

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

NOTIFICATION

NEW DELHI,
Dated the 22nd August, 2007

PRELIMINARY FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Phosphoric Acid – Technical and Food Grade (including industrial grade) originating in or exported from China PR.

No.14/7/2006-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995(hereinafter referred to as AD Rules), thereof:

A. PROCEDURE

2. The procedure described below has been followed with regard to the investigation:
 - i) The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application filed by M/s. Gujarat Alkalies & Chemicals Limited and Solaris Chemtech Limited, on behalf of the domestic industry, alleging dumping of Phosphoric Acid – Technical Grade and Food Grade (Including Industrial Grade) (hereinafter referred to as subject goods) originating in or exported from China PR (hereinafter referred to as subject country).
 - ii) The Authority on the basis of evidence submitted by the applicant found it appropriate to initiate the investigation concerning imports of subject goods originating in/or exported from China PR. The authority notified the Embassy of China PR 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.
 - iii) The Authority issued a public notice dated 04.07.2006 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of the subject goods classified under Chapter 28 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from China PR.
 - iv) The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the applicant) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2).

- v) The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by the applicant) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vi) Request were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India for the period of investigation and preceding three years.
- vii) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassy of China in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- viii) The Authority sent a questionnaire to elicit relevant information to the known exporters/producers, in accordance with the Rule 6(4).
- ix) M/s Yunnan Chemphos Corporation, exporter from China PR, submitted information on exporter's questionnaire on 9.4.2007.
- x) Other exporters, producers and other interested parties who have not supplied information in this investigation have been treated as non-cooperating interested parties.
- xi) A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters and the Bureau of Fair Trade (BOFT), Govt. of China. While for the purpose of initiation the normal value in China PR was considered based on the constructed cost of production of the subject goods in China PR, the Authority informed known exporters that it proposes to examine the claim of the applicant in the light of para 7 and para 8 of Annexure I of Anti Dumping Rules, as amended. The exporter/producer of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperative exporter/producers.
- xii) Response/information to the questionnaire/notification was filed by the following Importers/user/Associations:-
 1. M/s. Chemetall Rai India Ltd. (through Fair Trade Practice)
- xiii) Importers/users who have not provided information in this investigation have been treated as non-cooperating interested parties.
- xiv) Information regarding injury was sought from the applicant and other domestic producers also.
- xv) Applicants requested for amendment in the initiation notification, which was examined by the Authority. On being satisfied, the Authority issued a corrigendum dated 11th Sept 2006. Opportunity was provided to all interested parties to make their submissions, if any, to the Designated Authority with regard to the corrigendum issued.
- xvi) 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).

- xvii) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xviii) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xix) Investigation was carried out for the period starting from 1st April 2005 to 31st March 2006 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2002 - March 2003, April 2003 – March 2004 and April 2004 – March 2005 and the POI.

B. Product under consideration and like article

B.1 Submission by the domestic industry

3. Submissions made by the domestic industry are as below:

- i) The Product under consideration in the present petition is “Phosphoric Acid-Technical Grade & Food Grade”.
- ii) Phosphoric Acid is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, etc. The subject goods are also being used in Pharmaceutical applications, Beverages, Seed processing, Sugar juice clarification and sugar refining, Food phosphate manufacturing, etc.
- iii) Phosphoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act and subheading numbers 28092010 of Indian Trade Classification (based on harmonized commodity system). The custom classification for all forms /grades /types of Phosphoric Acid is same.
- iv) There are no restrictions on imports of Phosphoric Acid, as the product does not fall under restricted list. The product can be imported freely from any country in any quantity.
- v) The notice of initiation issued by the Designated Authority states scope of the product under consideration as "Phosphoric Acid-Technical Grade and Food Grade (i.e. excluding industrial grade) originating in or exported from People's Republic of China". Thus, industrial grade of phosphoric acid has been specifically excluded in the notice of initiation, whereas industrial grade is nothing but the product under consideration. Product literatures of the Indian Producers describes various types of Phosphoric Acid as (a) agriculture grade (also called fertilizer grade), (b) technical grade, (c) food grade, (d) pharma grade, or (e) laboratories/analytical reagent grade. Product literatures of the Chinese Producers describes technical and food grade as industrial grade. A large number of different nomenclature are used by the Chinese producers. No uniform standard description is used by the Chinese producers. Various descriptions used by the Chinese producers for Agriculture Grade Phosphoric Acid include Phosphoric Acid – Agriculture Grade, Phosphoric Acid - Fertilizer Grade, Purified Phosphoric acid. For Industrial grade Phosphoric Acid, various descriptions used by the Chinese

producers/suppliers are Phosphoric Acid – Technical Grade, Phosphoric Acid – Food Grade, Phosphoric Acid – JIS Standard, Phosphoric Acid – As per Customer's Specifications, Phosphoric Acid – High Purity, Phosphoric Acid – Medicine Use, Phosphoric Acid – Grade 1, Phosphoric Acid – Grade 2, Phosphoric Acid – 75%, Phosphoric Acid – 75% - Technical Grade, Phosphoric Acid – 85%, Phosphoric Acid – 85% - Technical Grade, Phosphoric Acid – 85% - Food Grade, Phosphoric Acid – 85 % - Industrial Grade, Purified Phosphoric acid, etc. Product literatures of third country Producers include Phosphoric Acid - Agriculture grade, also described as Fertilizer grade or merchant grade, Phosphoric Acid - Industrial grade, Phosphoric Acid - Technical grade, Phosphoric Acid - Food grade, Phosphoric Acid - Pharma grade, Phosphoric Acid - IP grade, Reagent/ Laboratory Grade, Merchant Grade, Electronic Grade, Purified Phosphoric acid, Codex grade, etc. USA has earlier imposed anti dumping duties on this product, where the product covered was Industrial Phosphoric Acid (excluding agricultural grade).

- vi) In summary, phosphoric acid can be broadly divided into two categories - for agriculture applications and industrial applications. Industrial application phosphoric acid can be food grade, technical grade and IP grade (also called pharma grade). Various industrial phosphoric acid are comparable and like products. Various types and concentration of the product are being produced and sold in both Indian and Chinese market. Should the anti dumping duties be restricted to food grade and technical grade and further should it be specifically stated that the industrial grades are exempted, the same would imply continued imports at the same dumping prices in spite of imposition of anti dumping duties. Since Pharma grade is also nothing but an industrial grade, the same is required to be included as a derivative of food grade.
- vii) Anti dumping duties were earlier imposed on Phosphoric Acid - Technical Grade. However, in spite of imposition of anti dumping duties, the domestic industry did not improve fully for the reasons that the consumers started importing food grade.
- viii) There was significant decline in imports of technical grade and significant increase in imports of food grade. The import price of food grade was significantly lower than import price of technical grade, whereas factually, food grade is priced higher than technical grade.
- ix) Whereas technical grade may not substitute food grade in all applications, reverse is true. Food grade, being purer material than technical grade, can technically substitute technical grade in 100% applications. Should the food grade price be lower than technical grade, it follows that it would it would commercially also substitute technical grade. Thus, in spite of imposition of anti dumping duties on technical grade phosphoric acid, de-facto little relief could be achieved by the previous imposition of anti dumping duties.
- x) There is no known difference in product produced by the participating companies and exported from China PR. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Comparison of essential product properties in respect of domestic product and imported product would show that the goods produced by the domestic industry are identical to the imported goods

in terms of essential product properties. The goods produced by the domestic industry are like article to the goods imported from China.

B.2 Submission by Exporter, Importer, Consumer and other interested parties

4.

- i) Domestic industry has described product under consideration in the present petition as “Phosphoric Acid – Technical Grade and Food Grade”. Clearly, domestic industry is seeking protection on two individual grades of Phosphoric Acid only and has expressly excluded any other grade of Phosphoric Acid out of the purview of present anti dumping investigation.
- ii) Domestic industry had earlier filed a petition for imposition of anti dumping duty on Technical Grade Phosphoric Acid, based on which, Designated Authority recommended imposition of anti dumping duty. The anti dumping duty so recommended came into force from 10th May 2001 vide customs notification no. 47/2001 and remained in force till 10th May 2006. As per definition of product under consideration in the previous investigation, the domestic industry had claimed Phosphoric Acid – Technical Grade as separate grade from any other grade of Phosphoric Acid and sought duty cover only for Technical Grade or Phosphoric Acid while excluding all other grades of Phosphoric Acid.
- iii) Domestic industry has attempted to enhance the scope of the present investigation and is seeking duty cover on two grades of Phosphoric Acid i.e. Technical Grade and Food Grade. It is submitted that GACL is not a producer of Food Grade Phosphoric Acid and credentials of Solaris Chemtech Limited as a producer of food grade Phosphoric Acid are also un-established as they have not given any details concerning their production for food grade as well as technical grade separately.
- iv) Two grades of Phosphoric Acid i.e. Technical Grade and Food Grade are two separate products and are not like article to each other. The applications of the two grades are also distinct from each other as one is used for industrial purpose while the other is used for production of food grade and pharmaceuticals. Therefore, in the absence of production of food grade by the domestic industry in India, the Designated Authority should exclude food grade phosphoric acid from the purview of present anti dumping investigation.
- v) A plain reading of Section 9A(1) of the Indian Customs Tariff Act 1975 clearly lays down that an anti dumping duty can be imposed on an article only when an article is exported at less than its normal value. CESTAT in the matter concerning Andhra Petrochemicals Limited v/s. Designated Authority has held that an article which has not been exported to India can not, therefore, be subjected to imposition of anti dumping duty. It has been admitted by the Domestic Industry that Phosphoric Acid industrial grade has not been imported from China PR. Merely because domestic industry has apprehension that the same could be dumped in near future, can not be made a valid point for initiation of investigation for industrial grade.
- vi) Various types of phosphoric acid have different properties, purity, uses and price structure.

B.3 Examination by the Authority

5. The Product under consideration in the present investigation is “Phosphoric Acid - Technical Grade & Food Grade” (including industrial grade). Phosphoric Acid is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, pharmaceutical applications, beverages, seed processing, sugar juice and sugar refining, food phosphate manufacturing, etc. Phosphoric Acid is classified under Customs subheading No. 28092010. The custom classification is however, indicative only and has no binding on the scope of the present investigation.

6. Authority notes various issues raised by opposing interested parties regarding product under consideration and like article. Detailed investigation was conducted at the time of verification at the premises of both the producers, which focused on the production process involved in producing various types of phosphoric acid, the plant & equipment required and raw materials used for production.

7. As regards inclusion of food grade within the scope of the product under consideration, the Authority notes that technical grade phosphoric acid is produced first. Production of food grade merely requires further purification. No additional raw materials are required. The purification process merely requires additional utility only. M/s. Solaris Chemtech is regularly producing food grade and supplying to the customers. Evidence shows that both food grade and technical grade are being produced in India and were imported from China during the relevant period. The Authority further notes that food grade can also be used in industrial activity in lieu of technical grade.

8. It has been stated by an interested party (importer) that industrial grade is a separate grade and by including industrial grade, by issue of corrigendum, in the investigation, the scope of product under consideration has been enhanced. The Authority notes that the corrigendum was issued on the basis of documents/submissions of the domestic industry that the term ‘industrial grade’ relating to phosphoric acid by Chinese companies are used for food and technical grades as well. It has been noted that the interested party has not submitted any back up evidence showing that industrial grade is another specific grade. On examination of the documents of the Chinese producers, the Authority notes that the term ‘industrial grade’ is being interchangeably used for other grades of the Phosphoric Acids used for industrial applications. Therefore, by issue of corrigendum the scope of present investigation has not been enhanced. The Authority further observes that the Phosphoric Acid used for agriculture purpose (or ‘fertilizer grade’) is not covered in the scope of the present investigation.

9. In view of the above, the Authority confirms that the scope of the product under consideration is Technical Grade & Food Grade Phosphoric Acid (including Industrial Grade).

10. The domestic industry is producing phosphoric acid both technical and food grade. The goods produced by the domestic industry are technically and commercially substitutable to the imported product under consideration. The two are comparable in

terms of product specifications, physical and chemical properties, functions and uses, prices and custom classification, therefore, the products produced by domestic industry are being treated as 'like article' to the product under consideration.

C Domestic industry

11. Authority notes that the application has been filed by two of the four Indian producers i.e. M/s Gujarat Alkalies & Chemicals Limited and M/s Solaris Chemtech Limited. Other two producers are Star Chemicals and STS Chemicals. Production of the two applicants accounts for 92% of the Indian production and thus constitute domestic industry within the meaning of the Rule 2(b).

D Methodology For Dumping Margin Determination

D.1 Submission made by domestic industry

12. Domestic industry has made following submissions:-

- i) China is a non-market economy. No country has granted market economy status to China after following elaborated evaluation procedure. China has been treated as non-market economy by European Union and United States in the past three years. Even China agreed in the accession treaty that WTO Members could use an NME anti-dumping methodology through December 11, 2016. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China as non-market economy. The Designated Authority has treated China as non-market economy in practically all the investigations initiated against China after the amendment dated 31stMay, 2002. Even after the amendment dated 4th Jan., 02, the Designated Authority have treated China as a non-market economy. With regard to treatment of China as non-market economy by other WTO member's country, European Commission, in the matter of Furfuryl Alcohol, Paracresol, Polyethylene Terephthalate, Silicon, Okoume Plywood from China, has treated China as a non-market economy. USA has treated China as a non-market economy in the matter of anti-dumping investigations concerning imports of Tetrahydrofurfuryl Alcohol, Saccharin, Ferrovandium, Cold-rolled carbon steel flat products etc.
- ii) The normal value in China can be determined considering cost of production in India, duly adjusted, to include selling, general & administrative costs and profits.

D.2 Submissions made by M/s Chemetall-Rai India Ltd.

13. It has been stated that normal value in China PR can not be determined on the basis of cost of production in India, as Rules do not provides for the same. Use of constructed normal value on the basis of cost of production in India should be rejected without any consideration.

D.3 Examination by the Designated Authority

14. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country for purposes of an anti dumping investigation. Upon initiation, the Authority advised the Chinese producers to respond to the notice of initiation and provide information relevant to determination of their market economy status.

15. The Authority sent copies of the questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c) and Annexure-I to the Rules. The Authority has requested Government of China to advise producers/exporters in China to cooperate with the Authority in the present investigation. Authority, however, notes that none of the producers/exporters from China PR have filed any response to the Designated Authority in respect of market economy treatment questionnaire. Therefore, the presumption of non-market economy has not been rebutted by any of the exporters/producers by providing documents as required under para 8(3) of Annexure 1 of Anti-Dumping Rules.

D.4. **Normal Value**

16. In anti-dumping investigations concerning imports originating in non-market economy normal value shall be determined in accordance with para 7 of Annexure I of the AD Rules. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

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

17. Applicants have not provided information concerning price in a market economy third country stating that the relevant information is not available to them. None of the Chinese producers have made any submissions in this regard. While disputing the claim of the domestic industry, other interested parties have not provided any information in this regard.

18. The transaction-wise imports data from DGCI&S shows imports from Korea ROK and Israel account for 6.28% and 3.10% of the total imports respectively. These two countries account for maximum imports after the imports from the subject country. The imports from Korea ROK were mainly of technical grade. However, small percentage of food grade was also imported. In respect of Israel, imports constitute only technical grade. Comparison of the export price from these two countries shows wide difference of the prices. The export prices from Korea ROK were approximately 20% less than the prices from Israel. The Authority in order to select the appropriate prices as normal value compared the export price from Korea ROK with the constructed normal value for this

country. For constructing the normal value, the raw material prices were taken at the international prices and power prices as available for the exporting country. The consumption norm and conversion cost for the other elements have been taken of the efficient domestic producer. The comparison shows that imports from Korea ROK were well below the constructed normal value. Moreover, the domestic industry has also filed an application for investigation in respect of imports from Korea ROK.

19. In view of above the export price from Israel is taken as normal value as per para 7 of Annexure-1. The expenses as per facts available have been adjusted from the export price to arrive at ex-factory normal value. By this method the normal value has been calculated as US\$ *** PMT for technical grade. Normal value for food grade has been calculated by addition of conversion cost incurred from technical grade to food grade by the domestic industry. The normal value for the food grade has been calculated as US\$ *** PMT.

D.5. Export Price for M/s Yunnan Chemphos Corporation

20. M/s Yunnan Chemphos Corporation, exporter from China PR has submitted response to Exporter's Questionnaire and provided details of exports made to India during the POI. As per information, there were only 7 transactions of exports during the period of investigation. The Authority provisionally accepted the information relating to exports and expenses subject to verification for the purpose of determining export price to India. The export price has been adjusted on account of overseas freight, overseas insurance and others as provided by the exporter. By this method, the ex-factory export price has been calculated as US\$ *** PMT.

D.6. Export price for Non-cooperating Exporter

21. The Authority has determined export price as per the transaction-wise details of imports provided by the DGCI&S. The imports regarding agriculture/fertilizer have not been taken into consideration for determining the export prices. The imports data were further segregated for food and technical grades. From the data, it was also noticed that imports of Phosphoric Acid (Food and Technical Grade) came only in packed form. Export prices for both the grades so determined have been adjusted for expenses on account of Ocean Freight, Marine Insurance, and others, etc. based on facts available. By adopting this method, the ex-factory export price has been determined as US\$*** PMT for technical grade and US\$ *** PMT for food grade.

D.7. Dumping Margin

22. Based on the normal value and export price as determined above, dumping margin determined are as under:

Technical Grade

US\$/MT

Exporter/ Producer	Normal Value	Export Price	Dumping Margin	Dumping Margin %
Non cooperating producers and Exporters from China PR	***	***	***	12.98%

Food Grade

US\$/MT

Exporter/ Producer	Normal Value	Export Price	Dumping Margin	Dumping Margin %
M/s Yunnan Chemphos Corporation	***	***	***	43.21%
Non cooperating producers and Exporters from China PR	***	***	***	55.66%

Weighted Average

US\$/MT

Exporter/ Producer	Dumping Margin	Dumping Margin %
M/s Yunnan Chemphos Corporation	***	43.21%
Non cooperating producers and Exporters from China PR	***	55.37%

The above determined dumped margin is more than *de minimis*.

E. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

E.1 View of the domestic industry

23. The domestic industry made the following submissions:-

- i) Volume of dumped imports has increased in absolute terms and in relation to production and consumption in India. As a result of increase in imports in absolute term and relative to production and consumption, share of the domestic industry has declined. Anti dumping duties were earlier imposed on imports of technical grade. With the imposition of anti dumping duties on technical grade, gradually food-grade imports increased.
- ii) The product is being transshipped from a number of countries. Petitioners have included all these transshipped imports in the determination of demand.
- iii) Imports are significantly undercutting the prices of the domestic industry. Further, imports have had significantly depressing effect on the prices of the domestic industry in the market.
- iv) Production, capacity utilization and sales of the domestic industry increased. Imposition of anti dumping duty on Technical Grade helped prevent further decline

and resulted in improvement with regard to production and capacity utilization. However, increase in sales remained less than increase in production.

- v) Petitioners submit that due to continuous availability of dumped material, the petitioners are unable to improve their performance to optimum level. Even though it is recognized that the financial losses (PBT) of the domestic industry reduced, it would be seen that the domestic industry continues to be in financial losses (PBT) - a situation, no industry can afford to sustain on long term basis. Further, losses increased once again in the investigation period as compared to preceding year.
- vi) Continued financial losses being solely due to the presence of dumped imports in the market in one form or the other, injury to the domestic industry from such dumping is evident.
- vii) Market share of other countries have also declined and the same have also been captured by China.
- viii) Employment level of the domestic industry remains more or less constant.
- ix) Productivity of the domestic industry increased with increase in production.
- x) ROI (PBIT) and cash profits, which were negative earlier, became positive in 2004-05. However, ROI and cash profits became negative once again in the investigation period.
- xi) Inventories declined up to 2004-05, but increased in the investigation period.
- xii) Growth of the domestic industry was positive up to 2004-05 in respect of most of the parameters. However, growth once again became negative in 2005-06.
- xiii) The dumping margin from subject country is not only more than de-minimus but also very substantial. The impact of dumping on the domestic industry is significant.
- xiv) There is no contraction in demand of the subject product. Possible decline in the demand has not caused material injury to the domestic industry.
- xv) Injury to the domestic industry has been caused by the dumped imports.
- xvi) The pattern of consumption with regard to the product under consideration has not undergone any change. At best, it can be considered that technical grade consumers have started consuming food grade also. However, this is not due to technical requirement. This is due to availability of dumped imports from China. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry. In any case technical & food grades being two forms of the product under consideration, inter-se substitutability is irrelevant.
- xvii) There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- xviii) Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.
- xix) Claimed injury to the domestic industry is on account of domestic operations. The domestic industry is substantially into domestic market and not exports.
- xx) Performance of other products did not cause any impact over injury to the domestic industry.
- xxi) There is significant difference between the prices offered by the domestic industry and Foreign Producers. Even when the domestic industry is offering sub-optimal prices, imports are increasing. Resultantly, domestic industry is losing sales.

Thus, decline in sales volumes is a direct consequence of dumped imports from subject countries;

- xxii) Price undercutting caused by the continued dumped imports is causing continuous price pressure on the domestic industry. As a direct consequence, the domestic industry continues to suffer financial losses in spite of imposition of anti dumping duties;
- xxiii) Continued financial losses have been resulting in adverse performance in terms of cash flow and ROI. Thus, continued adverse profits, return on capital employed and cash flow is directly due to dumped imports.

E.2 Views of Other Interested parties

24.

- I) The domestic industry has not completed all sections of the application proforma as require to constitute a valid and fully documented application.
- II) In terms of Rule 5 after determining standing Designated Authority has to examine the accuracy and adequacy of the evidence provided by the domestic industry and required to satisfy itself that there is sufficient evidence with regard to dumping injury and causal link to justify the initiation of the investigation. Only after fulfilling this requirement, Designated Authority can proceed further.
- III) Petitioner prima facie does not show any injury to the domestic industry. All economic parameters suggest sign of growth. Initiation of the investigation is therefore, without establishing injury to the domestic industry.
- IV) Domestic industry has alleged that material is being imported from a number of other countries also, for which petitioners are aware that there is no producer for product concern. The petitioners have neither provided any basis nor Information/evidence in support of their claim.
- V) Petitioner have not been able to bring any evidence on record regarding transshipment, Designated Authority is therefore, requested not to pay any attention with regard to claim of the domestic industry in this regard.
- VI) Information provided by the petitioner does not provide whether the demand is assessed for technical grade or food grade.
- VII) Imports have taken place not due to dumping but due to suspension of supply by the domestic producer and erratic supply. Food grade imports taken place due to lack of production by the domestic industry.
- VIII) No price undercutting analysis has been provided by the domestic industry, therefore, no injury can be claimed.

- IX) No injury has been claimed on account of production, sales, and capacity utilization by the domestic industry.
- X) Profitability of the domestic industry improved when compared to base year.
- XI) Market share of the domestic industry claimed to have been declined, which is not possible as sales of the domestic industry have increased.
- XII) No injury is claimed on account of employment, wages and productivity.
- XIII) There is no nexus between performance of the domestic industry and imports.
- XIV) Marginal increase in inventories can not be the reason of injury to the domestic industry.
- XV) Growth of the domestic industry in terms of all the parameters has been positive.
- XVI) Domestic industry has failed to establish any causal link between alleged dumping and injury to the domestic industry.

E.3. Examination by the Authority

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

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

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

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

Volume and market share in dumped imports

27. Imports volume from subject countries and other countries has been as under:

Imports in MT	2002-03	2003-04	2004-05	2005-06
China PR	180	41	3,148	4,600
Trend	100.00	22.74	1,744.99	2,549.69
Other Countries	774	530	2,974	553
Total Imports	954	571	6,122	5,153
Market Share in Imports %				
China PR	18.90	7.19	51.42	89.27
Other Countries	81.10	92.81	48.58	10.73

28. For analysis of imports, transaction-wise data of imports provided by DGCIS has been relied upon. The imports of Phosphoric Acid can be made in packed and loose form. The data shows that import consignments of Phosphoric Acid (Food and Technical Grade) ranges from 36 kg. to 70 MT. The domestic industry has informed that imports of Phosphoric Acid in loose form are commercially viable only in ship loads where volume of material could be in range of 2000 MT or multiple thereof. The data shows that the volume for imports of other grades are for quantity of more than 2000 MT (only few transactions ranges from 500MT to 2000 MT.). In absence of any other indication in data of imports, the Authority has accepted the argument of the domestic industry that imports of the Phosphoric Acid of Food and Technical Grade during POI were made in packed form. Data shows that imports from China PR has increased significantly from 180 MT in 2002-03 to 4600 MT during POI. During the same period imports from other countries declined. Further, China PR holds significant market share of total imports in India. It is also seen that between 2004-05 and investigation period, whereas Chinese imports increased significantly by 46% whereas from other countries it declined to 19%.

Market share in demand

29. Authority determined domestic consumption/demand of the subject goods considering domestic sales of the domestic industry, sales of other Indian producers and total imports of the subject goods into India. Demand of subject goods so determined is given in the following table:

Demand	2002-03	2003-04	2004-05	2005-06
Total Imports in MT	954	571	6,122	5,153
Sales – domestic industry in MT	33,834	40,335	38,462	42,074
Sales – Other Producers in MT	3,500	4,000	4,286	4,759
Total Demand in MT	38,289	44,906	48,870	51,986
Trend	100.00	117.28	127.64	135.77
Market Share in Demand in %				
Domestic industry	88.37	89.82	78.70	80.93
Other Indian Producers	9.14	8.91	8.77	9.15
China	0.47	0.09	6.44	8.85

Other Countries	2.02	1.18	6.09	1.06
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30. Data shows that demand of subject goods grew by 36% during POI as compared to base year. The market share of dumped imports in demand from China PR increased from 0.47% during 2002-03 to 08.85% during the POI whereas the market share of domestic industry has decreased from 88.37% to 80.93% during the same period.

Imports in relation to production of the domestic industry

31. Authority observed that the dumped Chinese imports have increased in relation to the production of the domestic industry, as is evident from the following table:

	2002-03	2003-04	2004-05	2005-06
Imports from China PR in MT	180	41	3,148	4,600
Production of domestic industry in MT	38,705	39,402	39,288	45,857
Imports from China in relation to production of domestic industry.(%)	0.47	0.10	8.01	10.03

32. It is evident from the above that dumped imports from China have increased in relation to production of domestic industry from 0.47% to 10.03%.

Capacity, production & capacity utilization

33. Capacity, Production and Capacity Utilization of the domestic industry is given in the following table:

	2002-03	2003-04	2004-05	2005-06
Capacity MT	50306	50306	50306	50306
Indexed	100.00	100.00	100.00	100.00
Production MT	38,705	39,402	39,288	45,857
Indexed	100.00	101.80	101.51	118.48
Capacity Utilization %	76.94	78.32	78.10	91.16
Indexed	100.00	101.80	101.51	118.48
Total Demand in MT	38,289	44,925	48,865	51,995
Indexed	100.00	117.33	127.62	135.80
Production in relation to Demand	101.09	87.71	80.40	88.19

34. The data shows that demand of subject goods grew by 36% during POI as compared to base year. During the same period there was no change in capacity of the domestic industry. Production and capacity utilization of the domestic industry grew by 18% during the corresponding period.

Sales

35. Sales Volume of the domestic industry is given in the following table:

	2002-03	2003-04	2004-05	2005-06
Sales in MT	33,834	40,335	38,462	42,074
Indexed	100.00	119.21	113.68	124.35
Year by year trend		19.21	(4.64)	9.39
Demand in MT	38,289	44,925	48,865	51,995
Indexed	100.00	117.33	127.62	135.80
Market Share in Demand in %	88.37	89.78	78.71	80.92
Indexed	100.00	101.60	89.07	91.57

36. The data shows that sales of the domestic industry increased by 24% during POI as compared to the base year. In comparison the demand of the subject goods grew by 36% during the same period. The share of domestic industry in demand declined from 88.37% in 2002-03 to 80.92% in POI.

Price Effect

37. The profitability, profits and cash flow of the domestic industry are given in the following table:-

Profitability (Average)

	2002-03	2003-04	2004-05	2005-06
Cost of Sales (Rs. Per MT)	***	***	***	***
Indexed	100.00	90.87	101.06	91.28
Selling Price(Rs. Per MT)	***	***	***	***
Indexed	100.00	99.85	130.74	129.57
Profit/Loss(Rs. Per MT)	***	***	***	***
Indexed	(100.00)	(71.06)	(35.58)	(6.84)
PBIT Rs. Lacs	***	***	***	***
Indexed	(100.00)	(72.07)	(24.16)	6.19
Cash Profit Rs. Lacs	***	***	***	***
Indexed	(100.00)	(80.12)	(24.04)	18.64

Profitability (Loose form)

	2002-03	2003-04	2004-05	2005-06
Cost of Sales Rs./MT	***	***	***	***

Trend	100.00	89.59	94.49	87.72
Selling price Rs./MT	***	***	***	***
Trend	100.00	99.93	125.89	129.62
Profit/Loss Rs./MT	***	***	***	***
Trend	(100.00)	(70.65)	(36.93)	(10.95)

Profitability (Packed form)

	2002-03	2003-04	2004-05	2005-06
Cost of Sales Rs./MT	***	***	***	***
Trend	100.00	92.16	99.50	94.65
Selling price Rs./MT	***	***	***	***
Trend	100.00	97.69	133.08	125.74
Profit/Loss Rs./MT	***	***	***	***
Trend	(100.00)	(76.05)	(1.76)	(4.17)

38. The data shows that the average cost of sales as compared to base year declined to 91% in 2003-04, rose to 101% before declining to 91.28% during POI. During the same period, the average selling price rose by 31% in 2004-05. However, it declined marginally in POI. The loss per unit declined consistently from base year to POI. In the indexed form -100 in the base year declined to -7 in POI. The cost of sales of the product in loose form from the 100 of base year declined to 90% in 2003-04, increased to 94% in 2004-05 before declining to 88% in POI. During the same period, the average selling price in loose form increased by 26% in 2004-05, by 30% in POI. The average cost of sale of the product in packed form from the 100 of base year declined to 92% in 2003-04, increased to 99% in 2004-05 before declining to 95% in POI. The average selling price in packed form from the 100 of base year declined to 98% in 2003-04, increased by 33% in 2004-05 before declining to 26% in POI. Profitability in the case of loose form shows improvement from base year to POI. (Per unit loss declined from base year to POI) The profitability in case of packed form shows improvement from base year to 2004-05, i.e. the per unit loss declined from base year to 2004-05, however, it again deteriorated in POI. The Authority notes that imports during POI were made only in packed form.

39. The profit (PBIT) shows consistent improvement from base year to POI. In indexed form the loss in base year from -100 turned to profit of 6.19 in POI.

Cash Flow

40. Authority notes that both the constituents of the domestic industry are multi products, multi-location companies. None of the companies maintain separate Information regarding cash flow of the product under consideration. Authority, therefore, determined cash profit situation of the domestic industry, which shows that cash profit continuously improved from base year to POI. In indexed form, from -100 in base year it became 18.64 in POI.

Factors affecting domestic prices

41. For examination of effect of dumped imports from China on the domestic industry, Authority has done a comparison of the domestic selling price of the subject goods (separately for each grade) with the landed value of imported product to determine price undercutting. The net sales realization was arrived after making all necessary adjustments. The landed value of the subject goods was compared with net sales realization of the domestic industry and it was found that the dumped imports from China PR has been undercutting the selling price of the domestic industry in the relevant period. During POI, the undercutting was in the range of 20-30% in food grade and negative in technical grade.

Price Underselling

42. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producers by appropriately considering the cost of production for the product under consideration during the POI. The analysis shows that the landed value of subject goods from China PR is much below the non-injurious price determined for the domestic industry during the period of investigation. The underselling margin was within a range of 10-20% for technical grade and 35-45% food grade from China during the POI.

Price undercutting – POI	Tech Grade	Food Grade
Export Price Rs. Per MT	27139	22224
Landed Price Rs. Per MT	31522	25813
Selling price Rs. Per MT	***	***
Price undercutting Rs. Per MT	***	***
Price undercutting %age	***	***
NIP (Packed)	***	***
Price Underselling Rs./MT		
Price Underselling %	***	***

Return on capital employed

43. The Information regarding return on capital employed is given in the table below:

	2002-03	2003-04	2004-05	2005-06
Net Fixed Assets Rs. Lacs	***	***	***	***
Indexed	100.00	92.91	88.78	88.61

Working Capital Rs. Lacs	***	***	***	***
Indexed	100.00	211.90	188.97	239.22
Capital Employed Rs. Lacs	***	***	***	***
Indexed	100.00	112.33	105.13	113.19
Capital Employed For Domestic Sales Rs. Lacs	***	***	***	***
Indexed	100.00	127.25	117.72	126.52
PBIT Rs. Lacs	***	***	***	***
Indexed	(100.00)	(72.07)	(24.16)	6.19
Return on Capital Employed – NFA %	***	***	***	***
Indexed	(100.00)	(56.63)	(20.52)	4.89

44. The return on capital employed for domestic industry shows consistent improvement from base year to POI. On NFA basis, from -100 in base year it turned to 4.89 in POI.

Employment and Wages

45. Employment & Wages levels of the domestic industry are given in the following table:

	2002-03	2003-04	2004-05	2005-06
Employment No	***	***	***	***
Indexed	100.00	99.66	98.28	102.41
Wages Rs. Lacs	***	***	***	***
Indexed	100.00	96.15	77.24	90.59

46. It is noted that there is no significant difference in the employment and wages.

Productivity

47. Productivity of the domestic industry, as reflected in terms of production per employee, is given in the following table

	Unit	2002-03	2003-04	2004-05	2005-06
Production	MT	***	***	***	***
Employment	NO.	***	***	***	***
Productivity	MT	***	***	***	***
Trend	Indexed	100	102.15	103.28	115.68

48. The productivity of the domestic industry i.e. production per employee improved by 16% during POI as compared to base year.

Growth

49. It has been observed that growth was positive in all parameters from base year to POI.

Inventory

	2002-03	2003-04	2004-05	2005-06
Inventory in MT	***	***	***	***
Indexed	100.00	69.15	38.15	181.84
Sales in MT	***	***	***	***
Inventory for no. of days sales (Days)	***	***	***	***
Indexed	100.00	58.00	33.56	146.23

50. The average inventory in terms of number of days' sales from base year to 2004-05 declined, however, it increased during POI. In the base year, it was equivalent to 9 days whereas in POI it increased to 14 days.

Ability to raise capital/investment

51. Designated Authority notes that both the petitioners are multi product companies and ability to raise investment may not be an indicator of impact of dumping on the domestic industry.

E.4. Conclusion

53. The imports from China increased significantly in 2004-05 and POI. It was 4600 MT during POI as compared to 180 MT in the base year. The market share in imports from subject country increased to 89.27% in POI as compared to 18.90% in the base year. The demand of the subject goods grew by 36% in POI as compared to base year. The domestic industry could increase their production and capacity utilization by 18%. However, the share in demand of the domestic industry declined from 88.37% in base year to 80.93% during POI. The production, sales and capacity utilization of the domestic industry in 2004-05 was less than that of POI as production facility of one of the producer had shut down for 107 days. The average inventory in terms of sales days increased from 9 days in base year to 14 days during POI, however, it was equivalent to 4 days in 2004-05. The closing stock in POI risen sharply to 23 days as compared to 5 days in the preceding year i.e. 2004-05.

54. The average cost of sales as compared to base year declined to 91% in 2003-04, rose to 101% before declining to 91.28% during POI. During the same period, the average selling price rose by 31% in 2004-05. However, it declined marginally in POI. The loss per unit declined consistently from base year to POI. In the indexed form -100 in the base year declined to -7 in POI. The analysis of data shows that the selling price of the Phosphoric Acid in packed form was directly impacted and it declined in

POI. The profitability was improving from base year to 2004-05, deteriorated in POI. The selling price in loose form increased and profitability improved further, however, the domestic industry was still making per unit loss during the POI. The cost of sales (average) for loose and packed form declined during POI as compared to preceding year, the selling price also declined, however, the domestic industry were making per unit loss even during the POI despite improvement in profitability. The return on capital employed was negative in the base year and showed improvement and become marginally positive during the POI.

55. The performance of the domestic industry shows improvement in production, sale and capacity utilization. However, the domestic industry could not take advantage of growth in demand as there remained unutilized capacity even during POI. The impact of imports was visible during POI as compared to preceding year in the form of significant rise in closing stock. The financial performance of the domestic industry improved as the average loss per unit declined significantly. However, the performance started showing deterioration during POI as compared to preceding year i.e. 2004-05 particularly in case of Phosphoric Acid in packed form.

56. The above analysis shows that the domestic industry has suffered material injury.

F. Causal Link and Other Factors

57. The anti-dumping measure was in force on Phosphoric Acid (Technical Grade). (It expired on 9.5.2006) The imports during 2002-03 and 2003-04 declined significantly. In 2004-05, the production of one of the producers of the domestic industry suffered for 107 days due to fire in their plant. During this year, there was surge in imports at significantly higher prices. The export price increased by 175% as compared to previous year and the landed value was much higher than that of the net selling price of the domestic industry indicating that when there was gap in demand and supply in India and domestic industry was not in position to supply goods, the exporters increased the prices significantly to take advantage of shortage of goods in the country. In 2005-06, the domestic producer was in position to restore the production, however, the export price declined to 87% of the previous year for Technical Grade. Significantly, the export price of the food grade which should be normally higher than that of technical grade was being sold at prices lower than that of technical grade. As compared to price of technical grade of previous year, the export price of the food grade was 71% during the POI. During the POI, there was negative undercutting in the technical grade, however, in the food grade there was substantial undercutting. In 2004-05, when the landed value was not undercutting the selling price of the domestic industry, the selling price of the domestic industry increased by 31% as compared to previous year. During POI, the selling price of the domestic industry declined to 99% of the base year in view of the undercutting from the imports. During POI, the cost of production of domestic industry has declined, however, the domestic industry was making per unit loss in 2005-06 even though there was improvement in profitability. There was, however, no reason for the domestic industry to reduce the selling price except that of pressure of dumped imports. The impact of dumped imports were pronounced on the packed form in India as imports came in the

packed form. The selling price of the packed product during POI declined to 94.4% as compared to 2004-05. The cost of sales though also declined to 95.1% during the same period, the losses per unit deteriorated significantly by 139%. The dumped imports did not impact the product in loose form immediately, therefore, there was improvement in the profitability.

58. The demand of the subject goods grew by 36% during POI as compared to base year. The capacity of the domestic industry remained same during the entire injury period. The production and capacity utilisation of the domestic industry grew only by 19% as compared to growth in demand of 36% during the same period. The sale of the domestic industry grew by 24%. The capacity utilization of the domestic industry has shown improvement, however, keeping in view the healthy growth in demand, the capacity of the domestic industry remained unutilized. The average inventory of the domestic industry grew by 81% from base year. In terms of sale days it increased from 9 days in the base year to 14 days. During POI, closing stock of the domestic industry increased to 23 days of sale days as compared to 5 days in 2004-05. As compared to base year, the closing stock increased from 11 days to 23 days.

59. Though the domestic industry was in position to improve production, sales and capacity utilization with the imposition of anti-dumping duty on technical grade, however, during POI the pressure of imports impacted the performance of the domestic industry as indicated from steep rise in inventory and declining selling price of the domestic industry despite the fact that the domestic industry was still making per unit loss, establishing causal link between imports and injury to the domestic industry.

Volume and Prices of imports not sold at the dumped prices

60. It is noted that about 90% imports are from China. Imports have been reported from Israel and South Korea, in addition to China. Imports from Korea ROK were also made at the prices which may have also impacted the selling price of the domestic industry, however, the domestic industry in this regard has already made application requesting for initiation of investigation. The imports from Israel were made at significantly higher prices than that of China.

Performance of Other Domestic producers:

61. There are two other domestic producers of the subject goods apart from the applicants. M/s. Star Chemicals and STS Chemicals. Authority has sent letters to these producers requesting them to provide injury and costing Information. M/s Star Chemicals provided some information, however, subsequently the company did not reply to the queries raised by the Designated Authority.

Trade restrictive practice and competition between the foreign and domestic producers

62. The Authority did not find any trade restrictive practices followed by the domestic industry or other Indian producers.

Contraction in demand or Changes in the pattern of consumption

63. It is noted that there is no contraction in the demand during the period under consideration. On the contrary, the overall demand has increased by 36% over the injury period. Therefore, possible decline in demand is not a factor which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor has investigation shown possible changes in consumption pattern.

Developments in Technology, Export performance and productivity of the Domestic Industry

64. None of the interested parties have raised any issue that these factors could have caused injury to the domestic industry. Further, the investigation has not revealed that technology for production of the subject goods has undergone any significant change. Domestic industry does not have significant exports except 2002-03, nor export performance of the domestic industry has declined. In fact, after 2002-03, exports by the domestic industry declined significantly in 2003-04 and increased thereafter.

G. Conclusions

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

- a. The subject goods have been exported to India from the subject country below its normal value;
- b. The domestic industry has suffered material injury;
- c. The injury has been caused by the dumped imports from subject country.

H. Indian Industry's Interest & Other Issues

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

I. Recommendations

67. In view of the above, the Authority considers it necessary and recommends provisional anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

68. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry.

Accordingly, provisional antidumping duty equal to the amount indicated in Col 9 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject country.

S N	Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	280920	Phosphoric Acid	Technical, Industrial or Food Grade (including industrial grade)	China PR	China PR	Any	M/s Yunnan Chemphos Corp.	206	MT	US\$
2	-do-	-do-	Technical, Industrial or Food Grade (including industrial grade)	China PR	China PR	Any	Any other than above	242.63	MT	US\$
3	-do-	-do-	Technical, Industrial or Food Grade (including industrial grade)	China PR	Any other than above	Any	Any	242.63	MT	US\$
4	-do-	-do-	Technical, Industrial or Food Grade (including industrial grade)	Any other than above	China PR	Any	Any	242.63	MT	US\$

J. FURTHER PROCEDURE

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

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- (b) Exporters, importers, applicants and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of publication of preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- (c) The Authority would conduct further verification to the extent deemed necessary;
- (d) The Authority would disclose essential facts before announcing the final findings.

(R. Gopalan)
Designated Authority