**Government of India**
**Ministry of Commerce & Industry**
**Department of Commerce**
**Directorate General of Anti-Dumping & Allied Duties**

# NOTIFICATION

**Udyog Bhavan, New Delhi-110011**
**Dated 10th May, 2011**

## Final Findings

**Subject: Anti-dumping investigation concerning imports of 1,1,1,2-Tetrafluoroethane or R-134a of all types originating in or exported from China PR and Japan.**

**NO. 14/24/2009-DGAD**: - Having regard to the Customs Tariff Act 1975 as amended in 1995 and thereafter (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, (hereinafter referred to as the Rules) thereof;

## A. Background Of The Case:

The background of the case is as follows:

1. Whereas M/s SRF Ltd, Gurgaon (hereinafter referred to as the applicant) has filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act and the Rules alleging dumping of 1,1,1,2-Tetrafluoroethane or R-134a of all types (hereinafter referred to as the subject goods) originating in or exported from China PR and Japan (hereinafter referred to as the subject countries) and requested for initiation of anti-dumping investigation for levy of anti-dumping duty on the imports of the subject goods, originating in or exported from the subject countries.

2. And whereas, the Authority on the basis of sufficient evidence, submitted by the applicant issued a Public Notice dated 19th August, 2009, published in the Gazette of India, Extraordinary, initiating Anti-dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries, in accordance with the sub Rule 5(5) of the Rules supra, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

3. The anti-dumping investigation concerning imports of 1,1,1,2-Tetrafluoroethane or R-134a of all types, originating in or exported from China PR and Japan, was initiated by the Authority vide Notification No. 14/24/2009-DGAD dated 19th August, 2009 on the basis of an application made by M/s SRF Ltd, having it's office at Block C-8, Sector 45,

Gurgaon, Haryana and factory at Bhiwadi, Tehsil Tijara, Alwar, Rajsthan, the sole producer of the subject goods in India.

4. After verifying the domestic industry's data and after examining the responses submitted by the cooperating producers/exporters from the subject countries and the cooperating importers of the subject goods in India, preliminary finding was issued by the Designated Authority vide Notification No. 14/24/2009-DGAD dated 19th February, 2010, recommending provisional duties against imports of the subject goods from the subject countries.

5. The recommendation of the Designated Authority vide the Preliminary Finding for imposition of provisional duty was accepted by the Central Government and the Revenue Department notified the imposition of the provisional anti-dumping duty vide Notification No. 52/2010-Customs dated 19th April, 2010.

6. The public hearing (oral hearing) as per Rules was convened by the Designated Authority on 10th May, 2010 by inviting the known interested parties for oral hearing.

7. M/s Refex Refrigerants Ltd, Chennai filed a writ petition vide WPC No.6952 of 2010 before the Hon'ble High Court of Madras and challenged the initiation of the investigation and the preliminary finding of the Authority. The Hon'ble High Court of Madras directed the Petitioner to attend the oral hearing scheduled by the Authority and directed the Authority to give an opportunity of personal hearing to the Petitioner.

8. Pursuant to the orders of the Hon'ble High Court of Madras, the Designated Authority heard the petitioner personally on 10th May, 2010 immediately after the oral hearing of the interested parties and passed a speaking order vide No.18/8/2019-DGAD dated 21st May, 2010.

9. M/s Refex Refrigerants Ltd, Chennai filed another writ petition vide WPC No. 8901 of 2010 before the Hon'ble High Court of Madras and obtained interim stay on the Customs Notification No. 52/2010 dated 19th April, 2010.

10. M/s Refex Refrigerants Ltd, Chennai filed another writ petition vide WPC No. 10709 of 2010 before the Hon'ble High Court of Madras and obtained interim stay on the proceedings of the subject investigation including the concerned Customs Notification that notified the provisional duty on the imports of the subject goods originating in or exported from the subject countries.

11. M/s Refex Refrigerants Ltd, Chennai filed another writ petition vide WPC No. 10710 of 2010 before the Hon'ble High Court of Madras. The said writ petition was dismissed as withdrawn by the Hon'ble High Court vide order dated 12th May, 2010.

12. Another Mumbai based importer, M/s Stallion Enterprises, filed a writ petition before the Hon'ble High Court of Bombay against the initiation of the subject investigation and the preliminary findings of the Authority. The writ petition was dismissed by the Hon'ble High Court of Bombay vide order dated 15th June, 2010 .

13. Another Chennai based importer, M/s Hawwa Exims, filed a writ petition before the Hon'ble High Court of Madras vide WPC No. 13438 of 2010. The Hon'ble High Court of Madras granted interim stay vide order dated 25th June, 2010.

14. Another Chennai based importer, M/s Value Refrigerants Pvt Ltd, filed a writ petition vide WPC No. 15826 of 2010. The Hon'ble High Court of Madras granted interim stay vide order dated 21st July, 2010 in this case as well.

15. The Domestic Industry filed Writ Appeals No. 1237 and 1238 before the Hon'ble High Court of Madras. The counter affidavits and the stay vacation petitions filed by the Designated Authority before the Hon'ble High Court of Madras were tagged up with the Writ Appeals of the Domestic Industry before the Hon'ble Division Bench of Madras High Court. The Hon'ble Division Bench heard the matters in its final hearing on 16th August, 2010 and reserved the order.

16. SLP was filed by the Domestic Industry, before the Hon'ble Supreme Court, against the interim stay orders granted by the Hon'ble Madras High Court. The Hon'ble Supreme Court vide order dated 13th December, 2010 directed Hon'ble High Court of Madras to expeditiously issue the reserved judgment within 4 weeks:

> *Heard learned counsel on both sides. We request the High Court to expeditiously deliver the judgment in the pending Writ Appeal Nos.1237 of 2010 and 1238 of 2010 and Writ Petition Nos.8901 of 2010 and 10709 of 2010. This order has become necessary in view of the fact that the cut-off date is 18th February, 2011, in respect of final findings on Anti Dumping Duty. We request the High Court to deliver this judgment, preferably within a period of four weeks from today. The special leave petitions are, accordingly, disposed of.*

17. On 6th January, 2011, Hon'ble Division Bench of Madras High Court passed the following Judgment:

> *"17. Therefore, without going into various aspects urged and argued on either side in view of the further fact that serious disputed questions of fact regarding the stature of the complainant, which will have the impact of cutting the root, are involved in the matter, we set aside the orders dated 19.4.2010 and 21.5.2010 passed by the third respondent and direct the first respondent/Government of India to appoint/nominate another officer in the place of the third respondent, to act as a Designated Authority for this case, within a period of four weeks from the date of receipt of a copy of this order. The officer so appointed/nominated is directed to conduct enquiry by scrupulously following the law governing the subject, viz. the Customs (Tariff) Act, 1975 and the Customs Tariff*

*(Identification, Assessment. and Collection of Anti Dumping Duty on dumped articles and for determination of Injury) Rules, 1995 and pass orders within six weeks thereafter. Till that time, the preliminary report dated 19.2.2010 shall not be given effect to. With this direction, all these matters are disposed of. No costs. Connected Miscellaneous Petitions are closed."*

18. SLP filed by the Authority against the interim stay orders granted by the Hon'ble Madras High Court vide No.18447-18449 of 2010 came up for hearing on 14.01.2011 and the same was disposed of as infructous.

19. The Designated Authority again filed SLP against the final judgment dated 06.01.2011 of the Hon'ble Division Bench of Madras High Court vide No.1913-1916. The same was finally heard by the Hon'ble Supreme Court on 03.02.2011 and disposed of as follows:

> *" We have heard the learned Additional Solicitor General and the learned senior counsel for the parties at length.*
> *In our considered view, no interference is called for. The special leave petitions are dismissed."*

20. In compliance with the Orders dated 6th January, 2011 of the Hon'ble Division Bench of Madras High Court and pursuant to the orders dated 3rd February, 2011 of the Hon'ble Supreme Court, the new Designated Authority was appointed by the Central Government in term of Rule 3 of the Rules with effect from 14th February, 2011. The Designated Authority so appointed, filed a writ application before the Hon'ble High Court of Madras, praying for extension of time granted by them vide their judgment dated 06.01.2011, for completing the subject investigation.

21. Another oral hearing was given by the new Designated Authority to the known interested parties on 1st March, 2011 and the interested parties were given opportunity of being heard and file their submissions.

22. The Hon'ble High Court of Madras, vide orders dated 25th March, 2011, disposed of the WP No. 15826 of 2010 and MP No. 1 and 2 of 2010 in M/s Value Refrigerants Pvt Ltd vs Union of India with a similar judgment as passed by the Hon'ble Division Bench in the WA No. 1237 of 2010 and batch cases 06.01.2011 in the SRF Ltd vs Refex Refrigerants Ltd.

23. The Hon'ble Madras High Court vide its order dated 30th March, 2011 in the Misc. Petition Nos. 1 and 1 of 2011 in Writ appeals No. 1237 of 2010 made the following order:

> " In view of the dismissal of SLP. Nos. 1913 to 1916 of 2011 by the Hon'ble Apex Court by order dated 3.2.2011, it is submitted that the New designated authority has been appointed on 14.2.2011.
>
> Accordingly, though it is not feasible to grant a period of six months time as requested by the petitioners herein.

We consider it appropriate to grant a period of six weeks from today to complete the investigation.

M.P.Nos. 1&1 of 2011 are disposed of accordingly."

Further, M/s Refex Refrigerants Ltd, Chennai had challenged the aforesaid orders dated 30th March, 2011 of the Hon'ble High Court of Madras, before the Hon'ble Supreme Court of India, vide their SLP(c) CC No. 7520-7523/2011. The Hon'ble Supreme Court heard the SLP on 9th May, 2011 and dismissed the SLP as withdrawn.

24. As per Rule 17 of the Anti-dumping Rules, the Designated Authority shall, within one year from the date of initiation of an investigation, submit to the Central Government its final finding, although the Central Government may, in its discretion in special circumstances, extend further the aforesaid period of one year by six months. Therefore the maximum time period available under the Rules for completing an investigation is 18 months from the date of initiation of investigation. The above provisions of the Anti-dumping Rules are clearly in line with Article 5.10 of the WTO Agreement which reads as follows:

"Investigations shall, except in special circumstances, be concluded within one year and in no case more than 18 months, after their initiation".

25. Due to the stay orders granted by the Hon'ble Madras High Court, the Authority could not complete the subject investigation within the time frame stipulated under the Anti-dumping Rules and WTO Agreement. However, pursuant to and in compliance with the orders dated 6th January, 2011 of the Hon'ble Division Bench of the Madras High Court, orders dated 3rd February, 2011 of the Hon'ble Supreme Court and orders dated 30th March, 2011 of the Hon'ble Division Bench of the Madras High Court, the subject investigation has been continued by the Authority beyond the maximum time limit prescribed under the WTO Agreement and the Anti-dumping Rules.

## B. PROCEDURE

26. The procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the initiation of the above investigation by the Authority:

i. The Embassies of the subject countries in New Delhi were informed about the initiation of the anti-dumping investigation in accordance with the sub-rule (5) of Rule 5 supra;

ii. The Designated Authority sent copies of the initiation notifications dated 19th August, 2009 to the embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic industry, as per the information available with it. The known interested parties to this investigation were requested to file questionnaire response and make their views known in writing within prescribed time limit. Copies of the letter, petition

and questionnaire sent to the exporter were also sent to the Embassies of the subject countries along with a list of known exporters/ producers with the request to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time.

iii. Copy of the non-confidential version of the application filed by the domestic industry was made available to the known exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra.

iv. Questionnaires were sent to the known exporters from subject countries in accordance with Rule 6(4) to elicit relevant information. Whereas no response has been received from Japan, responses to exporter's questionnaire and MET questionnaire have been received from the following exporters of the subject goods from China PR :

a) Zhejiang Juhua Co. Ltd., Kecheng District, Quzhou City, Zhejiang Province, China PR – 324004

b) Zhejlang Quhuaflour – Chemistry Co., Ltd., Juhua Group, Kecheng District, Quzhou City, Zhejiang Province

c) Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd., 18, South of Binjiang Road, Shihua Industrial Park, Taicang Port, , Jiangsu Province, China PR – 215433.

d) Sinochem Modern Environmental Protection Chemicals (Xi'an) Co. Ltd., Jinghe Industrial Area, Xian Economic-Technological Development Zone, Xian, China PR.

e) DuPont Trading (Shanghai) Co. Ltd., 10/F Building # 11, 399 Keyuan Road, Zhangjiang Hi-Tech Park, Pudong New District, Shanghai – 201203, China PR.

f) M/s Zhejiang Juhua Gonglian Foreign Trade Co Ltd., 2nd Floor, No. 243, Juhua Centre Road, Quzhou China.

v. Post initiation views/comments were also received from the China Association of Flourine & Silicon Industry.

vi. Questionnaires were sent to the known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4) and response to the importers questionnaire has been received from the following

importers of the subject goods in India;

a) Navine Fluorine International Ltd., 35-C, Shivaji Marg, New Delhi - 110015

b) E.I. DuPont India Private Limited, DLF Cyber Greens, 7th Floor, - 'C' Tower 25A – DLF City, Phase III Gurgaon 122002, Haryana.

vii. Post initiation, views/comments were also received from the importers/users of the subject goods viz; M/s Refex Refregerants Ltd , M/s Chennai Marine Trading Pvt Ltd and M/s Honneywell International Pvt Ltd . The submissions made by them has been considered in this finding.

viii. Post Preliminary Findings M/s Amarchand & Mangaldas and Suresh A. Shroff & Co has submitted request for condonation of delay for submission of exporters questionnaire response on behalf of M/s Mexichem Fluor Japan Ltd, Japan vide their letter dated 2nd June, 2010. In support of their request for condonation of delay they have stated that M/s Mexichem Fluor Japan SA de CV is a Mexican company that has taken over M/s INEOS Fluor Japan Ltd, Japan, (a subsidiary of M/s INEOS U K, a UK based company, which produced the Refrigerant HFC-R-134a), on March 31, 2010, after the preliminary finding was issued. They have argued that the PF was given on 19th February, 2010 and they have taken over the Japanese company on 31st March, 2010 and in view of that they could not have responded to the initiation of the investigation by the Authority on19th August, 2009. They have informed that they could know about the subject investigation only after taking over the said company, world-wide, including their Japan based company. However, the investigation initiation notification was sent to M/s Mitsui Dupont Fluorochemicals Co Ltd, known producer/exporter in Japan as declared by the domestic industry in their application, and also to the Japanese embassy in India. But, no response was received from any producer/exporter from Japan. In view of the above and undue delay in filing the request for condonation of delay by M/s Amarchand & Mangaldas and Suresh A. Shroff & Co on behalf of M/s Mexichem Fluor Japan Ltd, Japan, the Authority did not accept the request for condonation of delay for filing the exporter's questionnaire response by M/s Mexichem Fluor Japan Ltd, Japan. However, the submissions made by the interested party have been considered in this finding.

ix. Similarly, post preliminary findings, M/s Lakshmi Kumaran & Sridharan has requested for condonation of delay for filling the exporters questionnaire response on behalf of M,/s Honeywell Fluorine Products Europe BV, Larderhoogtweg, Amsterdam, Netherland vide their letter dated 30th April, 2010. They have argued that Honeywell Europe was not aware of the subject investigation earlier and no sooner they came to know about the subject investigation, they have approached the Authority. However, the plea of M/s Honeywell Fluorine Products Europe BV that they were not aware of the subject investigation earlier does not sound convincing since M/s Zhejiang Quhua Fluor Co Ltd, China PR and M/s Sinochem Environmental Protection Chemicals (Taikang) Co Ltd, China PR, from whom they have procured the subject goods and exported to India, have submitted questionnaire responses in the subject investigation. In view of the above and due

to undue delay in filing the request, the Authority did not accept the request for condonation of delay for filing the exporter's questionnaire response by M/s Honeywell Fluorine Products Europe BV, Larderhoogtweg, Amsterdam, Netherland. However, the submissions made by the interested party have been considered in this finding.

x. Post Preliminary Findings M/s Stallion Enterprises, Mumbai submitted importer's questionnaire response, the same being belated was not accepted by the Authority. However the relevant information and submissions made by M/s Stallion Enterprises, Mumbai have been considered in this finding.

xi. Submission was also furnished by the China Association of Flourine & Silicone Industry and the same have been considered in this finding.

xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;

xiii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the injury period including the period of investigation.

xiv. The Non-Injurious Price based on the cost of production on the basis of the accounting information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether anti-dumping duty lesser than the dumping margin would be sufficient to remove injury to Domestic Industry;

xv. The Authority initiated the investigation with Non-Market Economy (NME) presumption in respect of People's Republic of China in terms of Para 8 of Annexure I to the Rules and provided an opportunity to the country concerned and the exporters from People's Republic of China to rebut the said presumption under the said Rule. It was also mentioned in the said notification that the Authority may however, notify an appropriate third country, in the due course, for the purpose of determination of normal value in China PR in terms of para 7 of Annexure I to the Rules. However, none of the interested parties, including the applicants, have placed any material fact before the Authority to select an appropriate market economy third country for the above purpose.

xvi. As per the practice adopted by the DGAD, the injury period covers POI and preceding three years. The period of investigation in the subject case is starting from 1st April 2008 to 31st March 2009 (12 months). However, in the subject case the injury investigation period covers the period 2007-08 and the POI, as the applicant has started commercial production in the year 2007-08 only.

xvii. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to all the known interested parties to present their views orally in oral

hearing held on 10th May, 2010 and 1st March, 2011. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally.

xviii. The submissions made by the interested parties post prior to notification of the preliminary findings and the submissions made in response to the preliminary findings and arguments made in the written submissions/ rejoinders received from the known interested parties after the both the oral hearings and issues raised by interested parties in response to the disclosure statement and also before various courts have been considered, wherever found relevant, in this finding.

xix. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the cooperative respondent producers/exporters in China PR. Since no response was received from Japan, no verification was conducted.

xx. The disclosure statement was issued by the Authority disclosing the essential facts of the investigation to the interested parties. Comments were received from the following interested parties:

a) M/s A.K.Gupta, TPM Consultants, on behalf of M/s SRF Ltd, the Domestic Industry,

b) M/s Lakshmi Kumaran & Sridharan on behalf of M/s Du Pont Trading(Shanghai) Co Ltd, China PR, El Dupont India Pvt Ltd, India and M/s Honeywell Florine Products Europe BV,

c) M/s Amarchand Mangaldas & Suresh A. Shroff & Co on behalf of M/s Mexichem Fluor, Japan Ltd, Japan,

d) M/s Seth Associates Advocates & Legal Consultants on behalf of M/s Sinochem Modern Environmental Protection Chemicals (Xian) Co Ltd and M/s Sinochem Environmental Protection Chemicals (Taikang) Co Ltd .

No other interested parties including those who had filed cases before various courts namely M/s Stallion Enterprises, Mumbai, Refex Refrigerants Ltd, Chennai, M/s Hawwa Exims, Chennai and M/s Value Refrigerants Pvt Ltd, Chennai have filed comments on the disclosure statement issued by the Authority. M/s Refex Refrigerants Ltd, Chennai vide their letter dated 9th May, 2011 requested the Authority for grant of twenty-four hours time from the date of their letter to submit comments on the disclosure statement and opportunity for making oral submissions. However, in view of the fact that adequate opportunity was granted to the interested parties by the Authority to make oral as well as written submissions and the time granted for submission of comments on the disclosure statement was 6th May, 2011, the Authority did not consider it necessary to grant any further time/opportunity to M/s Refex Refrigerants Ltd, Chennai for making submission.

The relevant comments/submissions received from the interested parties have been examined and addressed in this finding.

xxi. The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated as confidential.

xxii. The exporters, producers, importers, consumers and other interested parties who have not supplied information in this investigation have been treated as non co-operating interested parties and the Authority has recorded these findings on the basis of the facts available.

xxiii. *** in this finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Anti-dumping Rules.

xxiv. The exchange rate adopted for the POI is Rs. 45.72=1 US $.

## C. Litigation Before Various Courts

### C.1 WPC No. 6952 of 2010 filed by M/S Refex Refrigerants Limited, Chennai

27. After issuance of the preliminary findings, a Chennai based importer namely M/S Refex Refrigerants Limited, had filed a writ petition vide No. 6952 of 2010 before the Hon'ble High Court of Madras challenging initiation of the investigation and the preliminary findings issued by the Authority. The Hon'ble High Court vide their orders dated 19.04.2010 at para 6 to 9 of the order have directed as follows:

> *"6. Going by the said regulation governing the investigation, the only grievance of the petitioner herein is that without adverting to the various contentions raised therein, the provisional order has been passed. It is further stated that the complainant itself is an importer of the goods. Having regard to the serious prejudice faced and in the light of the absence of any remedial provisions as against the provisional order of the respondent, it is absolutely essential that the petitioner's interest be properly considered before any demand is made on the petitioner.*
>
> *7. I agree with the submission of the learned Advocate General that having regard to the guidelines given in the Rules and the specific request made by the petitioner in their representation seeking a personal hearing in this matter without disturbing the order, the second respondent is hereby directed to consider the objection of the petitioner in terms of the representations dated 24/09/2009 as well as 05/04/2010 by affording opportunity to the petitioner for personal hearing and pass order thereon within a period of six weeks from today. It is also made clear that the respondent shall furnish the materials which are relied on as provided for under sub clause 6 of Rule 6 of the Customs Tariff (Identification, Assessment and collection of Anti-Dumping Duty on dumped Article and for determination of Injury) Rules, 1995.*

*8. Considering the above directions issued, in the meantime, the respondents are directed not to implement the order. Depending on the outcomes of the order passed, it is open to the respective parties to work out their remedies.*

*9. With the above observation, the writ petition is disposed off. No costs. Consequently, connected MPs are closed."*

28. Pursuant to the orders of the Hon'ble High Court of Madras the petitioner was granted a personal hearing by the Designated Authority at 12.30 PM in Room No. 141, Udyog Bhavan, New Delhi, immediately after the Public Hearing(oral hearing) held at 11.00 AM on 10th May, 2010 in the same venue. The representatives of the petitioner had attended the Public Hearing(oral hearing) and preferred not to make any submissions. The representatives of the petitioner also attended the personal hearing granted by the Designated Authority in terms of the orders of the Hon'ble High Court of Judicature at Madras under protest and made submissions vide their letter dated 10th May, 2010.

29. A speaking Order vide No.18/8/2019-DGAD dated 21st May, 2010 was issued by the Designated Authority in compliance with the orders dated 19.04.2010 of the Hon'ble Madras High Court in the matters of WP No. 6952 of 2010 filed by M/s. Refex Refrigerants Limited, Chennai. The speaking order dated 21.05.2010 was set aside by the Hon'ble High Court of Madras vide order dated 06.01.2011. However the submissions made by the petitioner during the personal hearing granted on 10.05.2010 have been considered in this finding.

**C.2 <u>WPC No. 8901 of 2010 filed by M/s Refex Refrigerants Ltd, Chennai before Hon'ble High Court of Madras</u>**

30. M/s Refex Refrigerants Ltd, Chennai had filed another WPC No. 8901 of 2010 before the Hon'ble High Court of Madras challenging the initiation of the subject investigation, the preliminary finding issued by the Authority and the Customs Notification that notified the provisional duty. The Hon'ble Bench of the Madras High Court vide order dated 5th May, 2010 in respect of WP No. 8901 of 2010 filed by M/s Refex Refrigerants Ltd, Chennai had directed the petitioner to participate in the public hearing scheduled by the Designated Authority on 10th May, 2010 and also directed that pending final decision by the Designated Authority in the matters the Customs Notification No 52/2010 dated 19th April 2010 shall not be given effect to in so far as the petitioner is concerned. The order of the Hon'ble Court is quoted below:

"6. *Considering the facts and circumstances of the case and submissions made by the learned senior counsel for the petitioner as well as learned standing counsel appearing for the respondents, the petitioner is directed to participate in the oral hearing scheduled on 10.05.2010 and raise all its contentions which are open to it under law and thereafter, the Designated Authority shall take a final decision in the matter. Pending such decisions, the impugned notification in No. 52/2010 – Customs, dated 19.04.2010 shall not be given effect to in so far as the petitioner is concerned. Notice*. "

**C.3 WPC No. 10709 of 2010 filed by M/s Refex Refregerants Ltd, Chennai before Hon'ble Bench of the High Court of Madras,**

31. The Hon'ble Bench of the Madras High Court vide order dated12th May 2010 in respect of WP No. 10709 of 2010 filed by M/s Refex Refrigerants Ltd, Chennai has granted interim stay on the proceedings of the subject investigation being conducted by the DGAD, the preliminary findings issued by the Designated Authority and the provisional duties imposed by the Department of Revenue vide Customs Notification No.52/2010-Customs dated 19th April, 2010. The order of the Hon'ble Bench is quoted below:

*"Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. SATISH PARASARAN, Advocate for the petitioner the court made the following order :-*

*Interim stay as prayed for. Notice. Private notice is also permitted.*

*Post alongwith W.P.No. 8901/2010."*

**C.4 WPC No. 10710 of 2010 filed by M/s Refex Refrigerants Ltd, Chennai before Hon'ble High Court of Madras,**

32. The writ petition No 10710 of 2010 filed by M/s Refex Refrigerants Ltd, Chennai was dismissed as withdrawn vide order dated 12th May, 2010 of the Hon'ble Bench of the Madras High Court.

**C.5 WPC No. 13438 filed by M/s Hawwa Exims, Chennai before Hon'ble High Court of Madras**

33. In the Writ Petition No. 13438 of 2010 filed by M/s Hawwa Exims, another Chennai based importer, vs Union of India the Hon'ble High Court of Madras vide order dated 25h June 2010 granted interim stay and passed the order as follows:

*"Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. MOHAMED SALEEM, Advocate for the petitioner, the court made the following order :-*

*Interim stay. Notice. "*

**C.6 WPC No. 15826 of 2010 filed by M/s Value Refrigerants Pvt Ltd Chennai before Hon'ble High Court of Madras,**

34. In the Writ Petition No. 15826 of 2010 filed by M/s Value Refrigerants Pvt. Ltd., Chennai vs Union of India the Hon'ble High Court of Madras vide order dated 21st July 2010 passed the order as follows:

*"Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S. T.RAMESH, Advocate for the petitioner in both the petitions and of Mr. M. RAVIEEDRAN, Addl. Solicitor General for Mr. K. RAVICHANDRAN, Advocate taking notice for the Respondents in both the petitions the court made the following order :-*

*Mr. M.Raveendran, Addl. Solicitor General took notice for respondents.*

*In view of the fact that in similar matters, this court granted interim order in M.B. Nos. 2 & 3 of 2010 in W.P. No. 8901 of 2010, dated 5.5.2010. Though writ appeal was filed, no stay having been granted, there may be a stay of this order till the disposal of the writ appeal.*

*In view of the same, their will be an order of interim stay, till the disposal of the writ appeal nos. 1237 and 1238 of 2010, till 2.8.2010.*

*Post on 2.8.2010."*

**C.7 WPC No. 971 of 2010 filed by M/s Stallion Enterprises, Mumbai before the Hon'ble Bombay High Court**

35. M/s Stallion Enterprises, Mumbai filed the WPC No. 971 of 2010 before the Hon'ble Bombay High Court in the subject anti-dumping investigations. The petition was dismissed by the Hon'ble Divisional Bench of Mumbai High Court vide order dated 15th June 2010.

**C.8 WPC No. 13438 of 2010 filed by M/s Hawwa Exims, Chennai before the Hon'ble Madras High Court**

36. Another Chennai based importer, M/s Hawwa Exims, filed a writ petition before the Hon'ble High Court of Madras vide WPC No. 13438 of 2010. The Hon'ble High Court of Madras granted interim stay vide order dated 25th June, 2010.

**C.9 WPC No. 15826 of 2010 filed by M/s Value Refrigerants Pvt Ltd, Chennai before the Hon'ble Madras High Court**

37. Another Chennai based importer, M/s Value Refrigerants Pvt Ltd, filed a writ petition vide WPC No. 15826 of 2010. The Hon'ble High Court of Madras granted interim stay vide order dated 21st July, 2010 in this case as well.

38. The Domestic Industry filed Writ Appeals No. 1237 and 1238 before the Hon'ble High Court of Madras. The counter affidavits and the stay vacation petitions filed by the Designated Authority before the Hon'ble High Court of Madras were tagged up with the Writ Appeals of the Domestic Industry before the Hon'ble Division Bench of Madras

High Court. The Hon'ble Division Bench heard the matters in its final hearing on 16th August, 2010 and reserved the order.

39. SLP was filed by the Domestic Industry, before the Hon'ble Supreme Court, against the interim stay orders granted by the Hon'ble Madras High Court. The Hon'ble Supreme Court vide order dated 13th December, 2010 directed Hon'ble High Court of Madras to expeditiously issue the reserved judgment within 4 weeks:

> *Heard learned counsel on both sides. We request the High Court to expeditiously deliver the judgment in the pending Writ Appeal Nos.1237 of 2010 and 1238 of 2010 and Writ Petition Nos.8901 of 2010 and 10709 of 2010. This order has become necessary in view of the fact that the cut-off date is 18th February, 2011, in respect of final findings on Anti Dumping Duty. We request the High Court to deliver this judgment, preferably within a period of four weeks from today. The special leave petitions are, accordingly, disposed of.*

40. The Hon'ble High Court of Madras, vide orders dated 25th March, 2011, disposed of the WP No. 15826 of 2010 and MP No. 1 and 2 of 2010 in M/s Value Refrigerants Pvt Ltd vs Union of India with a similar judgment as passed by the Hon'ble Division Bench in the WA No. 1237 of 2010 and batch cases 06.01.2011 in the SRF Ltd vs Refex Refrigerants Ltd.

41. The Hon'ble Madras High Court vide its order dated 30th March, 2011 in the Misc. Petition Nos. 1 and 1 of 2011 in Writ appeals No. 1237 of 2010 made the following order:

> " In view of the dismissal of SLP. Nos. 1913 to 1916 of 2011 by the Hon'ble Apex Court by order dated 3.2.2011, it is submitted that the New designated authority has been appointed on 14.2.2011.
>
> Accordingly, though it is not feasible to grant a period of six months time as requested by the petitioners herein.
>
> We consider it appropriate to grant a period of six weeks from today to complete the investigation.
>
> M.P.Nos. 1&1 of 2011 are disposed of accordingly."

42. On 6th January, 2011, Hon'ble Division Bench of Madras High Court passed the following Judgment:

> *"17. Therefore, without going into various aspects urged and argued on either side in view of the further fact that serious disputed questions of fact regarding the stature of the complainant, which will have the impact of cutting the root, are involved in the matter, we set aside the orders dated 19.4.2010 and 21.5.2010 passed by the third respondent and direct the first respondent/Government of India to appoint/nominate another officer in the place of the third respondent, to act as a Designated Authority for this case, within a period of four weeks from*

*the date of receipt of a copy of this order. The officer so appointed/nominated is directed to conduct enquiry by scrupulously following the law governing the subject, viz. the Customs (Tariff) Act, 1975 and the Customs Tariff (Identification, Assessment. and Collection of Anti Dumping Duty on dumped articles and for determination of Injury) Rules, 1995 and pass orders within six weeks thereafter. Till that time, the preliminary report dated 19.2.2010 shall not be given effect to. With this direction, all these matters are disposed of. No costs. Connected Miscellaneous Petitions are closed."*

43. SLP filed by the Authority against the interim stay orders granted by the Hon'ble Madras High Court vide No.18447-18449 of 2010 came up for hearing on 14.01.2011 and the same was disposed of as infructous.

44. The Designated Authority again filed SLP against the final judgment dated 06.01.2011 of the Hon'ble Division Bench of Madras High Court vide No.1913-1916. The same was finally heard by the Hon'ble Supreme Court on 03.02.2011 and disposed of as follows:

*" We have heard the learned Additional Solicitor General and the learned senior counsel for the parties at length.*
*In our considered view, no interference is called for. The special leave petitions are dismissed."*

45. Relevant averments made by the interested parties before various Courts in their respective writ petitions, which have also been considered by the Authority in this finding, are as follows:

**a)** Dumping per se not condemnable as it is recognized that producers sell their goods at different prices to different countries. Price discrimination in the form of dumping is a common international commercial practice.

b) SRF has failed to disclose that they are also an importer of the subject goods.

c) The entire anti-dumping proceeding has been initiated on the basis of a project report of M/s SRF which contains extremely rosy projections.

d) Preliminary findings issued by the Authority recommending provisional anti-dumping duty without affording the petitioner an opportunity of personal hearing and without considering the representations of the petitioner dated 24/09/2009 and 05/04/2010.

e) The petitioner was not supplied relied upon documents by Authority.

f) The representation dated 24th September, 2009 and 05th April, 2010 has not been considered by the Authority in preliminary findings.

g) The petitioner was not given notice of the anti-dumping proceedings nor was it called for a personal hearing or given copies of the complaint by the M/s SRF or the other documents before the Authority.

h) The applicant is not a domestic industry under Rule 2(b) of AD Rules since they are also importer of the subject goods.

i) The applicant does not manufacture the product in any justifiable quantity in order to qualify as domestic industry under Rule 2(b) of AD Rules.

j) The applicant is beneficiary of various Government subsidies.

k) The PUC has been incorrectly determined in extremely vague, wide and amorphous manner. Proposed levy of anti-dumping duty extends beyond the products that are claimed to be allegedly manufactured by the domestic industry.

l) Imposition of anti-dumping duty will result in artificial increase in the price of the subject goods.

m) The Chinese and Japanese companies use extremely cost effective methods and technology to produce the product under consideration and their prices are globally competitive.

**Submissions made by the interested parties during the course of the investigation**

46. Following submissions have been made by the various interested parties during the course of the investigation:

i. Installed capacity of applicant is much less than the domestic demand.

ii. Imposition of proposed duty on the subject goods will lead to monopolization of the trade by the applicant.

iii. No appropriate third party has been notified for the purpose of determination of normal value of the subject goods.

iv. Subject goods are also imported from USA, UK and Germany. Hence the present proceeding is incomplete in respect of the subject goods.

v. Since the Sale of applicant increased by 56.33% in 2008-09, it clearly establishes that the applicant's unit is a profit making unit.

vi. Applicant has exported subject goods during 2007-08 and 2008-09. It indicates that low price is the applicant's strategy to oust the other players from the market.

vii. The increase in import is due to manifold increase in demand in the Indian market during the so called injury period.

viii. China PR and Japan use advance technology to produce the subject goods cost effectively.

ix. There is known difference between domestically produced subject goods and goods imported from the subject countries. The proposed levy of anti-dumping duty is extended beyond the products claimed to be purportedly manufactured by the purported domestic industry. R-134A from China is superior in terms of purity and quality.

x. Injury period should not be less than 4 years as mandated under the Act and Rules.

xi. The applicant is claiming injury based on its plan/project report which is totally unrealistic and unachievable without any proper verification.

xii. The Applicant did not include Stallion and Honeywell as known interested parties.

xiii. Wide publicity of the initiation notification under reference was necessarily required to be given throughout India.

xiv. The Designated Authority should have disclosed all the facts in the initiation notification.

xv. The applicant is not domestic industry under Rule 2(b) of AD Rules since they are also importer of the subject goods. Further, the applicant does not manufacture the product in any justifiable quantity in order to qualify as domestic industry under Rule 2(b) of AD Rules.

xvi. DGAD has not disclosed the detailed facts/adjustments of computing the Normal Value the ex-factory export price, dumping margin calculation etc in the Preliminary Finding.

xvii. Determination of Normal Value in terms of Rule 7 of Annexure I of the Anti-dumping Rules without considering the data furnished by the producer/exporter is against the express provisions of Section 9A(6A) of the Customs Tariff Act.

xviii. Rejection of the MET claims is unreasonable and unjust.

xix. Both basic customs duty and customs education cess should be included while calculating the landed value.

xx. Improvement in various injury parameters does not show injury to the domestic industry. The various economic parameters of domestic industry such as Capacity, Production, Capacity Utilization, Domestic Sales, Cost of sales, profitability, etc, do not indicate material retardation to establishment of domestic industry.

xxi. Contrary to the observations of the Authority in the PF, the actual sales volumes of the Applicant have far exceeded the projected sales in the project report.

xxii. During the start up period of an Industry the cost remains very high due to unabsorbed overheads and inefficient production process, which results in high raw material consumption. These facts should have been examined by the Designated Authority while coming to a conclusion that purported injury has been caused by alleged dumped imports or the same is due to start up operations.

xxiii. Regarding causal link in the instant case the following submissions were made:

a) Change in the pattern of consumption despite increase in demand, domestic industry is unable to make profits in the sale of R134a because of its very high cost structure.

b) Poor exports achieved compared to projected export targets were the sole reason for the losses suffered by the domestic industry during 2008-09.

c) SRF is offering significantly low prices; users are forcing exporters also to match the prices set by SRF.

d) There is no causal link between the injury to the domestic industry and the imports from china.

e) Global recession is the main cause of decline in sales prices, decline in demand of finished products and decline in production and sales quantities.

xxiv. The Domestic Industry has never claimed Material Retardation. Moreover, both Material Injury and Material Retardation to the establishment of the Domestic Industry cannot co-exist.

xxv. Project report cannot be an authentic document to compare and assess the performance of the Domestic Industry.

xxvi. The Non-injurious Price determined by the Designated Authority is highly superfluous.

xxvii. Normal Value determined on the basis of conversion cost based on Domestic Industry cost data is incorrect.

xxviii. Mexichem Japan contended that there are various types/grades of the subject goods such as Industrial grade, 1-impact, CGMP and high purity. They further contended that different types/ grades are not substitutable and alleged that domestic industry is not manufacturing any grade other then industrial grade.

xxix. Investigation is time bared in term of Rule 17 of AD Rules and Article 5.10 of the WTO Agreement on anti-dumping.

**Submissions made by the domestic industry during the course of the investigation**

47. During the course of the investigation the following submissions have been made by the Domestic Industry:

i. The petitioner is not importing the product under consideration after commencement of commercial production.

ii. None of the Chinese producers can be given market economy treatment.

iii. India is an appropriate surrogate country for Chinese producers. This has been accepted by other investigating authorities also.

iv. The argument of the interested parties that the proposed imposition of ADD on import of R 134a is without rationale is baseless.

v. The argument of the interested parties that the applicant does not want to compete with advance technology and had also received a huge subsidy for phasing out CFC 12 are baseless.

vi. Increase in demand cannot be the certificate for resorting to dumping.

vii. The argument of the interested parties that the installed capacity of the applicant is much less than the domestic demand and imposition of duty will make the applicant exploit and monopolize the trade is not correct and basseless.

viii. The argument of the interested parties that the normal value of subject good in China PR and Japan is significantly higher than the ex factory export price is without any basis.

ix. Increase in sale volume by the domestic industry does not mean that the product is profitable.

x. Export made by the domestic industry does not mean that the product is not being imported at dumping prices in the Indian market or that the domestic industry is not suffering injury due to dumping.

xi. The submission of the interested parties that increase in import is due to increase in demand is baseless. Increase in imports is due to dumping.

xii. The Applicant uses the same technology as the producers in the subject countries.

xiii. The interested parties have argued that Japan has not yet responded and China PR has been treated as NME, hence, without proper investigation, imposition of duty is not appropriate and justified. But, it is for the Japanese producers to respond to the Authority. The Designated Authority cannot force a party to respond nor can the non-cooperation by a party prevent to conduct and completion of the investigations.

xiv. The project report of the domestic industry is approved by its Board of Directors and is based on verifiable information.

xv. The argument that the Applicant has operated at its highest level of installed capacity utilization and thus, there is no dumping and no injury is without basis. As stated in the petition and written submissions, that the petitioner has achieved production level of 247 MT in the month of March, 2008, which implies 3000 MT capability on annualized basis [i.e., 100% utilization]. The company again achieved production of 239 MT in Dec., 2008. This clearly establishes technical capability of the petitioner to produce and sell the product. Capacity utilization in fact got impacted due to dumped imports.

xvi. The request of Honeywell Flourine Products, Europe BV for a separate dumping margin should not be accepted since they have not filed questionnaire response.

xvii. The argument that the Authority has not disclosed on what basis normal value for China has been construed is baseless. The methodology of construction of the Normal Value has been disclosed in the Preliminary Findings and disclosure of the essential facts should be envisaged only at the stage of disclosure statement.

xviii. If the Authority includes customs duty and customs education cess while calculating the landed value, as argued by the interested parties, the Authority should also include excise duty and sales tax payable by the domestic industry since these are also charged at the ex-factory level .

xix. The submission that Domestic Industry had started the production just a few months before POI and that is why, it is suffering from high costs, is without basis. The claim of injury to the domestic industry is not due to start up problems. In fact, the petitioner had achieved 100% plant utilization in March, 2008 itself. However, the plant utilization subsequently declined because of the dumping of the product in the domestic market.

xx. The project report of the domestic industry is a confidential document.

xxi. None of the interested parties have identified any factor, other than dumping, which could have caused injury to the domestic industry.

xxii. Calculations of dumping margin, NIP, Normal Value, Export Price etc cannot be disclosed being confidential in nature.

xxiii. The submission that DGAD should determine normal value based on the information provided by the producer/ exporter is not correct since Dumping margin on the basis of information provided by an exporter can be determined only if the exporter is entitled to market economy treatment.

xxiv. The argument that the demand for R 134a from China is because of the superior quality of the Chinese goods and loss is caused due to the domestic Industry's inefficiency in production is without basis. A superior product cannot come-in at a lower price. In any case, there is no significant difference in the product.

xxv. The submission that misleading statistics has been provided by the domestic industry is baseless. The domestic industry has provided all the information based on records maintained by the company and the information has been verified by the Authority.

xxvi. The submission that a time period of preceding 3 years and POI for injury analysis is required, is not correct. As per WTO, a shorter period can be accepted by the Authority.

**Post disclosure comments by the exporters/importers/other interested parties**

48. Following comments were made by the exporters/importers/other interested parties

- DGAD has no jurisdiction to continue this investigation. The subject investigation should be terminated since violated Article 5.10 of the WTO Agreement,
- Gap between the domestic demand and the domestic supply makes imports inevitable and may promote monopoly of the sole domestic producer.
- The different types/grades of 1,1,1,2-Tetrafluoroethane or R-134a cannot be treated as like products.The Domestic Industry manufactures only Industrial Grade R-134a.
- Non-disclosure of normal value, export price and dumping margin
- Wrong Methodology adopted to calculate Non-injurious Price.
- Authority has placed heavy reliance on some project report submitted by the Domestic Industry in support of its claim.
- No causal link and no injury to the domestic industry.

**Post disclosure comments by domestic industry**

49. Following comments were made by the domestic industry on the disclosure statement:

- Capital employed should include (a) fixed assets and (b) working capital required for production of the captive input.

- anti dumping duty may be imposed only on fixed amount basis.

**Examination by the Authority**

50. The relevant submissions raised by the interested parties at various stages of the investigation including comments on the disclosure statement, have been examined and addressed in the respective paras of this finding.

**D. Product under Consideration and Like Article**

51. The product under consideration in the present investigation is 1,1,1,2-Tetrafluoroethane or R-134a of all types. R-134a, is also called as Tetrafluoroethane, Genetron 134a, Suva 134a or HFC-134a, HFA-134a, and Norflurane. It is a haloalkane refrigerant with thermodynamic properties similar to R-12 (dichlorodifluoromethane), but without its ozone depletion potential. It has the chemical formula CH2FCF3, and a boiling point of −26.3 °C (−15.34 °F). It is an inert gas used primarily as a high temperature refrigerant for domestic refrigeration and automobile air-conditioners. Other uses of the subject goods include plastic foam blowing, as a cleaning solvent and as a propellant for the delivery of pharmaceuticals (e.g. bronchodilators), gas dusters, and in air driers, for removing the moisture from compressed air.

52. The subject goods are being imported under Chapter 29 of the Customs Tariff Act under subheading 2903 under "Halogenated Derivatives of Hydrocarbons", under subheading 29033919 as "Other Fluorinated Derivatives", under the Indian Trade Classification (based on Harmonized Commodity Description and Coding System). The petitioner has, however claimed that the product under consideration does not have any dedicated customs classification code and are being imported under various other Customs sub-headings. However, the customs classification is indicative only and in no way binding on the scope of this investigation.

**Issues Raised by Interested Parties on PUC and Like Article**

53. It has been argued by the interested parties that the PUC has been incorrectly determined in extremely vague, wide and amorphous manner. Proposed levy of anti-dumping duty extends beyond the products that are claimed to be allegedly manufactured by the domestic industry. It has been further contended that there are various types/grades of the subject goods such as industrial grade, 1-impact, CGMP and high purity. They further contended that different types/ grades are not substitutable and alleged that domestic industry is not manufacturing any grade other than industrial grade. It was further argued that the Chinese and Japanese companies use extremely cost effective methods and technology to produce the product under consideration and their prices are globally competitive and also superior in terms of purity and quality.

54. The domestic industry has claimed that there is no known difference between the products manufactured by them and the subject goods imported from the subject countries, which can have any impact on price, usage, quality etc. The domestic industry also claims that the technology and primary production process employed by them and the foreign producers are comparable; however, every producer fine-tunes its production process based on available facilities and necessities. Further, domestic industry disputes the claim made by Mexichem for exclusion of any type of R-134a and submits that different types are nothing but one product. These are merely different grades/forms/types of 134a produced.

**Examination by Authority**

55. With regard to like article, Rule 2(d) of the Anti-Dumping Rules provides as under:

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

56. The Authority notes that the Domestic Industry follows the Gas Phase Method for the production of PUC as the Chinese enterprises and the nature of the PUC does not change with the level of purity. Examination of the product and import data submitted by the applicant indicates that there is no difference between subject goods produced by the Domestic Industry and imported from China. Moreover no substantial material has been provided by the interested parties in support of their arguments.

57. With regard to different types/grades of the subject goods, the Authority notes that in terms of end use, broadly there are two types of the subject goods i.e industrial and medical. The industrial type is used in refrigeration and air-conditioning etc, whereas the medical type is used as a drug propellant mainly for human consumption. The plant and machinery, raw material and the process of production of both the types are same. The differences between the two is only the level of purity, the purity required for the medical type meant for human consumption is minimum 99.98%. Although the domestic industry does not have GMP certificate, they have manufactured and supplied both industrial type and medical type (propellant) and adequately demonstrated with documentary evidence. Moreover the different types of the subject goods are based on level of purity only and the various types of the subject goods meant for human consumption can be used for industrial purpose, the purity level being higher, although the industrial type cannot be used for human consumption.

58. Product under consideration produced by the Domestic Industry and those imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the above, the Authority holds that subject goods produced by the Domestic Industry is therefore being treated as like article to the

subject goods imported from subject countries, in accordance with the Anti-Dumping Rules.

## E. Domestic Industry and Standing

### Issues Raised by Interested Parties

59. With regard to standing and scope of the domestic industry the interested parties have argued at various stages of the investigation that the applicant is not Domestic Industry under Rule 2(b) of Anti-Dumping Rules since they do not manufacture the product in any justifiable quantity and are also importer of the subject goods.

### Views of the Domestic Industry

60. The domestic industry has claimed that they have not imported the product under consideration after commencement of commercial production.

## E.1. Examination by Authority

61. Rule 2(b) of the Anti-Dumping Rules (as amended by Notification No. 18/2010-Customs (N.T.) – New Delhi dated 27th February, 2010) provides as follows:

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

62. The Authority notes that evidence on record does not show that Domestic Industry has imported the subject goods from the subject countries after commencement of commercial production and during the period of investigation. Therefore, the Authority holds that the applicant constitutes the domestic industry in terms of Rule 2(b) and being the sole producer of the subject goods in the country commands the standing in terms of Rule 5(3).

## F. Issues relating to Confidentiality

63. The interested parties have argued that:

a) The relied upon documents , including project report of the domestic industry, was not supplied by Authority.
b) The Designated Authority should have disclosed all the facts in the initiation notification.
**c)** Authority has not disclosed the detailed facts/adjustments of computing the Normal Value, the ex-factory export price, dumping margin calculation etc in the Preliminary Finding.

## F.1 Views of the Domestic Industry

64. In respect of confidentiality issue, domestic industry claimed that the project report can not be disclosed since the report contains sensitive information, disclosure of which will seriously jeopardize business interests of the domestic industry. Any information/data given on confidential basis cannot be disclosed by the Authority. Calculations of dumping margin, NIP, Normal Value, Export Price etc cannot be disclosed being confidential in nature.

## F.2 Examination by the Authority

65. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7). The Authority after examining the submissions of the interested parties observed that the methodology of computation of Normal Value, export price and non-injurious price have been disclosed in this finding.

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

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

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

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

b) The WTO Agreement on Anti Dumping provides as follows with regard to confidentiality of information :-

Article-6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause

shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.

Article-6.5.1 The authorities shall require interested parties providing confidential information to furnish non confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

Article-6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Footnote to Article 6.5.2 (footnote 18 of the WTO Agreement on Anti Dumping) provides as follows :–

*Members agree that requests for confidentiality should not be arbitrarily rejected.*

67. It is thus evident that the public notices issued by the authorities are directly subjected to confidentiality provisions and should protect confidentiality of information provided by an interested party. Further, a conclusion drawn by the Authority based on confidential information also becomes confidential, if disclosure of such conclusion can in any way effectively lead to disclosure of information provided on confidential basis.

68. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to "respective interested parties", while non-confidential facts are required to be disclosed to all interested parties. At no stage the Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests. Thus it would be sufficient if full explanation of the reasons for the methodology used in the establishment and comparison of the export price, normal value and Non-injurious price are disclosed by the Designated Authority instead of disclosing the actual figures. Normal Value, export price and non-injurious price are based on the confidential information submitted by the parties and disclosure of the same would be of significant competitive advantage to a competitor and its disclosure could have a significantly adverse effect upon the person supplying the information.

69. Disclosure of the commercially sensitive and confidential information, provided by the interested parties to the Designated Authority, by reposing trust and confidence, to facilitate the investigation, will completely vitiate the market atmosphere both in the domestic as well as international fronts. The disclosure of confidential information relating to the cost of production, non-injurious price etc. of the domestic industry will provide undue advantage to its domestic as well as overseas competitors and place them in a disadvantageous position before the consumers. Likewise

disclosure of the confidential information relating to the exporters such as normal value, net export price, landed price etc. will jeopardize their commercial interest vis-à-vis their competitors as well as buyers.

70. One of the interested parties namely M/S Refex Refrigerants Pvt. Ltd. has claimed that confidential information of the other interested parties. In terms of the provision of Rules 7 of the AD Rules, the domestic industry and the respondents exporters and importers were specifically requested by Authority to offer their comments on the claim of the M/S Refex Refrigerants. Such respondent interested parties and the domestic industry have opined that the Authority can not disclose the confidential information.

71. In view of the above Authority notes that confidential information can not be disclosed to the interested parties with competing and conflicting interests. However the non – confidential information has been disclosed to the interested parties.

## G. Miscellaneous issues

72. The following miscellaneous issues have been raised by the interested parties at various stages of the investigation:

i) Dumping per se not condemnable as price discrimination in the form of dumping is a common international commercial practice. Imposition of anti-dumping duty will result in artificial increase in the price of the subject goods.

ii) Installed capacity of applicant is much less than the domestic demand. Imposition of proposed duty on the subject goods will lead to monopolization of the trade by the applicant.

iii) The entire anti-dumping proceeding has been initiated on the basis of a project report of M/s SRF which contains extremely rosy projections.

iv) The Authority did not supply relied upon documents to interested parties.

v) M/s Refex alleged that preliminary finding has been issued by the Authority recommending provisional anti-dumping duty without affording the petitioner an opportunity of personal hearing and without considering the representations of the petitioner dated 24/09/2009 and 05/04/2010.

vi) The applicant is beneficiary of various Government subsidies.

vii) Wide publicity of the initiation notification under reference was necessarily required to be given throughout India. The Designated Authority should have disclosed all the facts in the initiation notification. The Domestic industry did not include Stallion and Honeywell as known interested parties.

viii) Injury period should not be less than 4 years as mandated under the Act and Rules.

ix) Investigation is time bared in term of Rule 17 of AD Rules and Article 5.10 of the WTO Agreement on anti-dumping.

## G.1. Examination by the Authority

73. The Authority has examined the miscellaneous issues raised by the interested parties as follows:

1. Authority notes that the objective and purpose of imposing anti-dumping duty is to prevent unfair trade practice and to create a level playing field for the domestic industry vis a vis dumped imports under the aegis of WTO and not to promote monopolization of trade by any interested party. Dumping is founded on the basis that a foreign manufacturer sells below the normal value in order to destabilize domestic manufacturers. In the present case, the Authority notes that even when the market for the product had significant demand, the domestic industry was forced to sell the product at a financial loss. The Authority notes that 'dumping' is an unfair trade practice and must be condemned if it causes injury to an established domestic industry, even though there is only one domestic producer; as the intent of anti-dumping duty is only to redress the injury caused to the domestic industry on account of the unfair trade practice of dumping. Imposition of the duties shall not restrict the rights of foreign producers to sell the subject goods at un-dumped prices in the Indian market.

2. The Authority on the basis of sufficient evidence, submitted by the domestic industry, initiated the investigation. The Authority notes that the project report has been considered and approved by the Board of the Company. Moreover, the Authority has verified the information submitted by domestic industry during the course of investigation.

3. The Authority notes that as per Rules 6(7), the non-confidential documents submitted by various interested parties are made available through public file for inspection by the interested parties.

4. The Authority notes that the relevant submissions made by M/s Refex Refrigerants Ltd. vide their letter dated 24.09.2009, 5.4.2010 and all their subsequent submissions, including the submissions made by various interested parties during the course of the investigation have been considered in this disclosure. With regard to opportunity to interested parties for making submission, the Authority has provided ample opportunity to the interested parties as per Rules. Apart from granting personal hearing to M/s Refex, the Authority had granted two oral hearings to the interested parties and provided opportunity for making oral and written submissions in the subject investigation, apart from disclosing essential facts of the investigation considered by the Authority.

5. Authority notes that the allegation of subsidy is without any basis. However the Authority has examined the issue and notes that SRF has given a certificate containing that SRF has not received any subsidy from the Government of India or any other institution for setting up its Plant to manufacture R-134a/ HFC-134a (PUC). Further SRF had cleared the imported equipments used in its Plant under

Notification No. 21/2002- Customs dated 1.3.2002 as read with Notification No.11/2005 Customs dated 1.3.2005, which exempts payment of Customs Duty on fulfillment of certain conditions. The authority has verified the information of the Domestic Industry and notes that no subsidy has been received by the Domestic Industry for setting up the plant manufacturing the subject goods.

6. The initiation notification was published in the Gazette of India and Copy of the notification was sent to known interested parties as per Rules.

7. The Authority notes that WTO Committee on Anti-Dumping Practices vide paper G/ADP/6, adopted on 5 May 2000 states as follows:

**"***The Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations states, inter alia, that the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable; and that the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation. From this, we take it that it is desirable* that there be a *substantial coincidence in the period of investigation for dumping and the period during which injury was found".*

In the present case the domestic industry has set up their Plant for manufacturing the product under consideration in the year of 2006-07 and the manufacturing facility for product under consideration was undergoing pre-commissioning trial runs.

8. It has been contended by the interested parties that the subject investigation is time bared in term of Rule 17 of AD Rules and Article 5.10 of the WTO Agreement on anti-dumping. The Authority notes that pursuant to the orders dated 6th January, 2011 of the Hon'ble Division Bench of the Madras High Court and orders dated 3rd February, 2011 of the Hon'ble Supreme Court, the subject investigation has been continued beyond the maximum time limit prescribed under the Rules and WTO Agreement i.e. 18th February, 2011.

## H. De Minimis Limits

74. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and other secondary sources, as well as the data furnished by the cooperating exporters from China PR, the import of the subject goods from the subject countries are above the de minimis level.

## I. Determination of Dumping Margin

### I.1 Examination of Market Economy Claims

75. In the present case the cooperating producers/exporters were accorded Non Market Economy status in the Preliminary Findings and they have not rebutted to the satisfaction of the Authority. The Authority had verified the data/information of the cooperating producers/exporters from China PR.

76. The Authority, notes that in the past China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure of Anti-dumping Rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.

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

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

78. The Authority notes that following producers and exporters of the subject goods from China PR have submitted their Exporters Questionnaire responses and Market Economy Questionnaire response, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption:

a) Sinochem Environmental Protection Chemicals (Taicang) Co. ltd.
b) Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd.
c) Zhejiang Juhua Co. Ltd.
d) Zhejlang Quhuaflour Chemistry Co., Ltd.
e) Zhejiang Juhua Gonglian Foreign Trade Co Ltd
f) Du-Pont Trading (Shanghai) Co. Ltd.

79. The Exporters Questionnaire responses and the Market Economy Questionnaire responses of the following cooperating producers/exporters from China PR were accepted and their information/data got verified by the Authority:

a) M/s Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd.
b) M/s Sinochem Environmental Protection Chemicals (Taicang) Co. ltd.
c) M/s Du-Pont Trading (Shanghai) Co. Ltd.

**Examination by the Authority**

**M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd (Producer/Exporter)**

80. M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd has claimed MET status in its response. It is stated in the MET response that China New Technology Development Trade Co Ltd holding ***% share in the subject company is a State owned company. The other ***% share is stated to be held by Xian Modern Chemistry Research Institute.

As per the Article of Association of Xian Jinzhu Modern Chemical Co Ltd, the predecessor company of the subject company, it was a joint venture between Tibet Jinzhu Co Ltd and Xian Modern Institute of Chemical Research. While Tibet Jinzhu Co Ltd held ***% share, Xian Modern Institute of Chemical Research, the Research Institute of China Ordnance Industry, held ***% of the shares in Xian Jinzhu Modern Chemical Co Ltd. The joint venture Xian Jinzhu Modern Chemical Co Ltd was formed with the approval of Tibet Plan Committee and Sanxi Province Plan Committee, the State owned agencies.

As per the web based information, Sinochem Group/Sinochem Corporation is a State owned company and the company was set up originally during 1950 as a State owned agency for promoting production and sale of chemicals and other products.

During verification it was observed and acknowledged by the company that Sinochem Group Co Ltd or Sinochem Corporation is a ***% State owned company originally set up during 1950. Along with another State owned agency namely Zhejiang Province State Asset Commission, it promoted Zhejiang Province Petrochem Construction Material Group with ***% and ***% shares respectively, which in turn owns China New Trade Development Co Ltd holding ***% share along with Sinochem Group holding ***% share. China New Trade Technology Development Co Ltd, a ***% State owned company along with another State owned agency namely Xian Modern Chemistry Research Institute owns the subject company. In this way the subject company M/s Sinochem Modern Environmental Chemicals (Xian) Co Ltd is a ***% State owned company, under the common control of the State owned Sinochem Group. It's subsidiary company M/s Sinochem Environmental Protection Chemicals(Taikang) Co Ltd, a respondent producer/exporter in the subject investigation, in which it has the majority share of ***% along with two other State owned companies namely Sinochem Europe holding ***% share and China New Trade Technology Development Co Ltd holding ***% share, is also a ***% State owned company. It is further observed that the Board of Directors of the company is ***% represented by the representatives of the State owned share holding companies

The company could not adequately demonstrate with documentary support that the growth/transformation of the company over the years was determined by market forces completely free of state interference. Further, the respondent company could not demonstrate with documentary support that the assets/raw materials/ utilities have been purchased by the company under market conditions and at prices comparable to the

prices prevailing in the international market. The company could not also adequately demonstrate with documentary support to prove that the decisional process of the company is free of State influence.

The company failed to furnish some of the following relevant information/documents/records to the verification team, in support of their MET claim:

i. Details/documents relating to the State owned Group company Sinochem Group/Sinochem Corporation, parent companies China New Technology Development Trade Co and Xian Modern Chemistry Research Institute and the affiliated and subsidiary companies.

ii. Details/documents relating to Tibet Jinzhu Co Ltd and Xian Modern Chemistry Research Institute, the investors in Tibet Jinzhu Modern chemicals Co Ltd.

iii. List of subsidies and details of the subsidies received by the company from the Government source.

iv. Detailed list of the assets of the company from the year of establishment till POI with details regarding date of procurement, mode of procurement, source of procurement, along with documents in proof of payment through normal banking channel.

v. Copy of the reports of Tibet Plan Committee and Sanxi Plan Committee with whose approval Xian Jinzhu Modern Chemicals Co was set up in 1997.

vi. Amount and source of investments/funds made by the subject company in its subsidiary company and documents justifying the difference between the registered capital of Sinochem Xian and it's investments in Sinochem Taikang.

vii. Land and building records along with proof of procurement, mode of procurement, payment proof through normal banking channel, etc.

The verification report was sent to the concerned producer/exporter by the Authority for views/comments. However, they failed to offer any comment. In view of the above stated position the Authority has not granted MET status to M/s Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd.

**M/s Sinochem Enviornmental Protection Chemicals (Taicang) Co . Ltd (Producer/Exporter).**

81. It has been submitted by M/s Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd. in their MET Response that they are a Chinese foreign equity joint venture company. The respondent company has claimed MET status in its response. It is stated in the MET Response that the subject company is a limited liability company and a

foreign equity joint venture, with majority share held by M/s Sinochem Xian, the parent company.

However, during verification it was observed that the ultimate controlling company i.e. Sinochem Group Co Ltd or Sinochem Corporation, originally set up during 1950 as per web based information, is a ***% State owned company. Along with another State owned agency Zhejiang Province State Asset Commission, it promoted Zhejiang Province Petrochem Construction Material Group with ***% and ***% shares respectively, which in turn owns China New Trade Development Co Ltd holding ***% share along with Sinochem Group holding ***% share. China New Trade Technology Development Co Ltd, a ***% State owned company along with another State owned agency namely Xian Modern Chemistry Research Institute owns Sinochem Modern Environmental Chemicals (Xian) Co Ltd, the respondent controlling parent company of the subject company, which holds the majority share of ***% along with two other State owned companies namely Sinochem Europe holding ***% share and China New Trade Technology Development Co Ltd holding ***% share. In that way the subject company is a ***% State owned company. All the 7 Directors including the Chairman of the Board of Directors of the company, represent the State owned share holding companies.

During verification the respondent producer/exporter acknowledged that they are a ***% State owned company with the Board of Directors ***% represented by representatives of the State owned share holding companies and could not adequately demonstrate that the decisional process of the company is free of State influence.

The respondent company could not demonstrate with documentary support that the assets/raw materials/ utilities have been purchased by the company under market conditions and at prices comparable to the prices prevailing in the international market. The company could not also adequately demonstrate with documentary support to prove that the decisional process of the company is free of State Influence. The Company failed to furnish some of the following relevant information/documents/records to the verification team, in support of their MET claim:

(i) Details/documents concerning Sinochem Group, the ***% State owned and ultimate controlling company.
(ii) Justification for the difference between the registered capital of the parent company (Sinochem Xian) and investment made by the parent company in it's subsidiary company(Sinochem Taikang), as reflected in the audited annual accounts of the subject company, and the source of fund.
(iii) List of subsidies received from the Government.
(iv) Power consumption by unit for production of R134a.
(v) Payment vouchers of major assets through normal banking channel.
(vi) Sample copies of TCE and AHF purchase from related and unrelated parties.
(vii) Copies of sales documents for domestic sales of the subject goods by the subject company.
(viii) Clarification to the discrepancy between quantity of sale of the subject goods made by the subject company to M/s Du pont Shanghai and the purchase quantity shown by them in their records.

The verification report was sent to the concerned producer/exporter by the Authority for views/comments. However, they failed to offer any comment. In view of the above stated

position the Authority has not granted MET status to M/s Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd.

**M/S Du-Pont Trading (Shanghai) Co. Ltd. (Exporter)**

82. In their MET Response it has been submitted by M/S Du-Pont Trading Shanghai Co. Ltd. (DPTS), China that they are a 100% subsidiary of M/s Du-Pont China Holding Co. Ltd. It has futher been submitted that M/S Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd., a corporation organized under the laws of China, is the only supplier (un-related) of R-134a and has multi year contract with them starting from Sep.,2008. During verification it was informed that Du Pont China Holding Co Ltd ("DCH") is the principal Du Pont entity in China and the controlling company of M/s Du Pont Trading Shanghai Co Ltd (DPTS), Shanghai. DPTS is one of the wholly owned subsidiaries of DCH. DPTS only is involved in the trading of the product concerned. It was informed that neither DCH nor any other related companies of DCH are involved in the product concerned.

DPTS in its capacity as a trader has claimed Market Economy Status. DPTS stated that since DCH was not at all involved in the production or sale of the product concerned, they have not filed a separate MET questionnaire response. Further, it was explained that Du Pont China Ltd, a company registered in USA holds ***% of the shares of DCH and DCH holds ***% shares in DPTS.

Being a trading company, MET claim of DPTS is not relevant unless the producer concerned establishes its market econiomy status. Moreover, DPTS, the subject trading company, has long term agreement with Sinochem Taikang, a ***% State owned Chinese producer/exporter and a cooperative respondent in the subject investigation, for procurement of the subject goods, exported to India, at agreed upon price. DPTS has exported the subject gods to India by procuring the same only from M/s Sinochem Taikang, a ***% State owned company. DPTS purchased the subject goods from Sinochem Taicang under a Product Purchase and Sale Agreement between the two companies.

The authority observes that M/S Du-Pont Trading Shanghai Co. Ltd. China,(exporter) is a ***% subsidiary of M/s Du-Pont China Holding Co. Ltd, who has not filed MET Response in the subject investigation. M/S Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd., a ***% state owned company in China PR, which has not been granted market economy status, is the only supplier of R-134a and has multiyear contract with them starting from Sep., 2008.

The verification report was sent to the party by the Authority for views/comments. However, they failed to offer any comment. In view of the above stated position the Authority has not granted MET status to M/s Du-Pont Trading Shanghai Co. Ltd. China.

**I.II. MET related issues raised by the interested parties during the course of the investigation.**

83. During the course of the investigation following MET related issues have been raised by the interested parties.

- Determination of Normal Value in terms of Rule 7 of Annexure I of the Anti-dumping Rules without considering the data furnished by the producer/exporter is against the express provisions of Section 9A(6A) of the Customs Tariff Act.
- No appropriate third party has been notified for the purpose of determination of normal value of the subject goods.
- Rejection of the MET claims is unreasonable and unjust.
- Normal Value determined on the basis of conversion cost based on Domestic Industry cost data is incorrect.
- Non – market economy provisions have become ultra vires under section 9A (6A) of the amended Rules.

## I.III. Views offered by the domestic industry with regard to MET and Normal Value.

84. The following views have been offered by the domestic industry with regard to MET and Normal Value.

i) None of the Chinese producers can be given market economy treatment.

ii) India is an appropriate surrogate country for Chinese producers. This has been accepted by other investigating authorities also.

iii) The argument of the interested parties that the normal value of subject good in China PR and Japan is significantly higher than the ex factory export price is without any basis.

iv) The interested parties have argued that Japan has not yet responded and China PR has been treated as NME, hence, without proper investigation, imposition of duty is not appropriate and justified. But, it is for the Japanese producers to respond to the Authority. The Designated Authority cannot force a party to respond nor can the non-cooperation by a party prevent the Authority to conduct and complete an investigation.

v) The argument that the Authority has not disclosed on what basis normal value for China has been constructed is baseless. The methodology of construction of the Normal Value has been disclosed by the Authority.

vi) The submission that DGAD should determine normal value based on the information provided by the producer/ exporter is not correct since Dumping margin on the basis of information provided by an exporter can be determined only if the exporter is entitled to market economy treatment

## I.IV. Examination by the Authority

85. As regards the argument that non-market economy provisions has become *ultra vires* under section 9A (6A) of the amended Rules, the Authority notes that the determination is fully consistent with the legal provisions.

86. The Authority has taken cognizance that the exporters from China PR have submitted responses rebutting the presumptions as mentioned in Para 8 of Annexure 1 of the Rules and Non Market Economy Questionnaire sent to them regarding grant of market economy status to their companies. The authority observes that both the verified cooperative respondent Chinese producers/exporters, which are related, are ***% State owned companies and failed to demonstrate with documentary support that their growth and commercial and administrative transactions are free of State influence. Moreover, they failed to furnish most of the relevant documents during verification to prove that they are free of State influence in their growth and administrative and commercial transactions and procurement of assets, raw materials and other relevant inputs are at prevailing market prices comparable to international standard. Further, the MET claim of the verified cooperative respondent trading company is irrelevant in the sense that the producer from whom they procured the subject goods through a long term pricing contract and exported to India is itself a ***% State owned and non market entity.

87. The Authority had not granted market economy treatment in the Preliminary Findings. During verification the cooperative respondent Chinese producers/exporters/traders could not demonstrate and justify with documentary evidence their MET claim as already mentioned in this finding. Since, even if one of the critical parameters of market economy treatment is not satisfied it would not be feasible to grant market economy status to the responding companies, the Authority has not granted MET status to any of the cooperative respondent Chinese producers/exporters/traders.

88. None of the interested parties have made available information regarding an appropriate market economy third country for the purpose of determination of normal value.

89. Moreover the Authority notes that the evidence on record does not establish that “prices of major inputs substantially reflect market values” comparable to prices prevailing in the international market. In a situation where the raw material prices are significantly lower than the prevailing market rates in the international market, not only a vital condition for market economy treatment is not satisfied but also costs may be

underestimated. Further, the Authority notes that the producers/exporters from China PR are admittedly either directly or through their subsidiaries and suppliers State controlled.

90. In view of the issues concerning ownership and control, their impact on the cost and prices and business decisions of the companies, the Authority has not granted market economy status to any of the subject producers/exporters from China PR.

## J. Determination of Normal Value

### J.1 Determination of Normal Value for China PR

91. The Authority indicated, in the Initiation Notification, that the Authority may notify an appropriate third country, in the due course, for the purpose of determination of normal value in China PR in terms of the above provisions. The Authority notes that none of the interested parties, including the applicants, have placed any material fact before the Authority to select an appropriate market economy third country for the above purpose. The domestic industry has submitted that they have made efforts to collect information on price and cost data of the subject goods in market economy third countries but no publicly available information could be collected in this regard. It has also been argued that for determination of normal value based on third country cost and prices, the Authority would require complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country, which the applicant is unable to obtain. The responding Chinese companies have made no claim with regard to an appropriate market economy third country. Therefore, the domestic industry has submitted that India should be treated as an appropriate surrogate country for China in this matter and the normal value should be determined accordingly.

92. The Authority, in view of the non-market economy status of the responding producers/exporters from China PR and since no interested party has provided the data of any appropriate third country, the Authority adopted the third option available in the Rules, which provides for adoption of 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 and construct the normal value in respect of China PR. Accordingly, the ex-works Normal Value of the product under consideration for cooperating producers/exporters from China PR has been constructed based on facts available. The Normal Value has been constructed taking into account consumption norms of verified producers/exporters and international prices of major raw materials as per the data from DGCI&S source. Further, duly adjusted conversion cost and SGA expenses of the domestic industry have been adopted for determination of the normal value. After adding a reasonable profit margin of 5% constructed normal value has been determined as US$ *** per Kg. in respect of the China PR.

### J.2 Normal Value for Japan

93. No exporter from Japan has cooperated and responded to the initiation notification issued by the Authority and submitted any information within the stipulated time. In view of that the Authority has seen the exports of subject goods by Japan to world over

from the data available as per World Trade Atlas. On this basis normal value has been determined as **US$** *** Per Kg in respect of the producers/exporters from Japan.

## K. Determination of Export Price

### K.1 Export Price for co-operating exporters from China PR

**M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.**

94. M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd has provided transaction wise details of exports to India during the period of investigation. For the purpose of this finding all export transactions have been taken into consideration for determination of export price. Company exported *** MT of subject goods to India during POI at total value of USD ***. The expenses claimed on account of packing, inland freight & port charges, overseas freight, overseas insurance, clearance and handling charges, other misc. charges and VAT adjustments have been allowed. By this methodology the ex factory weighted average export price has been determined as **US$ *** Kg.**

**M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd.**

95. The Authority notes that M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd and M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd are related companies, being subsidiary companies of the Sinochem Group . M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd is also a shareholder in M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. Further, M/S Sinochem Environmental Protection Chemicals (Taicang)'s parent company is admittedly M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd, which produces and sales the subject merchandise. M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd has much larger production capacity than that of M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. The Authority also notes that the Gross price charged by both these companies is substantially different despite having almost similar range of cost of production. It is noted from the information submitted that the difference is primarily on account of Bulk Discount. The exporter has provided transaction wise details of exports to India during the period of investigation. Company exported *** MT of subject goods to India during POI at total value of USD ***. All export transactions have been taken into consideration for determination of export price. The expenses claimed on account of packing, inland freight & port charges, overseas freight, overseas insurance and VAT adjustments have been allowed. By this methodology the ex-factory export price for M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co. Ltd. has been determined as US$ ***/Kg.

**M/S Dupont Trading (Shanghai) Co., Ltd.**

96. The exporter has provided transaction wise details of exports to India during the period of investigation. All export transactions have been taken into consideration for

determination of export price. Company exported *** MT of subject goods to India during POI at total gross value of USD ***. While arriving at net export price the exporter has made adjustments towards packing charges, inland freight, sea freight and insurance premium. Further, adjustments of domestically procured goods, profit margin of Du-Pont Trading and VAT adjustments has also been made to arrive at the ex-factory weighted average export price. By adopting this methodology the ex-factory export price in respect of M/S Du-pont (Shanghai) Co. Ltd. has been determined as US$ ***/Kg.

**Zhejiang Juhua Co. Ltd, M/S Zhejlang Quhuafluor – Chemistry Co., Ltd. & Zhejiang Juhua Gonglian Foreign Trade Co., Ltd.**

97. Zhejiang Juhua Co. Ltd (producer of the subject goods) M/S Zhejlang Quhuafluor – Chemistry Co., Ltd. & Zhejiang Juhua Gonglian Foreign Trade Co., Ltd (exporter) are related parties. M/S Zhejlang Quhuafluor – Chemistry Co., Ltd. has provided the transaction wise details of exports to India during the period of investigation and submitted that after procurement of subject goods from M/S Zhejiang Juhua Co. Ltd., (producer of the subject goods) appointed M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd. as their export agent and shipped and declared at the customs after they recived L/C, negotiated payment and received payment. However, while going through their responses it is observed by the Authority that the copies of the sample invoices and other relevant export documents are held in the name of M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd., thereby making them the actual exporter to India. However, M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd., who also have submitted the Exporters and MET questionnaire responses, has submitted that they are not the actual exporter of the product under investigation and just an exporting agent. Due to absence of clear channel of flow of goods from the producer to the exporter and thereafter to the Indian buyer, independent dumping margin was not given to the respondent exporter in the preliminary finding.

Post preliminary findings, it was clarified that on the request of M/S Zhejlang Quhuafluor – Chemistry Co., Ltd, M/s Zhejiang Juhua Co. Ltd., (the producer ) delivered the subject goods directly to M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd., who then exported the goods to India and realized the foreign exchange. The Authority notes that the documents with regard to the domestic sale of the producer M/S Zhejiang Juhua Co. Ltd., do not evident such supply to M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd. Further, the documents submitted by M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd do not evident procurement of the exported subject goods from the producer M/S Zhejiang Juhua Co. Ltd, although they hold the export documents in their name. Moreover. though the export documents show the name of M/S Zhejiang Juhua Gonglian Foreign Trade Co. as the actual exporter of the subject goods, who also realized the foreign exchange, M/s Zhejlang Quhuafluor – Chemistry Co., Ltd in Appendix 2 ( of export sales) reflects the export sales transactions to India. But the exporters questionnaire response submitted by M/S Zhejiang Juhua Gonglian Foreign Trade Co., despite being the actual exporter of the subject goods to India, does not contain the relevant appendices. As the linkage between production and export of the subject goods to India has not been clarified to the complete satisfaction of the Authority with documentary evidence, no separate export price has been determined in respect of either Zhejlang Quhuafluor Chemistry Co. Ltd. or Zhejiang Juhua Gonglian Foreign Trade Co., Ltd. In view of the above the

Authority considers M/S Zhejiang Juhua Co. Ltd, M/S Zhejlang Quhuafluor – Chemistry Co., Ltd. & M/S Zhejiang Juhua Gonglian Foreign Trade Co., Ltd as non-cooperative.

## K.2. Export price for Non-cooperating Exporters from China

98. Since, no response has been received from any other producer/exporter of the subject goods from China PR; the Authority has decided to determine their Export Price as per facts available in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information provided by the Applicant based on IBIS source and the expenses on account of packing, inland freight & port charges, overseas freight, overseas insurance, clearance and handling charges and other misc. charges have been adjusted on the basis of data furnished by co-operative exporters to arrive at the ex-factory price in respect of non- cooperative exporters from China PR. By adopting the above method the ex-factory export price for non-cooperative exporters from China PR has been determined as US$ *** per /Kg.

## K.3. Export price for Exporters from Japan

99. No exporter from Japan has responded to the investigation initiation notification. Therefore, the data reported by the IBIS, Mumbai for exports from Japan has been relied upon to calculate the ex-factory export price. As the transactions are on CIF basis, therefore, to determine ex-factory export price, adjustment on account of ocean freight, marine insurance, handling charges, port expenses have been adjusted to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price for exporters from Japan has been determined as US$ *** per /Kg.

## L. Dumping Margin

100. For the purpose of determination of dumping margin the ex-works normal value and export prices so determined have been compared at the same level of trade and dumping margin has been determined for the exporters from the subject countries. Further, being related parties, the dumping margin in respect of M/S Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. and M/S Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. has been determined on weighted average basis. On the basis of normal values and export prices as determined above, the dumping margins for exporters are determined as per table below: -

**US$/KG**

| Exporter/Producer From | Normal Value (USD) | Export Price (USD) | Dumping Margin (USD/KG.) | Wt. Avg. Dumping Margin of Taicang and Xi'an (USD/KG.) | Dumping Margin (%) |
|---|---|---|---|---|---|
| **Japan** | *** | *** | *** | ----- | 25 – 35 |
| **China PR** | | | | | |
| **Sinochem Environmental Protection Chemicals (Taicang)** | *** | *** | *** | *** | 35 - 45 |
| **Sinochem Environmental Protection Chemicals (Xi'an)** | *** | *** | *** | *** | 30 - 40 |
| **Du-Pont** | *** | *** | *** | ---- | 40 – 50 |
| **Others** | *** | *** | *** | ----- | 45 - 55 |

101. The dumping margins so determined are significant and above de-minimis level.

## M. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

### M.1 Views of the Exporters, Importers and other Interested parties during the course of the investigation.

102. The following views have been offered by the Exporters, Importers and other interested parties during the course of the investigation:

i. Subject goods are also imported from USA, UK and Germany. Hence the present proceeding is incomplete in respect of the subject goods.

ii. Since the sales of the Applicant increased by 56.33% in 2008-09, it clearly establishes that the applicant's unit is a profit making unit.

iii. Applicant has exported subject goods during 2007-08 and 2008-09. It indicates that low price is the applicant's strategy to oust the other players from the market.

iv. The increase in import is due to manifold increase in demand in the Indian market during the so called injury period.

v. Both basic customs duty and customs education cess should be included while calculating the landed value.

vi. Improvement in various injury parameters does not show injury to the domestic industry. The various economic parameters of domestic industry such as Capacity, Production, Capacity Utilization, Domestic Sales, Cost of sales, profitability, etc, do not indicate material retardation to establishment of domestic industry.

vii. Contrary to the observations of the Authority in the PF, the actual sales volumes of the Applicant have far exceeded the projected sales in the project report.

viii. During the start up period of an industry the cost remains very high due to unabsorbed overheads and inefficient production process, which results in high raw material consumption. These facts should have been examined by the Designated Authority while coming to a conclusion that purported injury has been caused by alleged dumped imports or the same is due to start up operations.

ix. The causal link determination is inappropriate in this instant case in view of the following:

- Change in the pattern of consumption despite increase in demand, domestic industry is unable to make profits in the sale of R134a because of its very high cost structure.
- Poor exports achieved compared to projected export targets were the sole reason for the losses suffered by the domestic industry during 2008-09.
- SRF is offering significantly low prices, users are forcing exporters also to match the prices set by SRF.

- There is no causal link between the injury to the domestic industry and the imports from China.

- Global recession is the main cause of decline in sales prices, decline in demand of finished products and decline in production and sales quantities.

x. The Domestic Industry has never claimed Material Retardation. Moreover, both Material Injury and Material Retardation to the establishment of the Domestic Industry cannot co-exist. Project report cannot be an authentic document to compare and assess the performance of the Domestic Industry.

.

**M.2 <u>Views of the domestic industry</u>**

103. The following views have been offered by the Domestic Industry during the course of the investigation:

- Increase in sale volume by the domestic industry does not mean that the product is profitable.

- Export made by the domestic industry does not mean that the product is not being imported at dumping prices in the Indian market or that the domestic industry is not suffering injury due to dumping.

- The submission of the interested parties that increase in import is due to increase in demand is baseless. Increase in imports is due to dumping.

- The Applicant uses the same technology as the producers in the subject country.

- The project report of the domestic industry is approved by it's Board of Directors and is based on varifiable information.

- The argument that the Applicant has operated at its highest level of installed capacity utilization and thus, there is no dumping and no injury is without basis. As stated in the petition and written submissions, that the petitioner has achieved production level of 247 MT in the month of March, 2008, which implies 3000 MT capability on annualized basis [i.e., 100% utilization]. The company again achieved production of 239 MT in Dec., 2008. This clearly establishes technical capability of the petitioner to produce and sell the product. Capacity utilization in fact got impacted due to dumped imports.

- The submission that Domestic Industry had started the production just a few months before POI and that is why, it is suffering from high costs, is without basis. The claim of injury to the domestic industry is not due to start up problems. In fact, the petitioner had achieved 100% plant utilization in March, 2008 itself. However, the plant utilization subsequently declined because of the dumping of the product in the domestic market.

- The project report of the domestic industry is a confidential document.

- None of the interested parties have identified any factor, other than dumping, which could have caused injury to the domestic industry.

- The submission that misleading statistics has been provided by the domestic industry is baseless. The domestic industry has provided all the information based on records maintained by the company and the information has been verified by the Authority.

**M.3. Examination by the Authority**

104. The following views offered by the interested parties during the course of the investigation are examined by the Authority as follows:

1. The argument of the interested parties that subject goods are also imported from USA, UK and Germany and hence the present proceeding is incomplete in respect of the subject goods is not correct. The Authority notes that the application/petition filed by the Domestic Industry was against imports from China PR and Japan. In respect of imports from USA, UK and Germany, Authority has examined and found that although there have been imports from USA, UK and Germany as well, but they are at much higher prices as compared to the imports from subject countries.

2. The argument of the interested parties that the sales of the applicant increased to the level of 56.33% in 2008-09 and therefore the applicant's unit is a profit making unit, is not correct. Increase in sales volume solely does not mean that the product is profitable. Injury to the domestic industry has to be seen in respect of all injury parameters.

3. With regard to the argument of the interested parties that applicant has exported goods for 2007-08, 2008-09 & 2009-10 indicating it as a strategy to oust the other players from the market, the Authority notes that injury in relation to production and sales of the subject goods has been examined in the context of the domestic market.

.

4. With regard to the argument of the interested parties that the increase in import is due to manifold increase in demand in the Indian market during the so called injury period, the Authority notes that increase in demand does not entitle the exporters/producer to export the material at dumped prices. However the market share of subject countries and other countries have gone down during this period. On the contrary, share of the domestic industry has gone up during the POI vis-à-vis the preceding year. The Authority notes that the Domestic Industry has commenced commercial production only in the year 2007-08 and therefore some decline in the imports is obvious as a direct result of commencement of new production facility in the country Increase in imports is due to dumping. In the absence of dumping, the petitioner could have produced and sold more in the market, particularly when demand is increasing.

5. The argument of the interested parties that both basic customs duty and customs education cess should be included while calculating the landed value. The Authority considered the same while calculating the landed Value.

6. The argument of the interested parties that improvement in various injury parameters does not show injury to the domestic industry. The Authority notes that cumulative effect of the factors indicates that in spite of the improvement in production and sales in absolute terms, increase in capacity utilization, increase in productivity, reduction in loss per unit, increase in market share, the domestic industry suffered huge losses due to decrease in selling price as against much high cost of sales and dumped imports from the subject countries. Imports from subject countries are maintaining their significant presence and these had significant price effect resulting in price depression, price undercutting and price underselling.

7. The argument of the interested parties that during the start up period of an Industry the cost remains very high due to unabsorbed overheads and inefficient production process, which results in high raw material consumption and these facts should have been examined by the Designated Authority while coming to a conclusion that purported injury has been caused by alleged dumped imports or the same is due to start up operations. The Authority has examined and found that the claim of injury is not due to start up problems. It is noted that the petitioner had achieved 100% plant utilization in March, 2008 itself. However, the plant utilization subsequently declined due to dumping of the product in the domestic market.

8. The interested parties have argued that the Domestic Industry has never claimed Material Retardation. Moreover, both Material Injury and Material Retardation to the establishment of the Domestic Industry cannot co-exist. Project report cannot be an authentic document to compare and assess the performance of the Domestic Industry. Under the Rules, the Authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to the Rules. The Authority notes that while some improvement in these parameters are natural result of commencement of nascent production facilities, the fact that the petitioner has not been able to increase these to the extent of capacity created in spite of significant demand in the Country itself clearly establishes that establishment of domestic industry has been materially retarded. Further, the negative profitability suffered by the domestic industry establishes that the same is on account of the dumped imports.

105. Having examined the degree and extent of dumping from China and Japan, the Authority has examined the injury caused to the domestic industry, if any, and the causal link between the dumped imports and injury so suffered by the domestic industry. The Authority holds that the applicant Company, i.e., M/s SRF Ltd constitutes a major proportion of Indian production of the subject goods during the period of investigation under Rule 2(b) of Anti-dumping Rules. Therefore, for the purpose of injury determination the applicant company has been held to constitute the domestic industry within the meaning of the Rules.

106. Rule 11 of Antidumping Rules read with Annexure–II provides that an injury determination shall involve examination of factors that may indicate 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.

107. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

108. The following are the essential facts before the Authority in respect of alleged injury to the domestic industry caused by dumped imports from China and Japan, which will form the basis for the final determination by the Authority. As per practice adopted by the DGAD, the injury period consist of the POI and preceding three years. The period of investigation in the subject case is starting from 1st April 2008 to 31st March 2009 (12 months). However, the injury investigation period will cover the period 2007-08 and the POI, as the applicant has started commercial production in the year 2007-08 only. Thus, all economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume etc. have been examined for the injury period adopted. However, as information pertaining to Imports ( Volume and Value) is available for previous three years as well, the injury analysis has been carried out by adopting the period of four years that is POI and previous three years.

## N. Cumulative assessment of injury

109. As per annexure-II (iii) of the Rules, in case, imports of a product from more than one country are being simultaneously subjected to Anti-dumping Investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that:

a. The margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article, and,
b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

110. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.

111. With a view to assess the conditions of competition between imported products and the like domestic product, the Authority notes that -

a. The subject goods supplied by Foreign Producers and by the domestic industry are inter-se like articles.
b. The Authority has found that the imported subject goods are commercial substitutes of the domestically produced R-134a.
c. The information furnished to the Authority gives a reasonable indication that the exports made from the subject countries compete in the same market, as these are like products.

112. Therefore, the Authority notes that it is appropriate to, cumulatively assess the effect of imports of the subject goods on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.

113. The Authority has taken note of various arguments put forth by the Domestic Industry (There was no response from other interested parties).

114. Annexure II of the AD Rules requires that determination of injury shall involve objective examination of both:

a) The volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and
b) Consequent impact of these imports on domestic producers of such products.

115. The Authority while examining the volume of dumped imports is required to examine whether there has been a significant increase in the dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase which otherwise would have occurred to a significant degree.

116. For the purpose of injury analysis the Authority has examined cumulative effect of dumped imports of the subject goods on the domestic industry and its effect on all relevant economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any. Since significant dumping margins have been established for the exports from the subject countries, entire exports from the subject countries have been treated as dumped imports for the purpose of injury analysis and causal link examination.

## O. Volume Effect of dumped imports and Impact on domestic Industry

117. With regard to the volume of the dumped imports, the Designated Authority is required to consider whether there has been a significant increase in dumped imports, in absolute terms or relative to production and consumption in India. As far as import volume is concerned the DGCI&S import data as well as import data reported in secondary sources i.e. IBIS have been examined. The Authority notes that the DGCI&S data does not capture the imports of the subject goods being imported in to India in different nomenclature and under different Customs classifications and therefore relied upon the data from the IBIS source. Therefore, the transaction level data on the basis of IBIS source has been relied upon and the volume and value of imports have been analyzed as follows:

### P.1 Import volumes and share of subject countries

118. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

119. The Authority has examined the volume of imports of the subject goods from the subject countries based on the transaction-wise import data from the IBIS source as follows:

Qty. in Mt

| Period | 2005-06 | 2006-07 | 2007-08 | POI |
|---|---|---|---|---|
| Country | | | | |
| China PR | 551 | 687 | 1123 | 1313 |
| Trend | 100 | 125 | 204 | 238 |

| | | | | |
|---|---|---|---|---|
| Japan | 1057 | 564 | 992 | 957 |
| Trend | 100 | 53 | 94 | 91 |
| Others | 812 | 1059 | 1318 | 1281 |
| Trend | 100 | 130 | 162 | 158 |
| Total | 2420 | 2310 | 3433 | 3551 |
| Trend | 100 | 95 | 142 | 147 |
| Share of subject countries (%) | 66 | 54 | 62 | 64 |
| Trend | 100 | 82 | 94 | 97 |

120. The above data shows that volume of imports from China PR in absolute terms has consistently increased from 551 Mt during 2005-06 to 1313 Mt during 2008-09 (POI). In case of Japan the import volume decreased substantially from 1057 Mt during 2005-06 to 564 Mt during 2006-07 and increased substantially thereafter to 992 Mt during 2007-08 and marginally decreased to 957 Mt during 2008-09. Share of subject countries in total imports has remained almost at the same level during POI in comparison to 2005-06 as well as 2007-08.

## P.2. Demand, Output and Market shares

### P.2.1. Growth in Demand

| | Unit | 2005-06 | 2006-07 | 2007-08 | POI |
|---|---|---|---|---|---|
| Assessment of Demand | | | | | |
| ➢ Imports from China | Mt | 551 | 687 | 1123 | 1313 |
| ➢ Imports from Japan | Mt | 1057 | 564 | 992 | 957 |
| ➢ Subject countries | Mt | 1608 | 1251 | 2115 | 2270 |
| ➢ Imports from Other Countries | Mt | 812 | 1059 | 1318 | 1281 |
| Sales of Domestic Industry | Mt | - | - | 909 | 1421 |
| Assessed Demand | Mt | 2420 | 2310 | 4342 | 4972 |

121. Though the commercial production of the domestic industry has been started during the year 2007-08, the demand has been analyzed for the year 2005-06 and 2006-07

also basing on the imports. The Authority notes that demand of the subject goods in the country has increased by more than 100% during POI in comparison to the year 2005-06 and by 15% during POI in comparison to immediate preceding year. It is further noted that demand in absolute terms has increased by 630 Mt during POI in comparison to the immediate preceding year and share of domestic industry has increased by 512 Mt during the same period.

### P.2.2 Market share in Demand

| Market Share in Demand | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| Imports from China | % | **25.86** | **26.41** |
| Imports from Japan | % | **22.85** | **19.25** |
| Import from subject countries | % | **48.71** | **45.66** |
| Imports from Other Countries | % | **30.35** | **25.76** |
| Domestic Industry | % | **20.94** | **28.58** |
| Other Producers | % | **0** | **0** |

122. It is observed by the authority that the imports from China has increased marginally and imports from Japan has decreased marginally during POI viz-a-viz. preceding year. However, cumulatively the import share of subject countries and other countries have gone down during this period. On the contrary, share of the domestic industry has gone up during the POI vis-à-vis the preceding year. However, the Authority notes that the Domestic Industry has commenced commercial production only in the year 2007-08 and therefore some decline in the imports is obvious as a direct result of commencement of new production facility in the country. However, the applicant had anticipated/projected (as per their project report) significantly higher sales/ market share in the increasing demand as opposed to much lower levels achieved during the POI.

### P.3. <u>Capacity, production and capacity utilization of the Domestic Industry</u>

| | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| Capacity | MT | **3,000** | **3,000** |
| Production | MT | **1,061** | **1,343** |
| Capacity Utilization | % | **35.37%** | **44.77%** |

| | | | |
|---|---|---|---|
| Domestic Sales | MT | **909** | **1,421** |
| Demand | MT | **4,342** | **4,972** |

123. The Authority notes that production, capacity utilization and sales of the domestic industry have increased both in absolute and relative term. However, the domestic industry operated at much lower level of capacity utilization as planned/ projected despite high demand in domestic market. The dumping has thus prevented the domestic industry to adequately utilize its capacity.

## Q. Price Effect of the Dumped imports on the Domestic Industry

124. With regard to the effect of dumped imports on prices as referred to in sub-rule (2) of rule 18, the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared to the price of like product in India or whether effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred to a significant degree.

125. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries have been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries.

### Q.1. Evaluation of price over period under consideration

| | **Unit** | **2007-08** | **2008-09** |
|---|---|---|---|
| Cost of sales | Rs./Kg | *** | *** |
| Trend | Indexed | **100** | **94** |
| Selling Price (NSR) | Rs./Kg | *** | *** |
| Trend | Indexed | **100** | **96** |

126. The Authority notes that cost of sales of the domestic industry has gone down by ***% during POI in comparison to previous year. Similarly, the net selling price of the domestic industry has also decreased by ***% during the corresponding period.

### Q.2. Price undercutting and underselling effects

| | **Unit** | **2007-08** | **2008-09** |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **Net sales realization** | Rs./Kg | *** | *** |
| **Landed price** | | | |
| Japan | Rs./Kg | *** | *** |
| China PR | Rs./Kg | *** | *** |
| Total subject countries | Rs./Kg | *** | *** |
| **Price undercutting** | | | |
| Japan | Rs./Kg | *** | *** |
| China PR | Rs./Kg | *** | *** |
| Total subject countries | Rs./Kg | *** | *** |
| **Price undercutting (%)** | | | |
| Japan | % | --- | **10 – 20** |
| China PR | % | --- | **1 – 10** |
| Total subject countries | % | --- | **5 - 15** |
| **Non Injurious Price** | Rs./Kg | | *** |
| **Price Underselling** | | | |
| Japan | Rs./Kg | - | *** |
| China PR | Rs./Kg | - | *** |
| Total subject countries | Rs./Kg | - | *** |
| **Price Underselling (%)** | | | |
| Japan | % | - | **50 – 60** |
| China PR | % | - | **40 – 50** |
| Total subject countries | % | - | **45 - 55** |

127. While working out the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been deducted. Price undercutting has been determined by comparing the landed value of dumped imports from the subject countries over the entire period of investigation with the net sales realization of the domestic industry for the same period. Price undercutting has been determined individually for China PR and Japan and for subject countries as a whole. For this purpose landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty to the value reported in the IBIS data of import prices from the subject countries. The price undercutting from China PR and Japan has been determined as ***% and ***% respectively and cumulative price undercutting from subject countries has been determined as ***% during POI.

128. For the purpose of price underselling the landed prices of imports from subject countries have been compared with the Non-injurious price of the domestic industry determined for the POI. The price underselling from China PR and Japan has been determined as ***% and ***% respectively and cumulative price underselling from subject countries has been determined as ***% during POI.

129. Volume and Import price movement of the subject countries has been analyzed for the years 2005-06 onwards in the following table:

| Volume of Imports | Unit | 2005-06 | 2006-07 | 2007-08 | POI |
|---|---|---|---|---|---|
| China | Mt | 551 | 687 | 1123 | 1313 |
| Japan | Mt | 1056 | 564 | 991 | 957 |
| Average import price | | | | | |
| China | Rs./Kg | *** | *** | *** | *** |
| Japan | Rs./Kg | *** | *** | *** | *** |
| Domestic net selling price | Rs./Kg | --- | --- | *** | *** |

130. The Authority notes that export price from China PR was to the tune of Rs. *** per Kg during the year 2005-06 and reduced to Rs. *** per Kg during 2006-07 and further reduced to Rs. *** during the year 2007-08. Similarly, export prices from Japan was to the tune of Rs *** per Kg during the year 2005-06 and after marginal increase to Rs *** per kg during the year 2006-07, steeply decreased to Rs *** during the year 2007-08 and again marginally increased to Rs *** per Kg during POI. It is evident that both the subject countries steeply reduced the prices during the year 2007-08 in which the domestic industry started the commercial production. Despite such discouraging market behavior of the subject countries, as the domestic industry could realize prices higher than the import prices, both the subject countries increased their prices during the year POI, still causing injury to the domestic industry.

**Q.3 Price suppression and depression effects of the dumped imports:**

131. Price suppression and depression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject countries. The price depression exists when the industry's prices are lower than the level of the previous period. Price suppression occurs when dumping prevents price increase that would otherwise take place due to increase in cost.

| Particular | Unit | 2007-08 | POI |
|---|---|---|---|
| Cost of Sales | Rs./Kg | *** | *** |
| Trend | Index | **100** | **94** |
| Selling Price | Rs./Kg. | *** | *** |
| Trend | Index | **100** | **96** |

| | | | |
|---|---|---|---|
| Landed Price | Rs./Kg. | | |
| Japan | Rs./Kg. | *** | *** |
| China PR | Rs./Kg. | *** | *** |
| Subject Coutnries | Rs./Kg. | *** | *** |
| Trend | Index | **100** | **117** |

132. From the above table it is evident that when the cost of sales reduced from 100 in the previous year to 94 during the POI, selling price reduced from 100 to 96 during the corresponding period and shows the absence of price depression. However, it is noted that cheap imports from the subject countries did not allow domestic industry to increase their selling price and thereby suppressed the prices of the domestic industry.

## R. Examination of other Injury Parameters

133. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analyzed hereunder as follows:

### R.1. Profits and actual and potential price effects on the cash flow

| | **Unit** | **2007-08** | **2008-09** |
|---|---|---|---|
| Cost of sales | Rs./Kg | *** | *** |
| Trend | Indexed | **100** | **94** |
| Selling Price (NSR) | Rs./Kg | *** | *** |
| Trend | Indexed | **100** | **96** |
| Profit/Loss | Rs./Kg | *** | *** |
| Trend | Indexed | **-100** | **-91** |
| Profit/Loss before Tax | Rs.Lacs | *** | *** |
| Trend | Indexed | **-100** | **-142** |
| PBIT | Rs.Lacs | *** | *** |
| Trend | Indexed | **-100** | **-150** |
| Cash Profit | Rs.Lacs | *** | *** |
| Trend | Indexed | **-100** | **-183** |

134. The data indicate that cost of sales of the domestic industry decreased by *** % during POI as compared TO previous year against which the selling price decreased by *** % during POI. Though, the loss per unit has come down during POI in comparison to previous year but domestic Industry continues to incur huge losses in the POI.

**R.2. Return on investment and ability to raise capital**

| | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| PBIT | Rs.Lacs | *** | *** |
| Trend | Indexed | -100 | -150 |
| Net Fixed Assets | Rs.Lacs | *** | *** |
| Trend | Indexed | 100 | 96 |
| Working Capital | Rs.Lacs | *** | *** |
| Trend | Indexed | 100 | 62 |
| Capital Employed | Rs.Lacs | *** | *** |
| Trend | Indexed | 100 | 92 |
| Return on Capital Employed (NFA basis) | % | *** | *** |
| Trend | Indexed | -100 | -162 |

135. The Authority notes that the return on the capital employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the preceding year and during the POI as well as the preceding year the domestic industry had a negative return from the subject goods.

**R.3 Productivity**

| | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| Production | Mt | 1,061 | 1,343 |
| Trend | Index | 100 | 127 |
| No. of Employees | Nos. | *** | *** |
| Productivity per employee | MT/No. | *** | *** |
| Trend | Indexed | 100 | 113 |

136. The data on production per employee shows that productivity per employee has increased by 13% in POI as compared TO previous year.

**R.4 Employment and wages**

| | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| Employment (Manpower strength) | Nos. | *** | *** |
| Trend | Indexed | **100** | **113** |
| Wages | Rs.Lacs | *** | *** |
| Trend | Indexed | **100** | **111** |

137. The employment level and wages do not show significant change. This may be attributable to the fact that the domestic industry has commenced its production of the subject goods during 2007-08 only. Despite incurring huge losses, the domestic industry could increase the wages by ***% during POI.

**R.5 Inventories**

| Inventories | Unit | 2007-08 | 2008-09 |
|---|---|---|---|
| Average | Mt | *** | *** |
| Trend | Indexed | 100 | 64 |

138. The Authority notes that the average inventory of domestic industry has reduced from *** Mt during the year 2007-08 to *** Mt during POI. The average inventory in indexed form has reduced from 100 during the year 2007-08 to 64 during the POI.

**R.6. Growth**

139. The Authority notes that the domestic industry has shown positive growth in terms of increase in production and domestic sales, increase in capacity utilization, increase in productivity, reduction in loss per unit and decrease in closing inventory. However, despite such positive growth indicators, the domestic industry continues to incur huge losses due to low selling price.

**R.7. Ability to raise fresh Investment**

140. The authority notes that the domestic industry had not changed the capacity of subject goods and there has been no fresh investment by the domestic industry during the period of investigation as the petitioner has recently commenced commercial production.

**R.8 Magnitude of Dumping**

141. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margins determined against the subject countries, for the POI, are significant.

## R.9. Factors affecting prices

142. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree. In order to assess the effect of imports on the domestic market, the Designated Authority analyzed import prices over the injury period. It was found that the landed value per KG in POI was lower than both the net selling price and non-injurious price of R-134a in respect of both the subject countries. Change in cost structure if any, due to competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors that might be affecting the prices in the domestic market. The cost of production has decreased by ***% during POI whereas the net selling prices decreased by ***% during the same period. However, the Authority notes that despite the second year of its operations, the prices of domestic industry remained significantly depressed at the level significantly below its cost of production. The Authority notes that Landed values of imported material from subject countries are significantly below the selling price of the domestic industry, causing price undercutting in the Indian market. The price undercutting during POI was in the range of 2-12% and underselling was in the range of 40-50% during POI.

## S. Conclusion on injury

143. The above analysis of the factors indicates that in spite of the improvement in production and sales in absolute terms, increase in capacity utilization, increase in productivity, reduction in loss per unit, increase in market share, the domestic industry suffered huge losses due to decrease in selling price as against much high cost of sales and dumped imports from the subject countries.

144. Imports from subject countries are maintaining their significant presence and these had significant price effect resulting in price depression, price undercutting and price underselling.

145. On the basis of above analysis, the Authority concludes that the domestic industry has suffered material injury.

## T. Causal Link & Other factors

146. Interested parties have argued in favor of absence of causal link in view of the following:

a) Change in the pattern of consumption despite increase in demand, domestic industry is unable to make profits in the sale of R134a because of its very high cost structure.

b) Poor exports achieved compared to projected export targets were the sole reason for the losses suffered by the domestic industry during 2008-09.

c) SRF is offering significantly low prices, users are forcing exporters also to match the prices set by SRF.

d) There is no causal link between the injury to the domestic industry and the imports from China.

e) Global recession is the main cause of decline in sales prices, decline in demand of finished products and decline in production and sales quantities.

**Views of the Domestic industry**

147. Domestic industry claimed that the petition, preliminary findings and written submissions are referred to and relied upon, which clearly establishes the causal link between dumped imports and injury to the domestic industry

**Examination by Authority**

148. Having examined the existence of material injury and volume and price effect of dumped imports on the prices of the domestic industry, in terms of its price undercutting, price underselling and price suppression and price depression effects, other indicative parameters listed under the Indian Rules and Agreements on anti dumping, have been examined to see whether there are any other factors, other than the dumped imports, that could have contributed to injury to the domestic industry. The following parameters have been examined in this regard.

**U.1 Volume and prices of imports from other sources**

149. The Authority notes that although there have been imports from other countries as well, but they are at much higher prices as compared to the imports from subject countries.

| Rs./kg. | 2007-08 | 2008-09 |
|---|---|---|
| Import price | | |

| | | |
|---|---|---|
| China | *** | *** |
| Japan | *** | *** |
| Third countries | *** | *** |
| Difference | 83.38% | 57.88% |

**U.2 Contraction in demand and / or change in pattern of consumption**

150. The Authority notes that the demand of the product under consideration has not registered any negative growth. In fact, demand shows significant positive growth. Thus, contraction in demand is not a possible reason that could have contributed to injury to the domestic industry. Also, the pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry. The argument of the interested parties that the global recession is the main cause of decline in sales prices, decline in demand of finished products and decline in production and sales quantities is not tenable with the trends reflected by injury parameters.

**U.3 Trade restrictive practices of and competition between the foreign and domestic producers**

151. The Authority notes that there is a single market for the subject goods where dumped imports from subject countries compete directly with the subject goods produced by domestic industry. The Authority also notes that the imported product is sold to meet the similar commercial grades and specifications as domestically produced subject goods and that the imported subject goods and domestically produced goods are like articles and are used for similar applications/ end uses.

152. The Authority notes that there is no restricted practice prevalent in the industry, which could be attributed to the injury to the domestic industry.

**U.4 Development of Technology**

153. On the basis of examination of the records of the petitioner, the Authority holds that development in technology has not been a relevant factor for the injury to the domestic industry. Further, domestic industry as well as the exporters from China PR is following the same process of production and there is no response from Japan.

**U.5 Export performance**

154. The Authority notes that the petitioner also exports a part of their production, and there has been increase in exports from 4 Mt during the year 2007-08 to 87 Mt during

POI. But, the quantity that is exported constitutes a meagre amount i.e.; just 6.4 % of the total production of the domestic industry in the POI. Hence, the Authority holds that material injury suffered by the domestic industry may not be as a result of the export performance of the domestic industry.

### U.6. Productivity of the Domestic Industry

155. Productivity of the domestic industry in terms of production per employee has shown improvement.

156. No other factor, which could have possibly caused injury to the domestic industry, has been brought to the knowledge of the Authority.

## V. Magnitude of Injury Margin

157. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The landed price of the exports from the subject countries and the injury margins have been worked out as follows:

### V.1. Injury margin Calculations

| Producer | Exporter | Injury Margin (USD/Kg.) | Injury Margin (%) |
|---|---|---|---|
| **China PR** | | | |
| Sinochem Environmental Protection Chemicals (Taicang) Co Ltd. | Sinochem Environmental Protection Chemicals (Taicang) Co Ltd | *** | 40 - 50 |
| Sinochem Environmental Protection Chemicals (Taicang) Co Ltd. | Du-Pont Trading (Shanghai) Co. Ltd. | *** | 45 - 55 |
| Sinochem Modern Environmental Protection Chemicals (Xi'an) Co. Ltd. | Sinochem Modern Environmental Protection Chemicals (Xi'an) Co. Ltd. | *** | 30 - 40 |
| Any | Any | *** | 45 - 55 |

| | | | |
|---|---|---|---|
| **Japan** | | | |
| Any | Any | *** | 50 - 60 |

## W. Indian industry's interest & other issues

158. The Authority recognizes that imposition of anti-dumping duties might affect the price level of product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply.

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

## X. Conclusions

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

a. The subject goods have been exported to India from the subject countries below its normal value;

b. The domestic industry has suffered material injury, caused by the dumped imports from subject countries;

c. The dumping margins of the subject goods imported from the subject countries are substantial and above de minimis.

## Y. Recommendations

161. Authority notes that the investigation was initiated and notified to all the known interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and completed the investigation into dumping, injury and causal link in terms of the Anti-dumping Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports from the subject countries, the Authority is of the view that imposition of anti-dumping measures is required to offset dumping and injury. Therefore, the Authority considers it necessary and recommends imposition of definitive anti-dumping duties on imports of the subject goods from the subject countries in the form and manner described hereunder from the date of notification by the Central Government.

162. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive 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, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning all imports of the subject goods originating in or exported from the subject countries.

## Duty Table

| Sl. No. | Sub Heading Of Tariff item | Description of Goods | Country Of Origin | Country Of Export | Producer | Exporter | Duty Amount | Unit of Measurement | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2. | 3. | 4. | 5. | 6. | 7. | 8 | 9. | 10. |
| 1. | 29033919 | 1,1,1,2-Tetrafluoroethaor R-134 a | China PR | China PR | Sinochem Environmental Protection (Taicang) Co. Ltd. | Sinochem Environmental Protection (Taicang) Co. Ltd. | 1.15 | Kg | USD |
| 2. | - Do - | - Do - | China PR | China PR | Sinochem Environmental Protection Taicang) Co. Ltd | Du-Pont Trading (Shanghai) Co. Ltd. | 1.36 | Kg | USD |
| 3. | - Do - | - Do - | China PR | China PR | Sinochem Environmental Protection Chemicals (Xian) Co. Ltd. | Sinochem Environmental Protection Chemicals (Xian) Co. Ltd | 1.15 | Kg | USD |
| 4. | - Do - | - Do - | China PR | China PR | Any Combination of producer and exporter other than Sl. No. 1 to 3 | | 1.41 | | USD |
| 5. | - Do - | - Do - | China PR | Any country other than China PR | Any | Any | 1.41 | Kg | USD |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 6 | - Do - | - Do - | Any country other than China PR | China PR | Any | Any | 1.41 | Kg | USD |
| 7 | - Do - | 1,1,1,2-Tetrafluoroetha or R-134 a | Japan | Japan | Any | Any | 0.69 | Kg | USD |
| 8 | - Do - | - Do - | Japan | Any | Any | Any | 0.69 | Kg | USD |
| 9 | - Do - | - Do - | Any country other than Japan | Japan | Any | Any | 0.69 | Kg | USD |

163. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Vijaylaxmi Joshi)

The Designated Authority