

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

NOTIFICATION

NEW DELHI, the , 2002

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Sodium Tripoly Phosphate (STPP) from People's Republic of China and Chinese Taipei (Taiwan).

No.14/1/2002-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE

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

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from M/s Albright & Wilson Chemicals India Limited, Mumbai (hereinafter referred to as petitioner) on behalf of domestic industry, alleging dumping of Sodium Tripoly Phosphate (STPP) (hereinafter also referred to as subject goods) originating in or exported from People's Republic of China and Chinese Taipei (Taiwan) (hereinafter referred to as subject countries).
- ii. Preliminary scrutiny of the application filed by the petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from People's Republic of China and Chinese Taipei(Taiwan). The authority notified the Embassies of the subject countries in New Delhi about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.

- iv. The Authority issued a public notice dated 15.2.2002 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under custom Code 2835.31 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from subject countries.
- v. The Authority notified preliminary findings dated 9th 2002 and forwarded a copy of the preliminary findings to the following interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter:-

IMPORTERS/USERS

1. M/s Neptune Overseas Ltd., Ahmedabad
2. M/s Frank Alkanes Ltd., Chennai
3. M/s Megavisa Marketing & Solution Ltd., Mumbai
4. M/s Nikiraj Industrial Impex (Pvt. Ltd., Mumbai
5. M/s Chemi Pharma, Madras
6. M/s Gormal Agriram Ltd., Noida
7. M/s Pee Cee Soap & Chemicals Ltd., Malanpur
8. M/s Pee Cee Soap & Chemicals Ltd., Agra

EXPORTERS

1. M/s Sinochem Hebei Qinhuangdao Imp & Exp Corp., Tangu Tianjin, PR China
2. M/s Chung Chemicals SON BHD, Kuala Lumpur, Malaysia
3. M/s China Petrochemical Development Corporation, Taiwan(Taipei Economic and Cultural Centre, New Delhi was requested for forward the questionnaire to this producer in Taiwan.

DOMESTIC INDUSTRY

1. M/s Albright & Wilson Chemicals India Limited, Mumbai
2. M/s Hindustan Lever Limited, Mumbai
3. M/s Hind Lever Chemicals Ltd., Mumbai

Response/information to the questionnaire/preliminary findings was filed by the following interested parties:-

IMPORTERS/USERS

Response/information to the questionnaire/notification was filed by the following importers/user Associations.

1. M/s Neptune Overseas Ltd., Ahmedabad

2.EXPORTERS

1. M/s Yunnan Chengjiang Phosphate Chemical Industry General Company, PR China
2. M/s Chongqing Chuandong Chemical(Group) Company Limited, PR China
3. M/s Chung Chemical SDN BHD, Malaysia (exporter for producer at SI. No.2 above)
4. Embassy of Taiwan, New Delhi

DOMESTIC INDUSTRY

1. M/s Albright & Wilson Chemicals India Limited, Mumbai
 2. M/s Hindustan Lever Limited, Mumbai
- i. The Authority also forwarded a copy of the preliminary findings to the Embassy of the subject countries in New Delhi with a request that the exporters of subject goods and other interested parties may be advised to furnish their views on the preliminary findings within forty days of the date of the letter;
 - ii. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
 - iii. Request was made to the Central Board of Excise and Customs (CBEC) to provide details of imports of subject goods made in India during the past three years, including the period of investigation.
 - iv. Arguments raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in the preliminary findings/and or these findings;
 - v. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 16.8.2002 and comments received on the same have also been duly considered in these findings.
 - vi. Cost investigation was also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally

Accepted Accounting Principles (GAAP) and the information furnished by the petitioner.

- vii. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- viii. Investigation was carried out for the period starting from 1st April, 2000 to 30th June., 2001 i.e. the period of investigation (POI).

B . VIEWS OF PETITIONER, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

1. VIEWS OF M/S ALBRIGHT & WILSON CHEMICALS INDIA LTD.

a) GENERAL

- i. The non-confidential version of exporters/importers filed with the Authority is wholly inadequate. A perusal of the non-confidential version filed by the exporters/importers is prima facie inadequate and the entire data provided by them should be disregarded on this ground alone. There is no data available in the non-confidential version made by the exporters/importers except arguments on the merits of the case. The Authority in its preliminary order has clearly indicated that costing, sales and other related data has been filed by the exporter/importer but there has been no indexed version of the same filed in non-confidential version.
- ii. The submissions made on behalf of the Chinese/Malaysian parties are unsigned. Given the fact that the proceedings before the Authority are quasi-judicial proceedings, the unsigned submissions must be rejected at the outset. This is all the more vital given the fact that there are factually incorrect statements made in the written submissions.
- iii. It is a matter of record that the exporters/importers have put no indexed version filed with the Authority as required, making it impossible for the petitioners to offer any comments, which is the cornerstone of the adversarial process mandated by the WTO.

b) PRODUCT UNDER CONSIDERATION & LIKE ARTICLE

- i. There are various types of STPP – Regular, Normal Temperature Rise, High Temperature Rise, Granular and Hydrated. The cost of production of each of these types is comparable and they can be used interchangeably. Besides this, it is reiterated that there is a large amount of interchangeability between the various types and accordingly all types and grades of STPP be considered. The

- petitioner is capable of manufacturing all types and grades of STPP, to meet the market demand.
- ii. STPP in its regular form is a powdery product, confirming to the grade being produced by the petitioners and is used in the detergent and ceramic industry.
 - iii. Use of STPP in detergents improves detergency by chelation of Ca⁺⁺ and Mg⁺⁺ ions thereby softening the water and preventing them from re-deposition on the fabric.
 - iv. In Ceramics industry, STPP is primarily used for deflocculation of the Ball Clay, which is the raw material for manufacture of ceramic tiles. Known alternatives are polyelectrolytes. However, due to the high cost of polyelectrolytes, STPP continues to be the preferred ingredient for deflocculation. This usage in the Ceramic industry is however minimal.
 - v. Though the domestic industry can manufacture all types and grades of STPP, it is emphasized that the grades used by the ceramic industry and the detergent industry are identical. The invoices show sales of STPP to leading consumers both in the detergent industry and the ceramic industry. The product and grade sold is "Sodium Tripoly Phosphate MTR Grade" in all cases. Thus, confirming that there is no difference in the STPP consumed by the detergent industry and the ceramic industry.
 - vi. The arguments made by the exporter/importer that there are two separate forms of STPP and that the ceramic type needs to be excluded is wholly fallacious and with a view to creating a loophole in the levy mechanism.
 - vii. The petitioners have already submitted credible evidence to prove that the same product manufactured by them is being consumed by both the ceramic and detergent industries. Therefore, there is no room for doubt or dispute for the common usage of STPP by the detergent and ceramic industries alike.
 - viii. Even the other domestic manufacturer (M/s HLCL) of STPP sells identical grades to both the detergent and ceramic industries.

In response to the Disclosure Statement, the following submissions have been made:-

c) STANDING OF THE DOMESTIC INDUSTRY:

- i. There is no dispute that the petitioner accounts for 25% of the domestic production.
- ii. The other domestic producer M/s HLCL sells the bulk of its production within its group. The Designated Authority as well as the Hon'ble CEGAT are clear on the issue of "captive consumption".
- iii. It is settled law that captive consumers are to be excluded from the domestic industry. Thus, excluding the captive production/consumption within the

Hindustan Lever Group, the petitioner has two thirds of the market and thus is locus to file and sustain this petition.

- iv. The other producer has also put on record its support for this petition and hence the Designated Authority has correctly recommended the imposition of the preliminary duties.
- v. The petitioner company accounts for well over 25% of the total production of the like article by the domestic industry. The provisions of Rule 5(3)(a) and (b) and its proviso stands fully satisfied.
- vi. Specific support to the petition for imposition of anti dumping duty has been received by way of a letter from M/s Hind Lever Chemicals Ltd., and therefore the requirement of Rule 5(3) and its explanation stand fully satisfied.

In response to the Disclosure Statement, the following submissions have been made:-

d) DUMPING

- i. The Authority has given effect to the data filed by the exporters resulting in the drastic reduction of the dumping margin as against calculated by the petitioners.
- ii. It is submitted that the Authority should put the exporters to strict proof of the fact that they are indeed market economy companies before giving them any benefits of a market economy company, such as international pricing of raw materials and normation of the other cost elements including fixed costs by benchmarking best practices on consumption and cpacity utilisation.
- iii. With reference to the inclusion of Taiwan in these proceedings, it is submitted that the petitioners have sourced data from the DGCIS which clearly shows the imports of STPP from Taiwan.
- iv. With reference to the submission that the volume of STPP from Taiwan is only 106 MT, the fact is that it is above the deminimis threshold as prescribed by the law and the dumping is most severe for that quantity which is having a negative price impact.
- v. Paragraph 8(3) of Annexure 1 to the Anti Dumping Rules, 1995 gives a list of Non Market Economy countries (NME), which includes, inter alia, People's Republic of China. The said note further provides that any country listed therein, may, if they wish to establish that it is a market economy country as per criteria enunciated in that paragraph, provide all necessary information which shall be taken due account by the Authority.
- vi. In the instant case, the Exporters from China have not provided any credible, concrete and adequate information to the Authority to establish their claim that China is a Non Market country. In fact they have repeatedly stated since the initiation of this case that "efforts are being made: to provide information on

China's market economy status, however no information has been put forward till date. Therefore, it is submitted that the exporters claim be rejected forthwith as more than adequate opportunity was given to them, but they still chose not to establish their claim. The benefits of a market economy company, such as international pricing of raw materials and normation of the other cost elements including fixed costs by benchmarking best practices on consumption and capacity utilisation given in the preliminary findings should be revoked forthwith and the dumping margin as calculated by the petitioners should prevail.

- vii. It is respectfully submitted that prior to disregarding the data published by the DGCI&S, the Authority should satisfy itself that the imports reported as originating in Taiwan are not originating in some other third country, including the other subject country, as the price impact is very severe.
- viii. It is settled law that the exporters alone have a locus, obligation and capacity to furnish information and/or make submissions in the context of the computation of the normal value of the exporters. The exporters have despite all available opportunities as contemplated under Rule 6(4) deliberately failed to furnish information. The provisions of Rule 6(8) squarely applies in the present case and of the present case and in view of the conduct of the exporters, the Authority has rightly proceeded on the basis of information furnished by the petitioners.
- ix. Under Rule 6(4), the Authority issued a notice as mandated under the Rules calling for any information, in a specified form. The Authority also provided an extension to the exporters/importers to provide this information, which information as a matter of record, is wholly inadequate and unsupported. It is submitted that no further opportunity deserves to be given and the Authority should proceed on the basis of Rule 6(8) applying the relevant non-market economy rules.

In response to the Disclosure Statement, the following submissions have been made:-

e) INJURY, CAUSAL LINK AND OTHER ISSUES

- i. The Authority while finaling the final findings should enhance the duty to the dumping margin as calculated by the petitioners. Since the exporters have not furnished any credible evidence of non-market economy, it is therefore our request that the Authority should therefore finalise the duty on the basis of the calculation arrived by the petitioners as they are considered to be a non-market economy.
- ii. While a examination of several specified indices may be made, the specific provisions as to injury as also the settled position in law indicate that injury

may be found from any one indice even though some of the other indice may not indicate a position adverse to the petitioners.

- iii. In the present case, there are clearly and unchallenged findings of price undercutting and price underselling. It is clear that the domestic industry is being forced to sell their products at a sizeable loss. In the present case, therefore clearly on the price effect, important indices are satisfied. Material injury has rightly been found in the present case.
- iv. It is submitted that the NIP is a confidential matter between the petitioner and the Authority, incapable of summarization.
- v. There is no basis to seek the costing and injury data for all the domestic producers. The petitioner has full standing in law as a domestic industry to bring this petition on its own. The exporters/importers therefore have no legal basis to demand that all the domestic producers should be required to file their costing and injury data.
- vi. In any event, it is submitted that any inefficiency, if any, in the domestic industry would stand accounted for, by the practice of "normation" adopted by the Authority.

In response to the Disclosure Statement, the following submissions have been made:-

2. Views of M/s Hindustan Lever Limited

Other Issues

- i. Hindustan Lever Ltd. consumes large quantities of STPP (about 32000 T per annum) for manufacture of detergents and is satisfied with the quality and quantity of STPP manufactured locally.
- ii. We also confirm that Hindustan Lever Ltd. sources its entire requirement of STPP from Hind Lever Chemicals Limited (HLCL), manufactured by HLCL.

3. Views of Exporter from PR China

a) PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- i. STPP is of two types, because of different processes of manufacture and have also different uses. Since the ceramic grade and detergent grade of STPP command very different prices in the market, treating both types as one, leads to a distortion of the data and misleading results. It is therefore requested that the standing, margin of dumping, non-injurious price and causal link be examined separately for each type of STPP. This would lead to more equitable and accurate results.

- ii. The above argument is relevant also from the point of view that whereas the exporter is manufacturing a greater quantity of STPP used in the ceramic industry, the domestic industry is mainly manufacturing STPP used in the manufacture of detergents. As the process of manufacture and the properties of the end products are quite different, a separate determination is called for. In these circumstances, it is requested that an apple to apple comparison may be made of the types of STPP.
- iii. The STPP for use in detergents is not fit for use in ceramics and vice versa. It is also our understanding that additional processes are required for manufacture of powder grade as against granular grade. Therefore, the comparison of the two types of product as one can not lead to meaningful results.
- iv. The product under consideration has not been appropriately defined. The petitioners have stated that the two products are inter-changeable. However, they have themselves submitted that the use of STPP in detergents is for chelation of Calcium and Magnesium ions and whereas in the case of ceramic industry it is used for deflocctulation. It is our submissions that the two types of STPP are not used interchangeably. The domestic industry has produced copies of certain invoices which are dated May and June, 2002 in support. These invoices are of no relevance since they do not relate to the period of investigation. The domestic industry should be asked to produce invoices showing sale of STPP to the ceramic industry during the period of investigation. Moreover, the invoices provided do not indicate the prices of the two types of STPP and, therefore, it is not possible to establish any comparability as regards the price. Therefore, the statement that the grades used by ceramic industry and detergent industry are identical is totally false. In fact, the ceramic industry is mainly importing its requirements since the domestic industry product is for detergents. Therefore the issue of like article, dumping and injury may be examined separately for STPP for the detergent industry and that required for ceramic industry.

In response to the Disclosure Statement, the following submissions have been made:-

b. STANDING OF THE DOMESTIC INDUSTRY

- i. It has been stated that the decision of the CEGAT in the case of RINL is applicable. As mentioned earlier, there is no such identity as a Hindustan Lever Group. In fact, two public limited companies can never be related. In this regard, reliance is placed on the decision in the case of Alembic Glass Industries Ltd. v CCE, reported in 2002(143) ELT 244 (SC) wherein the assessee and the purchaser company held shares in each other and were having common Chairman and three Directors. In spite of these facts, the Hon'ble Supreme Court held that the two companies were not related

nor did they have any interest in the business of each other. It is submitted that this decision is fully applicable to the present case since the manufacturer and its purchasers are both public limited companies.

In response to the Disclosure Statement, the following submissions have been made:-

c) DUMPING

- i. The preliminary findings do not indicate the selection of the third country market economy, nor have the exporters or importer been provided an opportunity to offer any views regarding the selection. The determination of normal value is therefore not consistent with the Rules.
- ii. It is submitted that China is a market economy, and efforts are being made to provide further evidence in this regard. Without prejudice, it is submitted that under Paragraph 7 of Annexure 1, the parties to the investigation are to be informed without unreasonable delay the selection of the market economy third country and are to be given a reasonable period of time to offer their comments. The preliminary findings do not indicate the selection of the third country market economy, nor have the exporters or importers been provided an opportunity to offer any views regarding the selection. The determination of normal value is therefore not consistent with the Rules.

In response to the Disclosure Statement, the following submissions have been made:-

d) INJURY, CAUSAL LINK AND OTHER ISSUES

- i. The level of sales of the domestic industry has remained more or less constant in the last two years. The proportion of imports as compared to the total production is minimal and therefore could not have had any significant impact on the domestic industry. In fact, the change in market share is nominal. It is requested that the market share of the petitioner and HLCL should be taken together, this would show that the market share of Indian manufacturers has not at all declined during the period of investigation. It is submitted that there is no injury whatsoever to the domestic industry as there is also a total absence of causal link.
- ii. There is also insufficient disclosure regarding the manner of determination of NIP, which appears to be on the higher side. It is requested that details may be provided in this regard on a non-confidential basis.
- iii. It is submitted that in the present case, the bulk of the imports are for use in ceramics. The manufacturers in India mainly cater to detergent industry. The

imports of ceramic grade STPP cannot cause injury to manufacturers of detergent grade STPP.

- iv. It is submitted that M/s Chung Chemicals Sdn. Bhd., Malaysia, Chongqing Chaungdong Chemicals (Group) C. Ltd., China, Yunnan Chengjiang Phosphate Chemistry Industry General Company and Shandong YanZhou Mingyue Chemical Co; & Ltd. have not made any exports to India since May 2002. It is also submitted that the levels of duty are very high and it is not commercially viable for the exporters to sell the goods to India at these prices.
- v. It has also been stated that the other producer has put on record its support, for this petition. In this regard it is requested that if the other producer is supporting this petition, then it must do so by providing all the information in the prescribed format. On examination of this information, it would be clearly revealed that such company is selling its products above non-injurious price and that there is a total lack of injury. It would also show that the non-injurious price as fixed by this Authority is clearly on the higher side. It is, therefore, requested that if the other producer is supporting this petition, then this support should be expressed by providing all the information to the authority and to exporters on a non-confidential basis. We understand that no such information has been provided to the Authority nor have any non-confidential copies thereof been provided to us.
- vi. In the present case, the bulk of the imports are for use in ceramics. The manufacturers in India mainly cater to detergent industry. The imports of ceramic grade STPP cannot cause injury to manufactures of detergent grade STPP. Moreover, the duty will not result in free and fair trade but will only promote distortion in the local market to the detriment of the user industries.
- vii. We have filed non-confidential information summarising the confidential information given. We would request the Authority to give suitable directions if it is of the view that any part of its submission is not sufficiently described.
- viii. It is submitted that obligation to pay duty is on the importers and, therefore, the exporters cannot be penalised for any non-compliance by the importers. Moreover, if any clearances have been made without payment of appropriate duties, the Customs Department would initiate proceedings under the Customs Act and the exporters have no objection to this. However, this cannot be a ground for retrospective imposition of duty. In fact, the clearance of goods without payment of duties is not known to the exporters. However, if such clearances have taken place then action is warranted against the Customs Officers concerned and the concerned importers.. As regards, M/s Neptune Overseas, it is denied that they have cleared any goods in violation of the notification in this regard, issued by the Ministry of Finance, It is ,therefore, requested that the duties may be withdrawn on the basis of the information provided by the exporters and M/s Neptune Overseas Ltd.

In response to the Disclosure Statement, the following submissions have been made:-

4. Views of Taipei Economic and Cultural Centre, New Delhi

a) DUMPING

- i. According to Import-Export Custom statistics of Taiwan, there is no record of STPP exported to India during the period of investigation. Even M/s China Petrochemical Development Corporation as listed by the petitioner as exporter to India, has stopped production of the said item since November, 1996.
- ii. This similar situation has ever happened in many other anti dumping cases against Taiwan. We are very concerned why custom statistics recorded in both countries are different in most of the case.

In response to the Disclosure Statement, the following submissions have been made:-

b) INJURY, CAUSAL LINK AND OTHER ISSUES

- i. Injury suffered by the domestic industry as a result of imported item from Taiwan should be checked. The import quantity from Taiwan as per the DGCIS data is only about 106 tons during 1.4.2000 to 30.6.2001, which means about 10 tons per month. This few quantities cannot cause serious injury to the domestic industry.

In response to the Disclosure Statement, the following submissions have been made:-

C. EXAMINATION BY AUTHORITY

The foregoing submissions made by the petitioner, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

1. PRODUCT UNDER CONSIDERATION

The Authority notes that none of the exporters/importers have given any views on the product under consideration. Hence the Authority confirms its preliminary findings of Para C(1) on the product under consideration. The product involved in the present petition is Hydrofluoric Acid in various forms viz. Anhydrous Aqueous and in different purities and concentrations originating in or exported from the PR China and classified under Customs Sub-heading 281111 of the Customs Tariff Act, 1975.

Hydrofluoric Acid could be Anhydrous Hydrofluoric Acid in liquid and gas form or Aqueous. It is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act under Customs Sub-heading 281111 of the Customs Tariff Act, 1975 and is used as a catalyst for gasoline Alkylation manufacture of Inorganic Fluorides, Fluorinated Hydrocarbon Compounds, Refrigerants. It is also used as a pickling agent for descaling stainless strips and high silicon sheets, glass etching and also for production of misc. fluorides. The product is available in various forms and purities.

The raw materials used in the manufacture of Hydrofluoric Acid are Acid Grade Fluorspar, Sulphuric Acid and Oleum. Raw material Fluorspar contains moisture. It is first dried by hot flue gases in a dryer. It is then fed to Hydrofluoric gas production plant. Fluorspar and Sulphuric Acid/oleum mixture are fed into prereactor at a constant predetermined rate. Prereactor mixes these and converts into a homogeneous mixture. The prereactor then pushes the homogeneous mixture into the Hydrofluoric Acid reactor. H F gas is drawn from the feed end into prescrubbing tower whereas the Anhydrite by product is withdrawn from the other end. H F gas passes through upper part of prescrubbing tower which washes the Hydrofluoric Acid gas and remains dust and moisture the gas is then washed with the H F Acid reflex. The gas then goes into two HF condensers and thereafter the gas is condensed by chilled Calcium Chloride solution. The liquid H F is then purified for removal of impurities by two separate distillation processes

2. LIKE ARTICLE

The Authority notes that the petitioner has claimed that the goods produced by them are like article to the goods produced, and exported from the subject country. Also both are technically and commercially substitutable and the consumers are using the domestically produced and imported goods interchangeably. The Authority also notes that no exporter/other interested party has filed any response on this issue. One of the importers i.e. M/s Oswal, Vadodara who has filed the information did not raise any argument on the issue of like article. The Authority notes that the subject goods imported from the subject country and that produced by the petitioner companies are technically and commercially substitutable and have been used interchangeably. The Authority also notes that one of the importers who has been the beneficiary of the dumped subject goods is also a customer of the Domestic Industry.

The Authority in view of the above holds that the goods produced by the Domestic Industry and those exported from the subject country are like article within the meaning of the Rules 2(d) and confirms the preliminary findings in this regard.

3. DOMESTIC INDUSTRY

The petition has been filed by the M/s All India Hydrofluoric Acid Manufacturers (AHF) Association, Cuddalore. The petition is supported by M/s Tanfac Industries Ltd and M/s Navin Fluorine Ltd. M/s Shriram Fibres Ltd. and M/s Gujarat Fluorine Chemicals Ltd., the other two producers consume Hydrofluoric Acid captively. On the basis of the production of M/s Tanfac Industries Ltd, Cuddalore and M/s Navin Fluorine Ltd., Mumbai for merchant purposes in the POI, the petitioners constitute about 67.4% of the total domestic production for merchant purposes and thus have the standing to file the petition on behalf of the Domestic Industry as per Rule 5(a) and (b) and also represent the domestic industry as per Rule 2(b). The Authority confirms the preliminary findings in this regard.

4. NORMAL VALUE & EXPORT PRICE

Under Section 9A(1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:-
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section(6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

The normal value and ex-factory export price determination is illustrated below.

A. NORMAL VALUE

The Authority notes that none of the exporters/producers from PR China have responded. The Authority also notes that the petitioner has claimed normal value based on the constructed cost of production as per the Anti Dumping Rules. The Authority keeping in view the Notifications No. 44/1999 NT dated 15.07.1999 and No.28/2001 NT dated 31.05.2001 and the non-cooperation from producers/exporters in PR China considers it appropriate to construct the normal value on the basis of the best available information including the information on the international prices of the major raw materials. The Authority has appropriately benchmarked the best consumption norms and productivity factors for constructing the normal value.

The Authority has determined the normal value separately for different concentrations of the subject goods keeping in view their different end uses and non-substitutability and in view of this the constructed normal value for 70% and 60% concentration of the subject goods comes to ***** and *****\$/PMT respectively.

B. EXPORT PRICE

The Authority notes that none of the exporters/producers from the subject country has provided the response to the questionnaire. The Authority also notes that the petitioner has provided data from Directorate General of Commercial Intelligence & Statistics (DGCI&S) and also from secondary sources evidenced in the form of bill of entry of one of the importers indicating the import price of the subject goods from the subject country during the POI. The Authority also notes that the petitioner has claimed adjustments on ocean freight, marine insurance, commission, inland freight and port expenses to an extent of *****, *****, *****, ***** and ***** \$/MT respectively.

The Authority in view of the non-cooperation and on the basis of available data from DGCI&S and secondary evidences as provided by the petitioner has evaluated the ex-factory export price on the basis of the above adjustments which comes to *****/PMT for 60% concentration of subject goods and *****/PMT for 70% concentration of subject goods respectively.

5. DUMPING-Comparison of Normal Value & Export Price

The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical

characteristics, and any other differences which are demonstrated to affect price comparability."

The Authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporters/producers of the subject country.

The Dumping Margins of concentrations other than 60% and 70% have been referenced on the basis of the data available for 60% concentration.

The dumping margin for all exporter/producers comes as under:

Exporter	Normal value (NV) \$/MT	Export Price (EP) \$/MT	Dumping margin as % of EP
PR China All exporters/Producers in China PR			
Hydrofluoric Acid of 70% concentration in all forms	****	****	De-minimis
Hydrofluoric Acid of 60% concentration in all forms	****	****	38.2%
All other concentrations of Hydrofluoric Acid in all forms	****	****	38.2%

The dumping margins of all concentrations of the subject goods other than 70% concentration are above the de-minimis level.

6. INJURY AND CAUSAL LINK

The relevant Rules pertaining to injury determination include the following.

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree".

For the examination of the impact of the dumped imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as

production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

As regards the threat of injury, the Authority notes that the Anti-Dumping Rules states as follows:

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the DA shall consider, inter-alia, such factors and;

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. inventories of the article being investigated.

The Authority recalls and reiterates its observations on the various economic parameters in the case of domestic producers who had supported the petition. The parameters pertaining to these producers are as under

- i. The imports from China PR of subject goods were 60 MT in 1999-2000 and have increased to 120 MT in 2000-2001. During POI (annualised) the imports are also at the same level of 120 MT. The market share of imports from PR China in total imports have however increased from 68.74% in 2000-2001 to 91.73% in POI (annualised). These levels are above the de-minimis limit.
- ii. The market share of imports from China in the total merchant sales demand increased from 1.2% in 2000-2001 to 2.5% in POI.
- iii. The capacity, production and capacity utilisation of the domestic industry for the year 1998-99, 1999-2002 and 2000-2001 and Period of Investigation are as under:-

(in MT)

	1998-99	1999-2000	2000-2001	April 2001-September 2001 (POI)	POI Annualised
--	---------	-----------	-----------	---------------------------------	----------------

Capacity	23035	23035	23035	11518	23036
Production	20338	21650	19452	10248	20496
Capacity Utilisation	88.29%	93.99%	84.45%	88.97%	88.97%
Domestic merchant Sales	3655	4863	4630	2042	4084

The Authority notes that as compared to 2000-2001, there has been increase in the production and as well as the capacity utilisation of the Domestic Industry. As regards the domestic merchant sales, it has declined from 4863 MT in 1999-2000 to 4630 MT in 2000-2001 and 4084 MT in Period of Investigation (Annualised).

- iv. The Authority also notes that one of the importers viz. M/s Jindal Strips of the dumped subject goods during the POI is also one of the customers for the subject goods sold by the petitioner. The Authority notes that the petitioner companies have lost sales to this customer on account of dumping of the subject goods.
- v. The landed value as described in Para 8 of the dumped imports from the subject countries is below the non injurious price of the subject goods. The price undercutting caused by these dumped imports have led to underselling and price suppression and has therefore affected the profitability of the Domestic Industry.
- vi. The Authority also notes from the secondary source published data on Chinese Fluorspar market as provided by the petitioner that there is sufficient disposable capacity more than 1.6 lakh tonnes of the subject goods available in the exporting country and that the price undercutting phenomena by the recent dumped imports also indicates an imminent threat to the domestic producers of the subject goods in India.
- vii. The demand of the subject goods evaluated on the basis of the merchant sales has declined from 4961 MT in 1999-2000 to 4804 MT in 2000-2001 and to 4215 MT in POI (annualised). However, the total demand including the captive consumption has increased from 30685 MT in 1999-2000 to 31340 MT in POI (annualised). Therefore the demand has not been a contracting factor for growth and therefore not a constraining factor to the injury caused to the domestic industry.

Also in order to eliminate effect of any inefficiencies in the production process of the subject goods Domestic Industry, which could be a contributing factor to the injury to the Domestic Industry, the Authority has determined a Non Injurious Price (NIP) for the Domestic Industry during the POI. The Non Injurious Price has been evaluated by normating and benchmarking the best utilisation and consumption norms of various cost components viz. raw material, utilities and consumables etc. for the Domestic Industry in the POI. Thus the injury has been on account of dumped imports.

7. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

Keeping in view the fact that though the user industry of subject goods might get affected, the Authority holds 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.

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

8. LANDED VALUE

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

D. CONCLUSIONS:

It is seen, after considering the foregoing paras on dumping and injury, that:

- a. As illustrated in foregoing Para 4 that since none of the exporters from the subject countries has cooperated, the normal value and export price have been referenced on the best available information as provided by the petitioner. It is observed that the subject goods of concentration other than 70% in all forms originating in or exported from the subject country have been exported to India below their normal value. The subject goods in 70% concentration have not been exported below the normal value.
- b. Injury has been caused to the domestic industry by dumping of the subject goods of all concentration other than 70% concentration originating in or exported from the subject country as the profitability of the domestic industry has suffered on account of depressed Net Sales Realisation caused by the price undercutting due to low landed prices of the dumped subject goods. The

significant capacity for export purposes available with the producers/exporters in PR China and the recent dumped imports of concentration other than 70% have caused price depression and is an imminent threat to the domestic producers of the subject goods in India.

- c. The Authority therefore recommends definitive anti-dumping duty on imports of subject goods of all concentrations other than 70% concentration falling under Chapter 28 originating in or exported from the subject country.
- d. The Authority recommends levy of anti-dumping duty equal so as to remove the injury caused to the domestic industry on account of dumping. Accordingly, it is recommended that definitive anti dumping duties equal to the difference between the reference amount as indicated in Column 9 below and the landed value be imposed, by the Central Government, on all imports of subject goods except that in 70% concentration originating in or exported from People's Republic of China under Chapter 28 Customs sub-heading 281111 of the Customs Tariff.

SI.No	Sub-heading	Description of goods	Specification	Country of origin	Country Of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 100% concentration in all forms (loose/unpacked)	People's Republic of China	Any country	Any	Any	797.6	Metric Tonne	USD
2.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 100% concentration in all forms (packed)	People's Republic of China	Any country	Any	Any	871.8	Metric Tonne	USD
3.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 60% concentration in all forms (loose/unpacked)	People's Republic of China	Any country	Any	Any	478.56	Metric Tonne	USD
4.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 60% concentration in all forms (packed)	People's Republic of China	Any country	Any	Any	552.7	Metric Tonne	USD
5.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 50% concentration in all forms (loose and unpacked)	People's Republic of China	Any country	Any	Any	398.8	Metric Tonne	USD
6.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 50% concentration in all forms (packed)	People's Republic of China	Any country	Any	Any	473.02	Metric Tonne	USD
7.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 100%	Any	PR China	Any	Any	797.6	Metric Tonne	USD

		Acid	concentration in all forms (loose/unpacked)							
8.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 100% concentration in all forms (packed)	Any	PR China	Any	Any	871.8	Metric Tonne	USD
9.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 60% concentration in all forms (loose/unpacked)	Any	PR China	Any	Any	478.56	Metric Tonne	USD
10.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 60% concentration in all forms (packed)	Any	PR China	Any	Any	552.7	Metric Tonne	USD
11.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 50% concentration in all forms (loose and unpacked)	Any	PR China	Any	Any	398.8	Metric Tonne	USD
12.	2811.11	Hydrofluoric Acid	Hydrofluoric Acid of 50% concentration in all forms (packed)	Any	PR China	Any	Any	473.02	Metric Tonne	USD

The reference amount in Column 9 for subject goods in loose form would be determined on a pro-rata basis viz. reference amount for 60% concentration is equal to 60% of the reference amount of 100% concentration. The reference amount for packed form of subject goods of a particular concentration would be determined by adding \$74.22/MT as a fixed packaging cost to its reference value in loose form.

- e. Subject to above, the Authority confirms the preliminary findings dated 15.2.2002
- f. An appeal against this order shall lie to the Customs, Excise, Gold (Control) Appellate Tribunal in accordance with the Act Supra.

L.V. SAPTHARISHI,
Designated Authority & Addl. Secretary