Rules.
  - a. Asambly Chemicals Company Ltd.
  - b. Changzhou City Qishuyan Fine Chemical Co. Ltd.
  - c. Wintersun Color Co. Ltd.
  - d. Skyfly Industry Limited
  - e. High Hope Int'l Group
  - f. Chizhou Longhua Pharmachem Co. Ltd.
  - g. Zhejiang Medicines & Health products Import & Export Co. Ltd.
  - h. Qingdao Wisdom International Trading Co. Ltd.
  - i. Zhejiang Sa-Chem Import & Export Co.
  - j. Avai Chemicals Co. Ltd.
- vii. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to the Embassy of China along with the names and addresses of the known producers/exporters from the subject country.
- viii. The following producers/exporters, exporting the subject goods originating in or exported from the subject country, have filed exporter's questionnaire response:
  - a. Changzhou City Qishuyan Fine Chemicals Co. Ltd.
  - b. Chizhou Longhua Pharmachem Co. Ltd.
- ix. Changzhou City Qishuyan Fine Chemicals Co. Ltd. has also made submissions on initiation.
- x. M/s Chizhou Longhua Pharmachem Co. Ltd. has informed that w.e.f. 01 August 2017 the name of the company has been changed. Hereafter it is to be called 'Anhui Longhua Chemical Industry Company Ltd.'. They submitted the supporting

documents evidencing the change in name formally. The Authority has accepted the change in name of Chizhou Longhua Pharmachem Co. Ltd. and the said exporter is being referred to as “Anhui Longhua Chemical Industry Company Ltd”, in this final finding.

- xi. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6 (4):
  - a. Sudarshan Chemical Industries Ltd.
  - b. Heubach Colour Pvt. Ltd.
  - c. Pidilite Industries Limited
  - d. Prasol Chemicals Limited
  - e. Lona Industries Limited
  - f. UPL Ltd.
  - g. Anshika Polysurf
- xii. Following importers/users of the subject goods have filed the importer’s questionnaire responses:
  - a. Meghmani LLP
  - b. Prasol Chemicals Ltd.
  - c. Sudarshan Chemical Industries Ltd.
- xiii. The Authority made available non-confidential version of the evidences presented by various interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6 (7). Submissions made by all interested parties have been taken into account in the present disclosure statement.
- xiv. The Period of Investigation for the purpose of the present investigation has been considered from July 2015 - September 2016 (15 Months). The injury investigation period has been considered as the period April 2013 - March 2014, April 2014 - March 2015, April 2015 - March 2016 and the POI. Further, since the investigation period is a period of 15 months, all figures/data for the POI have been considered by annualizing the same. Since the POI is more than 12 months, figures relating to POI have been shown on “annualized” basis in order to be comparable to the other years.
- xv. Additional/supplementary information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry and exporters/producers was conducted to the extent considered necessary for the purpose of the investigation. Only such verified information with necessary rectification, wherever applicable, has been relied upon.
- xvi. The Non-injurious Price (NIP) is based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules. It has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- xvii. Information provided by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise basis for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xviii. The Authority held an oral hearing on 17th January, 2018 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6(6) of AD Rules. All the interested parties who presented their views orally at the time of hearing were advised to file written submissions of the views expressed orally. The interested parties were also provided opportunity to offer rejoinder submissions to the submissions made by opposing interested parties. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final findings.
- xix. Information provided by the 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.
- xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded the findings on the basis of the facts available.
- xxi. Verification of domestic industry was conducted to the extent considered necessary for the purpose of the present investigation.
- xxii. A spot verification was also conducted at the premises of the exporters between 24th to 29th July 2017.
- xxiii. A Disclosure Statement was issued on 19.02.2018 containing essential facts under consideration of the Designated Authority, giving time up to 26.02.2018 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xxiv. ‘\*\*\*\*’ in this finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- xxv. The average exchange rate of 1US\$ = Rs 67.06 prevailing during the POI has been adopted by the Authority.

## **B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

4. The product under consideration for the purpose of present investigation is “Phosphorus Pentoxide” or P<sub>2</sub>O<sub>5</sub>.

### **B.1 Submissions made by the Domestic industry**

5. The domestic industry has made following submissions with regard to the product under consideration:

- i. The product under consideration is Phosphorus Pentoxide.  $P_2O_5$  is also known as Diphosphorous Pentoxide, Phosphorus(V) oxide, Phosphoric anhydride, Tetraphosphorus decaoxide, Tetraphosphorus decoxide.
- ii. Phosphorus pentoxide is a white, microcrystalline, light weight powder which is produced by the combustion of elemental phosphorus in an excess of oxygen.
- iii. Phosphorus Pentoxide is used as a powerful desiccant and dehydrating agent and is a useful building block and reagent in the chemical industry.
- iv. The product under consideration is classified under Chapter 28 of the Custom Tariff Act under subheading 28091000. The customs classification is indicative only and in no way it is binding upon the product scope.
- v. With regard to the issues raised by other parties, the petitioner has contended that the petitioner has the latest and better technology both in terms of yield, ratio of conversion, design, compactness and environmentally friendly and less carbon footprint technology as they use liquid oxygen and not air.
- vi. The petitioner buys liquid oxygen in tankers and not in cylinders. Extracting Oxygen from air will involve its own capital and running cost which is clearly saved in buying liquid oxygen in tankers.
- vii. Production of Phosphorus Pentoxide involves a number of steps, melting of solid yellow phosphorus to liquid yellow phosphorus, transferring the liquid yellow phosphorus to the reactor without air contamination in closed atmosphere and reacting the yellow phosphorus with oxygen in reactor, condensation of Phosphorus Pentoxide vapours and collecting the Phosphorus pentoxide powder and packing the same without moisture contamination.
- viii. Although production process from Yellow Phosphorus (YP) to Phosphorus Pentoxide involves only burning of Yellow Phosphorus in the presence of Oxygen, handling of Yellow Phosphorus in a safe and closed environment is a huge challenge and hazardous, as Yellow Phosphorus is highly flammable, dangerous and explosive.
- ix. Further,  $P_2O_5$  is also highly corrosive, reactive chemical and an explosion hazard. It requires use of explosion-proof electrical equipment and fittings and specially trained personnel to handle production and storage of  $P_2O_5$ .
- x. The manufacturing of  $P_2O_5$  requires expert manpower especially skilled to handle the hazardous nature of production. Significant value addition, to the extent of 30%, is achieved on conversion of Yellow Phosphorus into  $P_2O_5$ .
- xi. The authority has recommended anti-dumping duty in cases of number of chemical and petrochemical products where the value addition carried out in India is either comparable or even significantly lower than the value addition that is being carried out by the domestic industry.

## **B.2 Submissions by other interested parties**

6. The opposing interested parties have raised following issues with regard to the product under consideration:

- i. Production of  $P_2O_5$  requires very basic activity of an oxidation reaction. The 30% value addition in conversion that is claimed, could be on account of expensive liquid

- oxygen, high manufacturing cost due to old technology and high packing cost.
- ii. China is manufacturing with advance technology where they extract oxygen from air whereas Sandhya Dyes and Chemical Pvt. Ltd. is using very old method of buying liquid oxygen in cylinders.
  - iii. Use of skilled manpower is a very common practice in basic practices in chemical industry.

### **B.3 Examination by the Authority**

7. The product under consideration in the present petition is “Phosphorus Pentoxide”, also referred to as  $P_2O_5$ . The product is also known as Diphosphorous Pentoxide, Phosphorus(V) oxide, Phosphoric anhydride, Tetraphosphorus is decaoxide, Tetraphosphorus decoxide.

8. Phosphorus pentoxide is a white, microcrystalline, light weight powder which is produced by the combustion of elemental phosphorus in an excess of oxygen. Phosphorus pentoxide is the anhydride of orthophosphoric acid,  $H_3PO_4$ . It is very hygroscopic and is converted by water to  $H_3PO_4$  via intermediates.

9. Phosphorus Pentoxide is used as a powerful desiccant and dehydrating agent and is a useful building block and reagent in the chemical industry. Because of its strong hygroscopic properties, phosphorus pentoxide can be used as a drying agent. Phosphorus pentoxide finds application as a reagent for condensations in organic synthesis and polymerisation reactions; for production of phosphate esters with a mono/di ester content; manufacture of specialty sodium and ammonium phosphates, superphosphoric and polyphosphoric acids and for glass making.

10. The product under consideration is classified under Chapter 28 of the Customs Tariff Act. The PUC has a specific HS code 28091000 under Chapter 28 of Customs Tariff Act, 1975. The customs classification is indicative only and in no way it is binding upon the product scope.

11. With regard to the contention of other interested parties that 30% value addition could be on account of expensive liquid oxygen, high manufacturing cost due to old technology and high packing cost, the Authority notes that production of Phosphorus Pentoxide is hazardous, as Yellow Phosphorus is highly flammable, dangerous and explosive. Further,  $P_2O_5$  is also highly corrosive, reactive chemical which requires use of explosion-proof electrical equipment and fittings and trained personnel to handle production and storage of  $P_2O_5$ . The Authority also notes the Petitioner’s contention that manufacturing of  $P_2O_5$  requires expert manpower especially skilled to handle the hazardous nature of production and significant value addition to the extent of 30% is required on Yellow Phosphorus.

12. With regard to the method of procurement of oxygen by Chinese producers and the domestic industry, it is noted whether the oxygen is extracted from air or bought as liquid

oxygen both have its own cost. Further, difference in cost on account of liquid oxygen and oxygen extracted from air is not so significant as to cause any major variation in the total cost of the product under consideration.

13. After considering the information on record, the Authority holds that there is no known difference in subject goods produced by the Indian industry and subject goods imported into India from the subject country. Subject goods produced by the Indian industry and imported in India are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. They are technically and commercially substitutable. The consumers are using the domestically manufactured P<sub>2</sub>O<sub>5</sub> and imported P<sub>2</sub>O<sub>5</sub> interchangeably. The Authority holds that the product under consideration produced by the domestic industry is like article of the product imported from the subject country within the meaning of the Rule 2(d) of the Rules.

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

14. The petition has been filed by M/s Sandhya Dyes & Chemicals Pvt. Ltd., who is a domestic producer of the product under consideration in India.

#### **C.1 Submissions made by the Domestic industry**

15. The petition has been filed by M/s. Sandhya Dyes & Chemicals Pvt. Ltd., Mumbai, as a domestic producer of the product under consideration. There are some other known producers of P<sub>2</sub>O<sub>5</sub> in India.

16. The petitioner has claimed that there are no other existing known producers of Phosphorous Pentoxide in India, except the petitioner. There were two more producers, namely United Phosphorous Limited and Punjab Chemical & Crop Protection Limited, who were forced to close down the plant. While United Phosphorous Limited closed their plant in 1990s; Punjab Chemical & Crop Protection Limited shut down plant in 2013, owing to their inability to stay competitive with the low prices of the dumped imported product from the subject country. Further, M/s Prasol Chemicals Limited had the capacity for producing Phosphorus Pentoxide, however, the company is now largely importing the subject goods.

17. The petitioner has imported small quantities of the subject goods from the subject country in the POI to fulfill the commitments made to customers. The imports made by the petitioner in relation to total imports, consumption and production are insignificant.

18. Petitioner is the sole producer of the subject goods in India in the POI. The petitioner satisfies the standing requirements and constitutes domestic industry within the meaning of the Anti-Dumping Rules.

#### **C.2 Submissions by other interested parties**

19. The interested parties have contended that the petitioner is not the only producer of the subject goods in India. They have contended that there are other Indian companies, namely, Punjab Chemical & Crop Protection Limited and United Phosphorous Limited,

producing the product, as per the website information of these companies. Further, PCPL has stopped production because PCPL's technology is obsolete and they suffered losses on investments in South America.

20. The petitioner has imported the subject goods from subject country. As per Rule 2(b) the petitioner should not be treated as Domestic Industry.

### **C.3 Examination by the Authority**

21. The present application was filed by M/s Sandhya Dyes & Chemicals Pvt. Ltd., who is a domestic producer of the product under consideration in India, seeking imposition of anti-dumping duty on imports of Phosphorus Pentoxide from the subject country.

22. As per information on record and investigation conducted, following are the other known producers of the product under consideration, besides the petitioner, namely:

- (a) United Phosphorous Limited
- (b) Punjab Chemical & Crop Protection Limited

23. In the course of investigations, Punjab Chemical & Crop Protection Limited, while extending support to the petitioner stated that they stopped production of the subject goods due to dumping. However, United Phosphorus Limited has not shown any interest in the present investigations. Further, information on record shows that M/s Prasol Chemicals Limited is regularly importing the subject goods and have submitted Importer Questionnaire response as an interested party to the investigation. Further, regarding the issues of PCPL's technology and losses in investments, the Authority notes that technology of PCPL is not relevant as the domestic industry is Sandhya Dyes & Chemicals Pvt. Ltd.

24. With regard to the contention of the interested parties that the petitioner has imported the subject goods and is not eligible to be considered as domestic industry, it is noted that the petitioner has imported very small quantities of the subject goods from the subject country in the POI to fulfill the commitments made to customers as there was a temporary shortfall in the production. It is seen that the imports made by the petitioner are 1% of total imports in the POI, less than 1% of the consumption in India and nearly 2% of the production in the country in the POI. The petitioner is primarily a producer of the subject goods and continues to focus on domestic production. The Petitioner has given sufficient evidence in support of their claim to expand their capacity significantly within a period of 6 months. Having regard to the facts of the case, the Authority considers that the petitioner constitutes eligible domestic industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules and satisfies the standing criteria in terms of Rule 5 (3).

## **D. CONFIDENTIALITY**

### **D.1. Submissions made by the Domestic industry**

25. Submissions made by the domestic industry in this regard are as follows:

- a. The respondents have claimed excessive confidentiality by not providing information in the public version of their questionnaire responses. The same has been done to the extent that not even properly indexed information has been provided.
- b. The information furnished under Appendices 1-9 are clearly not in the format when

‘strict adherence’ to the proforma has been specifically sought. In the absence of even properly indexed information, the Domestic Industry is left handicapped to offer its comments on such deficient responses.

- c. The exporters have suppressed vital information such as names of shareholders, production process and sources of procurement of raw material and utilities, use of captive inputs and affiliation.

#### **D.2. Submissions made by the other interested parties**

26. The other interested parties have argued that the petitioner has claimed excessive confidentiality in the costing information provided in the petition.

#### **D.3. Examination by the Authority**

27. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:

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

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

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

28. Information provided by the domestic industry and the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not kept it open in public file.

### **E. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

#### **E.1 Submissions made by the Domestic industry**

29. Submissions made by the domestic industry with regard to MET, normal value, export price and dumping margin during the course of the investigation and considered relevant by the Authority are as follows:

- a. Chizhou Longhua is a producer of the subject goods. Exports to India have been made through third party distributors to Indian customers. Response by Chizhou Longhua Pharmachem Co. Ltd. is incomplete as there is no response from the associated exporters, who have exported to India have not responded. Complete sales channel is missing. The response should, therefore, be rejected outright.
- b. Changzhou City Qishuyan Fine Chemical Co. has stated that all inputs required for manufacture of the product under consideration are purchased from unrelated suppliers. The major raw material required for production of the subject goods is Yellow Phosphorus, which is produced by the company. The questionnaire response of Changzhou City Qishuyan Fine Chemicals Ltd. may be rejected on this ground alone.
- c. One of the provisions of Accession protocol has expired on 11<sup>th</sup> December, 2016. The Designated Authority should proceed with present investigation considering Chinese producers as producers operating in non-market economy conditions due to reasons given below.
- d. The investigation period considered by the Authority in the present case is July 2015 to September 2016 (15 months). The injury investigation period has been considered as 2013-14, 2014-15, 2015-16 and the POI.
- e. In the present case, the POI was July, 2015 to September, 2016 (15 months).
- f. The purpose of fixation of POI is to consider a period when the existence of dumping causing injury is claimed and established.
- g. The Chinese producers are required to be treated as non-market economy companies for the reason that the costs and prices in China do not reasonably reflect the market forces. Para 8 to Annexure-I specifies the parameters which should be considered for grant of market economy status.
- h. Since Chinese companies have been denied market economy status for the reasons mentioned in Para 8 of Annexure-I till December, 2016, petitioner submits that the Chinese producers are required to be treated as non-market economy companies till such time the investigation period includes the period specified in Accession protocol.
- i. Chinese producers are required to be treated as companies operating under non-market economy environment and the Authority may proceed to determine the normal value on the basis of Para 7 of Annexure-I.
- j. Normal value could not be determined on the basis of price of like article in an appropriate market economy third country for the reason that the relevant information is not publicly available. The petitioner has claimed consideration of normal value on the basis of cost of production in India duly adjusted.
- k. Further, since the prices of raw material and the subject goods are subject to significant fluctuations; determination of normal value, export price and dumping margin should be done on month-wise basis.
- l. The dumping margin from China is not only significant, but also substantial, thus establishing existence of significant dumping of the product under consideration in India. The import volume of China has remained significant throughout the present injury period.

## **E.2 Submissions by exporters, importers and other interested parties**

30. The responding exporter, M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd., has filed submissions claiming that India must recognize China's full market economy status and legally stop using the "surrogate country" approach in anti-dumping duty investigations against China. After December 11, 2016, normal value for imports from China must be determined on the basis of Chinese prices and costs and China should be accorded Market Economy Treatment.

31. The exporter has claimed that normal value for imports from China must be determined on the basis of price and cost data provided by Exporter Company rather than applying analogue country data.

## **E.3 Examination by the Authority**

### **E.3.1 Examination of Market Economy Claims**

32. With regard to the submissions made by the petitioner, it is noted that the commitments under para 15(a) (i) of the Accession Protocol signed by China with WTO requires that the producers under investigation should clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product. In event of this being substantiated, the importing WTO member shall use Chinese prices or costs for the industry under investigation in determining price comparability. Further Article 2.2.1.1 of WTO and AD Rules of India requires that the financial records of producer/exporter reasonably reflect the production costs. Therefore, information and supportive evidence thereof in respect of the following is required to be provided.

- a. Decisions in regard to price, cost, inputs including raw material, cost of technology and labour, output, sales and investment, are made in response to market signal reflecting supply and demand and without significant State interference and whether cost of major inputs substantially reflect market value.
- b. Production costs and financial position does not suffer from any distortion.
- c. The producer/exporters are subject to bankruptcy and property law which guarantees legal certainty and stability for the operation of the firms.
- d. Exchange rate conversions are carried out at the market rate.

### **E.3.2 Determination of Normal Value and Export Price for producers and exporters in China PR**

33. The Authority notes that the following producers/exporters from China PR have filed exporter questionnaire response:

- a) M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd.
- b) M/s Anhui Longhua Chemical Industry Company Ltd. (earlier known as M/s Chizhou Longhua Pharmachem Co. Ltd.

34. While M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd. have not submitted supplementary questionnaire claiming Market Economy Treatment, M/s Chizhou Longhua Pharmachem Co. Ltd. had submitted supplementary questionnaire on Market Economy

Treatment. However, they have withdrawn their claim for Market Economy Treatment during the course of investigations.

35. The Authority appreciates the participation in and cooperation of the two producer/exporters from China PR. Since of these two producer/ exporters, one of them did not claim the market economy status and the other withdrew it during the course of the investigation. This entailed the construction of a normal value for these two exporters by the Authority. In doing so full care has been taken to approximate the prices and costs as close as possible to that of what the two producer/ exporters actually incur in their home markets. The Authority notes that the producer/ exporters in China PR have a natural advantage in that the basic raw material contributing to almost 70% of the cost for manufacture of the subject goods is 'yellow phosphorus'. Yellow phosphorus is mined and produced primarily in China, Kazakhstan and Vietnam. Further, it is noted that the Government of China PR levies export duty on export of yellow phosphorus from that country. This on one hand provides the Chinese producers using it a cost advantage while on the other it encourages the other countries producing yellow phosphorus from pricing it internationally close to the prices obtained from China. Thus, the manufacturers in India importing this raw material from any source face a cost disadvantage. Nonetheless, in constructing the normal value for the subject goods manufactured in China PR, the Authority has provided a deduction for the export duty from the landed price of yellow phosphorus in India, as a producer based in China does not incur it, along with the freight, ocean insurance and other incidentals using the best available information regarding the cost of raw materials, optimum consumption norms of the domestic industry for raw materials and utilities, conversion cost, interest, SGA, etc. including thereupon reasonable profit.

36. In constructing the normal value, the Authority noted that the subject goods are sensitive to the atmosphere and therefore packing is an important component of the production. It is also noted that the subject good after production is packed either in Plastic drums, which are more expensive or in plastic-lined paper bags. Given the price differential between the two types of packaging popularly used, the Normal value is thus considered as \*\*\* USD/MT when packed in 'Plastic-lined' paper bags and \*\*\* USD/MT when packed in Plastic drums.

### **E.3.3 Determination of Export Price for Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Qishuyan)**

37. The Authority notes that Qishuyan has sold \*\*\* MT of the subject goods to India, packed in 'Plastic-lined' paper bags and \*\*\* MTs of the subject good packed in Plastic Drums. The weighted average CIF Price is determined as \*\*\*USD/MT. The Authority allowed adjustments on account of ocean freight, marine insurance, inland freight, port handling charges, bank charges, credit cost, non-refundable VAT etc. to determine net export price at ex-factory level. The ex-factory export price is determined as \*\*\* USD/MT on a trade weighted basis.

**E.3.4 Determination of Export Price for Anhui Longhua Chemical Industry Company Ltd. (earlier known as M/s Chizhou Longhua Pharmachem Co. Ltd.)**

38. The Authority notes that Longhua has sold \*\*\* MT of the subject goods to India directly. The weighted average CIF Price is determined as \*\*\* USD/MT. The Authority allowed adjustments on account of ocean freight, marine insurance, inland freight, port handling charges, bank charges, etc., to determine net export price at ex-factory level. The ex-factory export price is determined as \*\*\* USD/MT.

**E.3.5 Determination of Normal Value and Export Price for Non-cooperating producers and exporters in China**

39. For the other producers/exporters of China, Normal value and the export value has been considered based on the facts available. Based on this the dumping margin is indicated in the relevant table.

**E.3.6 Calculation of Dumping Margin**

40. Comparing the aforesaid normal values and export prices as determined above, the dumping margin determined for the subject country during POI are as follows:

**Dumping Margin**

Producer	Exporter	Normal Value US\$ / MT	Export Price US\$ / MT	Dumping Margin US\$ / MT	Dumping Margin %	Dumping Margin Range %
M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Quishuyan)	M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Quishuyan)	***	***	***	***	20-30
*Anhui Longhua Chemical Industry Company Ltd.	*Anhui Longhua Chemical Industry Company Ltd.	***	***	***	***	25-35
All Others		***	***	***	***	45-55

*\*Earlier known as M/s Chizhou Longhua Pharmachem Co. Ltd.*

41. It is seen that the dumping margins are more than the *de minimis* limits prescribed under the Rules in respect of exports made from each of the cooperating producers/exporters and non-cooperative producers/ exporters from the subject country.

**F. DETERMINATION OF INJURY AND CAUSAL LINK**

**F.1 Submissions made by the domestic industry**

42. The domestic industry, in its submissions, has *inter alia* argued as under:

- a) Significant volume of imports had entered the country at dumped prices in the injury

period. Imports declined marginally in 2014-15 and thereafter in 2015-16. Imports however increased significantly in the POI. Imports in POI showed 16% increase as compared to preceding year and 7% increase as compared to base year; whereas, demand for the product showed only 8% increase as compared to preceding year.

- b) Imports were significant in relation to production and consumption in India. Whereas imports in POI increased by 16% as compared to preceding year, the domestic industry lost sales by 8% as compared to preceding year.
- c) Market share of imports declined in 2014-15 as compared to preceding year. However, thereafter, market share of dumped imports has been consistently increasing and that of domestic industry has been consistently falling.
- d) Subject imports hold significant and majority market share despite domestic industry having capacity to cater significant portion of the domestic demand.
- e) The subject imports are undercutting the domestic prices significantly. Import prices are creating pressure on domestic prices, which resulted in reduction of profits in 2015-16 and thereafter in POI.
- f) There was continuous decline in import prices. The decline was more significant in the POI.
- g) Production, capacity utilization and sales of the domestic industry increased in 2014-15 as compared to preceding year. However, production, sales and capacity utilization declined thereafter in 2015-16 and then further in POI. While petitioner suffered 14% loss of production in POI as compared to 2014-15, it suffered 16% loss of sales during the same period. Capacity utilization of the domestic industry is much below the achievable levels in spite of significant demand in the country.
- h) Considering significant and rising demand, having achieved a level of production in 2014-15, the production, sales and capacity utilization should have at the least improved thereafter, and not declined, as in fact happened with the domestic industry. While increase in production and sales with the increasing demand is a natural business situation, decline in production and sales after increase in 2014-15 is at the least much abnormal and shows distorted business performance. Further, while production declined by 16% between 2014-15 and POI, the imports increased by 12%.
- i) Average inventory with the domestic industry once again increased in the POI.
- j) Performance of the domestic industry in terms of profits, profit before interest, return on investments and cash profits improved in 2014-15 and declined significantly thereafter. Profits in POI were mere 30% of the profits in 2014-15. ROI declined more rapidly and were mere 23% of the ROI in 2014-15.
- k) In spite of sufficient capacity and employment level, the domestic industry could not achieve the desired results in terms of volume as well as price parameters such as production, sales, capacity utilization, profits, cash profits, return on investment and market share.
- l) The petitioner plans to expand capacity and has also taken steps to improve the efficiency of the existing plant to increase production.
- m) In view of huge volume of dumped imports, the petitioner has no choice but to export the product to remain viable.
- n) As the petitioner was unable to utilize the capacity in view of dumping of P<sub>2</sub>O<sub>5</sub> in

India, the petitioner explored options for production of downstream products to increase production of the product under consideration. The petitioner started some trial production of Poly Phosphoric acid (PPA) in the POI (around July 2016) and just 8MT of P<sub>2</sub>O<sub>5</sub> was used captively.

- o) The dumping margin is not only more than *de minimis* but also substantial. Injury margin is also positive and quite significant.
- p) Examination of the economic situation of the domestic industry within the injury period rather than an end-point to end-point analysis shows material injury caused to the domestic industry by dumped imports.
- q) The domestic industry has requested to impose anti-dumping duty in the form of fixed duties.
- r) Yellow Phosphorus being highly flammable and reactive, transportation requires extreme caution. Tanker load transportation is more expensive than packing in drums. Further transportation by tanker involves two-way freight owing to the hazardous nature of Yellow Phosphorus.
- s) Production of P<sub>2</sub>O<sub>5</sub> from yellow phosphorus involves significant value addition as both the raw material and product under consideration require extreme precaution.
- t) The petitioner has the latest and better technology both in terms of yield, ratio of conversion, design, compactness and environmentally friendly and less carbon footprint technology as they use liquid oxygen and not air. In the case of China, extracting oxygen from air will involve its own capital and running cost which is clearly saved in buying liquid oxygen in tankers. Further, as the balance 79% of air is not taking part in reaction, this huge volume of other gases, containing P<sub>2</sub>O<sub>5</sub> vapors, has to be scrubbed off, putting more load on the scrubber.
- u) The petitioner also uses the heat of reaction for their captive consumption that is melting of phosphorus drums and lines for transfer.
- v) P<sub>2</sub>O<sub>5</sub> is taking part in the reaction and Dilute Phosphoric acid comes out as a by-product. Nearly 30% cost of P<sub>2</sub>O<sub>5</sub> is recovered as by-product value.
- w) The domestic industry's product has insignificant value for the user industry. Imposition of ADD would not have any major impact on the cost of downstream product.

## **F.2 Submissions made by the producers/exporters/other Interested Parties**

43. The exporters, importers and other interested parties to this investigation have made the following submissions regarding the injury and causal link:

- a) In India P<sub>2</sub>O<sub>5</sub> required is around 4,000MT whereas India is producing 2,000MT so it shows huge short fall. End users are not able to get sufficient quantities leaving them no choice but to import.
- b) The capacity of the petitioner is insufficient. Further, they export 600-800 MT and P<sub>2</sub>O<sub>5</sub> is also captively consumed for the production of Poly Phosphoric Acid (PPA), leaving a very small quantity for local users.
- c) 2.5 kg of P<sub>2</sub>O<sub>5</sub> is used to make 1 kg of our finished pigment product. Hence any increase in P<sub>2</sub>O<sub>5</sub> price will impact our product price significantly.
- d) Imposition of ADD would lead to monopolistic conditions in the market, as the petitioner's capacity is limited. This will result in issues of supply continuity and

- pricing of the product.
- e) The petitioner's share capital is mere Rs.25 lacs and the product value in Indian demand is only Rs.50-60 crores. As against this, the user industry has turnover of Rs.500-1,000 crores.
  - f) Petitioner's product is not competitive as petitioner is importing yellow phosphorus and making P<sub>2</sub>O<sub>5</sub>. Yellow phosphorus is the main raw material for P<sub>2</sub>O<sub>5</sub> which is imported from China and Vietnam. With 20% export duty on yellow phosphorous from China, Vietnam prices to India are also at par to those increased prices. The import prices of yellow phosphorus are higher as the exporting countries are fixing their prices on the basis of Chinese yellow phosphorus prices which are higher due to export duty in China.
  - g) Chinese P<sub>2</sub>O<sub>5</sub> manufacturers are buying yellow phosphorous, which is raw material, in tanker load whereas Indian manufacturer is importing in drums which increases their raw material cost and reduces their competitiveness.
  - h) China is manufacturing with advance technology where they extract oxygen from air whereas petitioner is using very old method of buying liquid oxygen in cylinders.
  - i) Chinese exporters are using heat generated in production process for steam generation which is sold/ used for other products whereas no such use is done by the Indian producers.
  - j) Petitioner has compared the injury parameters from 2014-15, whereas comparison should be made from base year, 2013-14. Comparison from base year would show improvement in respect of all parameters, volume as well as price.
  - k) The capital employed has increased from 100 to 356 index points during POI as compared to the base year 2013-14. However, there is no increase in installed capacity.
  - l) The Authority has terminated those cases wherein the Domestic Industry was earning huge profits or selling its products at price above NIP.
  - m) The trends of domestic and landed prices are reducing due to reduction in the prices of Yellow Phosphorus. The investigating authorities must make an appropriate assessment of the injury caused to the domestic industry by the other known factors.
  - n) Price undercutting has no relevance in the present case as domestic industry has improved its performance and its sales realization is more than its Non-Injurious Price.
  - o) Capital employed comprises of net worth and debt of the company. Calculation of return by adopting 22% uniformly on both the components of capital employed is totally incorrect.
  - p) PCPL's technology is obsolete and they suffered losses on investments in South America.
  - q) The fact that a company with the capital employed of Rs.25 lacs only can manufacture 3000 tons of material shows that producing PUC does not require much capital and superior technology.
  - r) Very basic technology of oxidation reaction is required for the production of P<sub>2</sub>O<sub>5</sub>. The so called 30% value addition could be on account of expensive liquid oxygen, high manufacturing cost due to old technology and high packing cost.
  - s) Raw material cost itself is expensive by US\$335 – 350 per MT.

- t) Liquid oxygen is more expensive than cost of compressing oxygen from air by US\$ 95-110 per MT.
- u) P<sub>2</sub>O<sub>5</sub> is taking part in the reaction and dilute phosphoric acid comes out as a by-product. P<sub>2</sub>O<sub>5</sub> is used in cyclisation process hence in this process, value of P<sub>2</sub>O<sub>5</sub> is being consumed to give finished product is very high. For e.g. finished P<sub>2</sub>O<sub>5</sub> is Rs.117 per KG while spend phosphoric acid would be less than Rs.10 Kg (depending upon the concentration of the acid) so this value utilization is counted part of finished product.

### **F.3 Examination by the Authority**

44. The Authority notes the arguments of the domestic industry and other interested parties and various issues raised therein and has addressed them in the relevant paragraphs hereunder.

45. With regard to the contention of the interested parties that imposition of anti-dumping duty would lead to monopolistic conditions in the market, it is noted that supply of imports at fair prices is not restricted in any way by the imposition of anti-dumping duty. 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.

46. With regard to the contention that the petitioner has not made any claim regarding expansion of capacity, the Authority notes that while the petitioner has provided some information about their expansion plans and the roadmap for its implementation, this issue is not relevant for the current investigation.

47. With regard to the contention of differences in technology, it is noted that the technology used by the petitioner is comparable to that of Chinese manufacturers. As regards the submission of the interested parties on provision of return on capital employed at 22%, the Authority notes that it has been the consistent practice of the Authority to provide return on capital employed at 22% and the same has been followed in this case also.

48. As regards the submission that advanced technology is being followed in China for manufacture of the subject goods, the Authority notes that none of the parties has provided any verifiable evidence to that effect. The Authority holds that the main raw materials required for production of the subject goods is Yellow phosphorous and oxygen. While oxygen is directly extracted from the air by the producers from China, the same is purchased by the domestic industry at competitive rates. The costing information filed by the petitioner does not show that the costs on account of air can be so different as to enable the Chinese producers to sell the product at such low prices. In fact, in case of petitioner, the cost on account of oxygen is only 4% of total costs. In any case, possible difference in production process in no way affects the right of the domestic industry to seek protection against the unfair trade practice of dumping being resorted to by the Chinese producers/exporters. The

Authority has worked out the NIP as per antidumping rules based on the cost data/information verified from the records maintained by the domestic industry.

49. As regards the submission of interested parties about the need for protecting meager investment of Rs.25 lakhs made by domestic industry, the Authority notes that paid up share capital is not an indicator of the actual investment in a company. This matter is not relevant for the investigation and the Authority holds that the level of investment made by the domestic industry is not a criterion for recommending or otherwise imposition of anti-dumping duty.

50. As regards the submission that the investigation should be terminated when NSR exceeds NIP, the Authority notes that the purpose of calculating NIP is primarily to compute injury margin, i.e., use of the calculated NIP is not to conclude on injury. However, if the NIP calculated is significantly and consistently lower than the net sales realization during the injury period, it could indicate, when read with other elements of the investigation that the injury is not significant. The Authority notes that previously decisions of both kinds, i.e., on imposing anti-dumping duty when the NSR is more than the NIP and *vice versa* have been taken after taking all relevant factors into consideration holistically.

51. The analysis here in below *ipso facto* addresses various other issues raised by the interested parties.

#### **F.4 Examination of Injury and Causal Link**

52. For the examination of the impact of the imports on the domestic industry in India, the Authority has considered relevant economic factors and indices having a bearing on the state of the industry such as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules.

##### **F.4.1 Assessment of Demand and Market Share**

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

<b>Demand</b>	<b>UOM</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>POI-A</b>
Imports from China	MT	3,143	2,995	2,906	3,367
Imports from Other Countries	MT	0	0	0	0
Sales of domestic industry	MT	616	1,404	1,286	1,181
<i>Trend</i>		<i>100</i>	<i>228</i>	<i>209</i>	<i>192</i>
Demand	MT	3,759	4,398	4,192	4,548
<i>Trend</i>		<i>100</i>	<i>117</i>	<i>112</i>	<i>121</i>
Market Share	%				
Imports – China	%	83.60%	68.08%	69.31%	74.04%
Imports – Other countries	%	0.00%	0.00%	0.00%	0.00%

<b>Demand</b>	<b>UOM</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>POI-A</b>
Domestic industry	%	16.40%	31.92%	30.69%	25.96%

54. The Authority notes that the demand of the product under consideration has increased over the period. Though there was a slight decline in demand of the subject goods in 2015-16, it increased by 21% in the POI as compared to the base year. It is also noted that the subject imports command major share in the Indian market throughout the injury period.

#### **F.4.2 Volume and Price Effects of Dumped Imports on the Domestic industry**

##### **(a) Volume Effect: Import volumes and share of subject country:**

55. With regard to volume of the dumped imports, the Authority has examined whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. The volume of imports of the subject goods from the subject country have been analyzed as under:

<b>Import Volume</b>	<b>Unit</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>POI-A</b>
China	MT	3,143	2,995	2,906	3,367
Other Countries	MT	0	0	0	0
Total Imports	MT	3,143	2,995	2,906	3,367
Total Imports	%	100%	100%	100%	100%
Demand	MT	3,759	4,398	4,192	4,548
Production	MT	***	***	***	***
Demand	%	84%	68%	69%	74%
Production	%	267%	150%	157%	196%

56. The Authority notes that imports from China declined up to 2015-16 and then increased by 16% in the POI even when demand for the PUC increased only by 8%. Imports in the POI show increase whether compared to base year or preceding year. There were no imports from any other country throughout the injury period. It is observed that the subject imports are significantly high in absolute as well as relative terms in the injury period and the POI and despite significant unutilized capacities with the domestic industry.

##### **(b) Price Effect of the Dumped imports and impact on the Domestic Industry**

57. With regard to the impact 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 product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject country have been examined with reference to price undercutting, price suppression/ price depression and price underselling, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the Domestic industry have been compared with the landed price of imports from subject country.

(i) **Price undercutting**

58. Price undercutting has been determined by comparing the landed value of imports from the subject country with the net sales realization of the subject goods sold by the domestic industry in India.

Particulars	Unit	2013-14	2014-15	2015-16	POI
Net Sales Realization	Rs./MT	***	***	***	***
Landed Price	Rs./MT	110,080	109,252	104,073	100,693
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	10-20%	10-20%	10-20%	20-30%

59. It is seen that the imports from China are significantly undercutting the domestic prices in the injury period and the POI. The extent of undercutting increased significantly over the injury period. Whereas the NSR of the domestic industry remained in similar region between POI and 2013-14, the landed price of imports declined by about 9% over the injury period.

(ii) **Price Suppression/Depression effects of dumped imports**

60. In order to determine whether the effect of the dumped imports was to suppress or depress the prices of the like article in India, or prevent price increases which would have otherwise occurred, the Authority notes the changes in costs and prices of the domestic industry as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>92</i>	<i>94</i>	<i>98</i>
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>99</i>	<i>97</i>	<i>100</i>
Landed Price	Rs./MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>99</i>	<i>95</i>	<i>91</i>

61. Comparison of cost of sales with the selling price of the domestic industry shows that both the cost of sales and selling price declined in 2014-15. Whereas, cost of sales increased in 2015-16 and the POI, the selling price further declined in 2015-16 and then increased in the POI. The landed price of imports has remained below the cost of sales of the domestic industry throughout the injury period and the POI. Whereas the cost of production declined only by about 2%, the import prices declined by about 9%.

(iii) **Price underselling effect of the dumped imports**

62. For examining the price underselling effects of the dumped imports, the landed value of imports has been compared with the non-injurious price determined. The analysis shows that during the POI, the landed value of subject imports was materially below the non-injurious price of the domestic industry as can be seen from the table below:

<b>Particulars</b>	<b>Rs./MT</b>
Non-Injurious price	***
Landed Value	***
Injury Margin	***
Injury Margin %	***
Injury Margin (Range)	10-20%

(c) **Conclusion on Volume and Price Effect of Dumped Imports**

63. It is seen that there has been a significant increase in the volume of subject imports in absolute terms as well as in relation to production or consumption in India. Further, subject imports are undercutting and underselling the domestic prices and the effect of the subject imports is to cause suppressing and depressing effect on the prices of the domestic industry in the market.

**F.4.2 Examination of economic parameters relating to the domestic industry:**

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

65. Accordingly, various economic parameters of the domestic industry are analyzed herein below:

(a) **Actual and potential impact on capacity, production, capacity utilization and sales**

66. The table below shows the capacity, production, capacity utilization and sales of the domestic industry for the product under consideration during the injury investigation period.

<b>Particulars</b>	<b>Unit</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>POI-A</b>
Capacity	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>170</i>	<i>158</i>	<i>146</i>
Capacity Utilization	%	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>170</i>	<i>158</i>	<i>146</i>
Domestic Sales	MT	616	1,404	1,286	1,181
<i>Trend</i>		<i>100</i>	<i>228</i>	<i>209</i>	<i>192</i>
Demand	MT	3,759	4,398	4,192	4,548

Particulars	Unit	2013-14	2014-15	2015-16	POI-A
<i>Trend</i>		100	117	112	121

67. It is seen that production and domestic sales of the domestic industry increased in 2014-15, but declined thereafter significantly in 2015-16 and further then in POI. The petitioner suffered 14% loss of production in POI and 16% loss of sales compared to 2014-15. Petitioner contended that having achieved a production and sales level in 2014-15, and considering that the demand for the PUC did not decline thereafter, there is no reason, but for dumping, why the same should have declined so materially thereafter. It is also noted that capacity utilization of the domestic industry is much below the achievable levels in spite of significant demand in the country.

**(b) Market Share of Domestic industry in Demand**

68. The effects of the subject imports on the market share of the domestic industry have been examined as below. It is noted that the market share of the domestic industry has remained low throughout the injury investigation period and the POI. Further, after decent increase in market share in 2014-15, the same declined in 2015-16 and the POI.

Market share in Demand	UOM	2013-14	2014-15	2015-16	POI-A
Domestic industry	%	16.40%	31.92%	30.69%	25.96%
Imports from China	%	83.60%	68.08%	69.31%	74.04%
Total	%	100%	100%	100%	100%

**(c) Actual and potential impact on profit/loss, cash flow, return on capital employed**

69. Performance of the domestic industry with respect to the profitability parameters are as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI-A
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>		100	92	94	98
Selling Price	Rs/MT	***	***	***	***
<i>Trend</i>		100	99	97	100
Profit / Loss	Rs/MT	***	***	***	***
<i>Trend</i>		(100)	1,010	482	227
Profit / Loss	Rs. Lacs	***	***	***	***
<i>Trend</i>		(100)	2,299	1,005	434
Cash Profit	Rs. Lacs	***	***	***	***
<i>Trend</i>		100	3,373	1,672	952
PBIT	Rs. Lacs	***	***	***	***
<i>Trend</i>		100	55,367	25,320	12,836
ROCE	%	***	***	***	***
<i>Trend</i>		100	19,663	7,962	3,586

70. It is seen that profit, cash profit and return on investment increased up to 2014-15. Performance of the domestic industry in respect of these parameters declined thereafter in

2015-16 and the POI. The domestic industry was suffering losses in 2013-14 when its capacity utilization was low. However, as demand increased in 2014-15 and imports declined, the domestic industry was able to come out of losses and earn profits. However, with the significant increase in imports in POI, the profits earned by the domestic industry declined significantly.

**(d) Actual and potential impact on Employment, Wages and Productivity**

71. The data on employment and wages given below indicates increase in employment up to 2015-16 and then declined in the POI. Wages have increased over the injury period and the POI. The information below shows that the productivity has increased in 2014-15 and then declined in tune with the level of production.

Particulars	Unit	2013-14	2014-15	2015-16	POI-A
Employment	No	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>123</i>	<i>186</i>	<i>154</i>
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>170</i>	<i>295</i>	<i>291</i>
Productivity per day	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>170</i>	<i>158</i>	<i>146</i>
Productivity per Employee	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>138</i>	<i>85</i>	<i>95</i>

**(e) Actual and potential impact on Inventories**

72. Information regarding inventory can be seen from the table below:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Average Inventory	MT	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>42</i>	<i>25</i>	<i>88</i>

73. The average inventory with the domestic industry declined up to 2015-16 and then increased in the POI.

**(f) Actual and potential impact on ability to raise fresh Investment**

74. The Authority notes that the domestic industry has not been able to fully utilize the production capacity for the product under consideration. Further, sharp decline in profitability of the product under consideration in the POI is likely to affect the expansion being undertaken by the domestic industry.

**(g) Actual and potential impact on growth**

75. The Authority notes that the overall analysis of the performance of the domestic industry shows that the domestic industry has faced negative growth in POI in terms of volume as well as price parameters, such as, sales, production, capacity utilization, market share, profits and return on investment. Considering the decline in growth in these parameters during the POI, the potential impact of the dumped imports on these parameters could be significantly negative.

Particulars	UOM	2013-14	2014-15	2015-16	POI
Production	%	-	69.78	(7.16)	(7.37)
Domestic Sales Volume	%	-	127.74	(8.36)	(8.21)
Cost of Sales	%	-	(8.33)	2.14	4.21
Selling Price	%	-	(1.06)	(1.53)	2.35
Profit/ Loss per unit	%	-	(1,109.59)	(52.30)	(52.90)
Return on Investment	%	-	34.55%	-20.67%	-7.73%
Capacity Utilization	%	-	27.35%	-4.76%	-4.56%
Market Share	%	-	15.52%	-1.23%	-4.72%

**(h) Magnitude of Dumping and Dumping Margin**

76. The dumping margin determined in respect of the subject imports is significantly above *de minimis* level.

**(i) Factors affecting prices**

77. Examination of trends in the volume and prices of the dumped imports from the subject country, and the domestic prices indicate that the presence of significant volume of dumped imports from the subject country have affected the prices of the domestic industry resulting in deterioration of profits to the domestic industry.

**(j) Conclusion on Injury**

78. The verified information relating to the injury to the domestic industry and analysis indicates that while the performance of the domestic industry had improved in 2014-15, the performance of the domestic industry in respect of various vital economic parameters such as production, sales, capacity utilization, market share, profits, cash profits and return on investments has deteriorated thereafter significantly and consistently up to POI. Imports from China increased and were undercutting the prices of the domestic industry in the market. Imports were causing significant underselling effect on the domestic industry's selling prices. The injury suffered by the domestic industry is not only significant but also material.

**G. MAGNITUDE OF INJURY AND INJURY MARGIN**

79. The non-injurious price of the subject goods produced by the domestic industry when compared with the landed value of the exports from the subject country shows positive injury margin during POI.

**Injury Margin**

Producer	Exporter	Non-injurious Price US\$ / MT	Landed Price US\$ / MT	Injury Margin US\$ / MT	Injury Margin %	Injury Margin Range%
M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Qishuyan)	M/s Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Qishuyan)	***	***	***	***	5-15%
*Anhui Longhua Chemical Industry Company Ltd.	*Anhui Longhua Chemical Industry Company Ltd.	***	***	***	***	10-20%

Producer	Exporter	Non-injurious Price US\$ / MT	Landed Price US\$ / MT	Injury Margin US\$ / MT	Injury Margin %	Injury Margin Range%
All Others		***	***	***	***	25-35%

*\*Earlier known as M/s Chizhou Longhua Pharmachem Co. Ltd.*

## **H. CAUSAL LINK AND OTHER FACTORS**

80. 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.

81. It was examined whether the following other factors listed under the AD Rules could have contributed to the injury suffered by the domestic industry.

### **(i) Volume and prices of imports from other sources**

82. Examination of import data shows that there are no imports of product under consideration from other countries. Therefore, the imports from other sources have not caused injury to the domestic industry.

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

83. Demand for the product in the domestic market has shown increase over the injury period. Therefore, the demand for the subject goods has not caused any injury to the domestic industry.

### **(iii) Trade restrictive practices of and competition between the foreign and domestic producers**

84. The investigation has not shown that conditions of competition or trade restrictive practices are responsible for the alleged injury to the domestic industry.

### **(iv) Development in technology**

85. The investigation carried out does not show any significant change in technology which could have affected the performance of the domestic industry.

### **(v) Export performance of the domestic industry**

86. Petitioner has exported the product under consideration during the injury period. However, the claimed injury to the domestic industry is on account of domestic operations and the injury analysis in the previous section is based on the performance of the domestic industry in respect of its domestic sales. Prices and profitability in the domestic and export markets have been segregated by the Authority for the purpose of assessing injury to the domestic industry in the domestic market.

### **(vi) Productivity of the Domestic Industry**

87. The productivity of the domestic industry has declined due to the decline in production.

## **H.1 Factors establishing causal link**

88. Analysis of the performance of the domestic industry over the injury period shows

that the performance of the domestic industry has deteriorated due to dumped imports from the subject country. Causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- a) Imports have undercut the prices of the domestic industry. The volume of imports increased over the injury period.
- b) The presence of dumped imports in the country had depressed the prices of the domestic industry.
- c) The subject imports were underselling the product sold by the domestic industry.
- d) Deterioration in profits, return on capital employed and cash profits is a direct consequence of dumped imports.
- e) As a result of significant price undercutting; production, sales and capacity utilisation of the domestic industry has not increased in proportion to increase in demand.
- f) The growth of the domestic industry in POI became negative in terms of a number of price and volume related economic parameters.

## **I. POST DISCLOSURE COMMENTS**

89. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed in relevant paras. However, for the sake of clarity, the submissions by the interested parties are being examined as below:

### **I.1 Submissions made by the domestic industry**

90. The domestic industry has made the following submissions:
- a) P2O5 produced by the domestic industry is like article to the imported product.
  - b) The petitioner is an eligible domestic industry.
  - c) Imposition of export duty on yellow phosphorus by China is to promote its value added products. Even if the raw material price is discounted by the quantum of export duty (which is not a requirement), the data would show significant dumping. This should not be encouraged by permitting dumping.
  - d) Significant value addition to the extent of 30% is required on Yellow Phosphorus to convert into P2O5 due to the hazardous nature of raw material and finished product, its handling, packing and transportation also requiring extreme caution.
  - e) There is no significant difference in cost of production on account of difference in the method of oxygen procured and used in the process by Chinese exporters and the domestic industry.
  - f) The Chinese exporters would incur two-way freight on tankers on account of transportation of yellow phosphorus as against cost of drums used by the domestic industry.
  - g) Denial of protection to the domestic industry of yellow phosphorus in the past led to complete stoppage of production of yellow phosphorus in the country.
  - h) Domestic industry has suffered material injury caused by dumped imports as the volume and market share of dumped imports was so high that the domestic industry

could not sell, produce and utilize its existing capacity in spite of demand in the country.

- i) Dumped imports undercut the domestic prices and created price pressure in the domestic market leading to decline in profits, cash profits and return on investment.
- j) Dumped imports have resulted in significant price underselling.
- k) Dumping margin and injury margin in respect of each of the responding as well as non-responding exporters from the subject country is significantly positive.
- l) Comparison of NIP with NSR should be at same level, that is, all the expenses which have been disallowed in NIP, should be deducted from NSR.
- m) Imposition of antidumping duty will not have any significant impact on user industries.
- n) The petitioner has made significant investment and has even planned to expand the production capacity of the subject goods.
- o) Since the prices of yellow phosphorus are fluctuating, anti-dumping duties expressed in US\$ terms and in fixed form or ad valorem form need to be recommended.

## **I.2 Submissions by other interested parties**

91. The submissions of various opposing interested parties are summarized as follows:
  - a) Price undercutting and price underselling are inconsistent. This shows that net sales realization of the domestic industry is higher than the non-injurious price and the domestic industry is not facing any injury.
  - b) The consistent practice of the Authority to consider 22% return on capital employed is without any logic and cannot be termed reasonable, whereas the law required reasonable return on capital. Reference to CESTAT rulings in the cases of Bridge Stone Tyre Manufacturing & others vs. DA and Hyosung Corporation vs. DA.
  - c) The practice followed by EU in determination of reasonable return is based on target profit, which is the profit margin obtained by the domestic industry in the period in which dumped and/ or subsidized imports did not have any negative effect. Reference to T-210/95 European Fertilizer Manufacturer's Association (EFMA) v Council [1999] ECR II-3291.
  - d) Raw material effect has not been considered by the Authority. India has higher raw material cost than China on account of yellow phosphorus import price. There is 20% export duty from China. Vietnam and Kazakhstan adjust their rates accordingly.
  - e) India also incurs additional cost on account of transportation (ocean freight) and packing of yellow phosphorus as there is no producer of yellow phosphorus in India, which makes Indian P2O5 more expensive than Chinese P2O5.
  - f) There is no dumping causing injury to the domestic industry. Application of anti-dumping measures is inconsistent with the long-term and overall interests of Indian domestic and downstream industries.
  - g) As there is no injury to the domestic industry, the Authority should not apply anti-dumping measures. In case the Authority feels imposing anti-dumping duty, the Authority may consider fixing up reference price as mode of anti-dumping duty.

### **I.3 Examination by the Authority**

92. It is noted that the issues raised at post disclosure stage have already been examined by the Authority in above relevant paragraphs, however for the sake of the clarity of the submissions they are addressed as below:

- a) With regard to the contention of interested parties that net sales realization of the domestic industry is higher than the non-injurious price and the domestic industry is not facing any injury, the Authority has made determination of injury after conducting complete verification of the costing information and claims of injury.
- b) With regard to the submission of the interested parties on provision of return on capital employed at 22%, the Authority notes that it has been the consistent practice of the Authority to provide return on capital employed at 22% and the same has been followed in this case also.
- c) With regard to the contention of interested parties that raw material effect has not been considered by the Authority, it is to be noted here that the Non-injurious Price (NIP) is based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules. Cost of production in the exporting member country is immaterial for calculation of non-injurious price and injury suffered by the domestic industry.
- d) With regard to the contention by the domestic industry that the Chinese exporters incur two-way freight cost on tankers on account of transportation of yellow phosphorus as against cost of drums used by the domestic industry, the Authority notes that this issue is not relevant as the Authority has rejected the responding exporters' claim for normal value and adopted constructed cost method for calculation of normal value. Further, as regards the cost incurred by the domestic industry for transportation of yellow phosphorus, the same has been verified as per the books of accounts and taken into consideration for the calculation of non-injurious price.

### **J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

93. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. 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 duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

**K. CONCLUSION AND RECOMMENDATION**

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

- a) The product under consideration has been exported to India from the subject country below the normal value.
- b) The domestic industry has suffered material injury on account of dumped imports from the subject country.

95. The Authority notes that the investigation was initiated and it was notified to all the interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the Anti-Dumping Rules and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of anti-dumping duty is necessary to offset dumping and injury.

96. Having regard to the lesser duty rule, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the ‘margin of dumping’ and ‘margin of injury’, so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of definitive anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries, for a period of five (5) years from the date of notification to be issued in this regard by the Central Government, as the difference between the landed value of the subject goods and the amount indicated in Col 8 of the duty table appended below, provided the landed value is less than the value indicated in Col 8.

**DUTY TABLE**

<b>SN</b>	<b>Subheading/ Tariff Item</b>	<b>Description of Goods</b>	<b>Country of Origin</b>	<b>Country of Export</b>	<b>Producer</b>	<b>Exporter</b>	<b>Amount US\$/ MT</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
1	*28091000	Phosphorus Pentoxide	China PR	China PR	Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Qishuyan)	Changzhou City Qishuyan Fine Chemicals Co. Ltd. (Qishuyan)	1685.42
2	28091000	Phosphorus Pentoxide	China PR	China PR	**Anhui Longhua Chemical Industry Company Ltd.	** Anhui Longhua Chemical Industry Company Ltd.	1685.42
3	28091000	Phosphorus Pentoxide	China PR	China PR	Any other than (1) and (2) above		1685.42
4	28091000	Phosphorus Pentoxide	China PR	China PR	Any	China	1685.42

<b>SN</b>	<b>Subheading/ Tariff Item</b>	<b>Description of Goods</b>	<b>Country of Origin</b>	<b>Country of Export</b>	<b>Producer</b>	<b>Exporter</b>	<b>Amount US\$/ MT</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
5	28091000	Phosphorus Pentoxide	China PR	China PR	China	Any	1685.42

*\* The customs classification is indicative only and not binding on the scope of this investigation.*

*\*\* Earlier known as M/s Chizhou Longhua Pharmachem Co. Ltd.*

97. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

#### **L. Further Procedure**

98. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Sunil Kumar)

Additional Secretary & Designated Authority