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14/07/2007-DGAD
Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

NEW DELHI,
Dated the 11 November 2009

FINAL FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade) originating in or exported from Korea RP.

No.14/07/2007-DGAD - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995(hereinafter referred to as AD Rules), thereof:

2. WHEREAS M/s. Gujarat Alkalies & Chemicals Limited and Solaris Chemtech Limited,, (herein after referred to as the applicants) have filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and the Rules, alleging dumping of Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade) (hereinafter referred to as the subject goods), originating in or exported from Korea RP (hereinafter referred to as subject country).and requested for initiation of an investigation for levy of anti dumping duties on the subject goods.

3. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicants issued Initiation Notification of even number dated 12th November 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

4. AND WHEREAS, the Authority notified its preliminary findings vide Notification dated 24th April 2009 recommending provisional anti-dumping duty on import of subject goods from the subject countries and acting upon such recommendations of the

Authority, the Department of Revenue, vide its notification No 74/2009-Customs dated 22nd June 2009 imposed provisional anti-dumping duty on the subject goods.

A. PROCEDURE

5. The procedure described below has been followed with regard to the investigation:
- i) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with sub-Rule 5(5) of the Rules.
 - ii) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassy of subject country in accordance with Rules 6(3) supra.
 - iii) The Authority forwarded a copy of the Initiation Notification to the known exporters from the subject country, importers and domestic industry as per the addresses made available by the applicant and gave them opportunity to make their views known in writing within forty days from the date of the Initiation Notification.
 - iv) No response has been received from any producer/ exporter of Korea RP within the prescribed time limit. However a response has been received from M/s DC Chemicals Co. Ltd., Korea RP dated 4.2.2009 received on 19.2.2009, after prescribed time limit and the same has been found incomplete and accordingly the said producer/ exporter has been treated as non-cooperative for the purpose of this investigation.
 - v) The Authority forwarded a copy of the Initiation Notification to all the known importers (whose names and addresses were available with the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4).
 - vi) Comments on initiation notification have been received from the following interested parties, which have been dealt with at appropriate place in the findings:
 - a. Star Chemicals (Bombay) Pvt. Ltd., Mumbai
 - b. The Fertiliser Association of India, New Delhi
 - c. Hindustan Unilever Limited
 - d. Madras Fertilisers Limited, Chennai
 - e. Sandeep Organics Pvt. Ltd., Mumbai

- vii) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- viii) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigations. The information received from DGCI&S shows that it had not captured the total imports of the subject goods during the period of investigation therefore data from IBIS has been relied upon in this preliminary findings.
- ix) Information was sought from the applicant and other domestic producers also. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;
- x) The Designated Authority sent copies of preliminary findings dated 24th April 2009 to all known interested parties including, the responding importers and users of the subject goods, Embassy of the subject country in India, and the domestic industry and invited the comments of the interested parties on the preliminary findings. Parties to this investigation were requested to make their views known in writing within 40 days (or extended period) of the notification of preliminary findings.
- xi) The comments of the interested parties in response to the preliminary findings have been taken on record and have been discussed in appropriate sections of the findings.
- xii) The Authority held a public hearing on 11.08.2009 to provide an opportunity to all interested parties to present their view. Oral submissions made by the parties during the public hearing reproduced in writing have been taken on record for the purpose of this investigation.
- xiii) In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 3rd November 2009 and comments received thereon have also been duly considered in the findings.
- xiv) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

- xv) The Period of Investigation covers the period starting from 1st April 2007 to 31st March 2008 (12 months). The examination of trends in the context of injury analysis covers the period from April 2004 - March 2005, April 2005 – March 2006 and April 2006 – March 2007 and the POI.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY.

6. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and those raised in the disclosure statement and in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

7. Subsequent to the preliminary findings, the following interested parties have made submissions:

- i. Domestic Industry
- ii. Vasu Chemicals, Mumbai, Importer
- iii. Sandeep Chemical Corporation, New Delhi – Importer
- iv. Hindustan Unilever Limited
- v. Bohrim Industry Corp., South Korea
- vi. Sebit Chem Co. Ld., South Korea
- vii. Canko Marketing Inc., South Korea
- viii. MetaChem, South Korea

8. Subsequent to public hearing, the submissions were received from the following:

- i. Domestic Industry
- ii. A. Choksey Chemical Industries, Mumbai
- iii. M/s Sandeep Organics Pvt. Ltd., Mumbai
- iv. Hindustan Unilever Limited
- v. M/s Sebitchem Co. Ltd., South Korea
- vi. M/s Kwang Jin Chemical Co. Ltd., Korea
- vii. Bohrim Industry, South Korea
- viii. Canko Marketing Inc., South Korea
- ix. BR Corporation, South Korea

9. The submissions made by various interested parties that had been dealt with in the preliminary findings are not being repeated here for the sake of brevity. Following disclosure statements, the following interested parties have submitted their comments within the time period:

- (i) M/s Bohrim Industry, South Korea
- (ii) M/s Borim Industry South Korea
- (ii) M/s Canko marketing. South Korea
- (iv) M/s Kwang Jin Chemical Co Ltd. South Korea
- (v) M/s Br Corporation. , Korea RP
- (vi) M/s Sebit Chem, Korea RP
- (vii) Hindustan Lever Ltd.
- (viii) Domestic industry
- (ix) M/s A Choksey chemical industry

Subsequent to the issuance of disclosure statement, various interested parties i.e importers, exporters and domestic industry have submitted their comments which have been analysed at appropriate headings in this findings. Various importers and exporters have reiterated their earlier submissions with regard to product under consideration, domestic industry standing and injury parameters. The domestic industry has requested the authority to confirm dumping margin and injury margin and has also requested the Authority to fix duty in US \$ because of depreciation of US\$.

C. Product under consideration and like article

10. The product under consideration in the present investigation is Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade). Phosphoric Acid is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, pharmaceutical applications, beverages, seed processing, sugar juice and sugar refining, food phosphate manufacturing, etc.

11. Phosphoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act and subheading number 2809.20 of Indian Trade Classification (based on harmonized commodity system). The custom classification for all forms /grades /types of Phosphoric Acid is same. There are no restrictions on imports of Phosphoric Acid, as the product does not fall under restricted list. The product can be imported freely from any country in any quantity.

12. The applicants have claimed that there is no known difference in product produced by the participating companies and exported from Korea RP. Both products

have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. It has been claimed by the domestic industry that comparison of essential product properties in respect of domestic product and imported product show that the subject goods produced by the domestic industry are similar to the subject goods imported from subject country in terms of essential product properties. The phosphoric acid produced by the domestic industry are like article to the subject goods imported from Korea RP.

C.1. Views of other interested parties on Product under Consideration

13. The importers and users of the subject goods in India made the following submissions:

14. Vasu Chemicals, Mumbai.

- i. The Indian and imported material are different in specifications mainly with the presence of Acetic Acid in imported material and also varies in ppm level with respect to other impurities.

15. M/s Sandeep Organics Pvt. Ltd., Mumbai

- i. The goods produced by the domestic industry are not technically and commercially substitutable to the imported product under consideration. Therefore, the products produced by domestic industry should not be treated as 'like article' to the goods imported from Korea RP.
- ii. LCD manufacturers in South Korea use pure Phosphoric Acid as raw material & then reprocess the phosphoric acid recovered in the process. The recovered, recycled, non-pure & reprocessed grade is different from the Pure form. The domestic producers in India produce pure form.
- iii. The Korean phosphoric acid is of very high acetic content and the removal of the same involves very high cost. The high cost of such removal and the compromise in quality has to be factored into the landed cost to arrive at the effective and real cost of such imports from Korea.
- iv. Fertiliser grade is green in colour while technical & food grade is colourless.
- v. Korean Material is not used in Pharmaceuticals, phosphate sales & food (beverages & sugar) industries. It is used in textiles, electroplating & paper industry).

16. A. Choksey Chemical Industries, Mumbai

- i. Because of anti-dumping duty on Phosphoric Acid, the cost of production of various phosphate salts has increased as seen from the comparison of the cost of production of Phosphate salt if indigenous phosphoric acid is used vis-à-vis imported phosphoric acid.
17. **Vasu Chemicals, Mumbai**
 - i. There are number of applications where Korean Phosphoric Acid can easily be used and thus allowing Indian Manufacturers to keep their cost of final products in control in the parity of world formulation.
18. **M/s Economic Law Practice, Mumbai on behalf of M/s Hindustan Unilever Ltd.**
 - a. The scope of the product under consideration includes technical and food grade. The Industrial Users in their production of the detergent i.e. Surf Excel bar specifically requires Pure Phosphoric Acid. Post the Period of Investigation; the Industrial Users due to non-availability of this grade by the Petitioners were forced to look at the viable source of this product from Korea RP.
 - b. The Industrial Users has imported “spent phosphoric acid” which is recovered, recycled and reprocessed impure phosphoric acid having acetic acid of 3%. This impure phosphoric acid is a by-product of the manufacturing process of Liquid Crystal Display. Once the product is imported into India, the Industrial Users engage a job worker to convert the spent phosphoric acid into pure phosphoric acid by removing the impurities. The DGAD should therefore exclude from the purview of this investigation the grade used by the Industrial User which is clearly not a ‘like article’ as it does not have the physical / chemical characteristics / end user capabilities of the pure phosphoric acid as sourced from the Petitioners in the normal course.
 - c. If the DGAD does considers it to be within the scope of the investigation, while conducting the injury analysis should factor in the prices of the imported “spent phosphoric acid” and the reprocessing charges to compare with the grades allegedly injuring the Petitioners in the domestic market.
19. M/s Sandeep Chemical Corporation, New Delhi made the similar submissions on product under consideration as made by the exporters, as shown in the para 21 below:
20. The following exporters from South Korea made their submissions first time after the Preliminary Findings:
 - i. Bohrim Industry Corp., South Korea
 - ii. Sebit Chem Co. Ld., South Korea

- iii. Canko Marketing Inc., South Korea,
- iv. MetaChem, South Korea

21. All of the above exporters from Korea RP have made the similar submissions; as shown below:

- i. Technical grade is actually re-cycled/ recovered/ impure/ re-processed grade.
- ii. LCD manufacturers in South Korea imports Phosphoric Acid from China and use it in their manufacturing process. They recover phosphoric acid from its process and then sell it to exporters. It contains impurities such as Acetic Acid & Arsenic contents. It is not used in many industries.
- iii. There is difference in the parameters such as physical, chemical characteristics, manufacturing process & technology, use of raw material, function & use of products, specifications, pricing, distribution & marketing. For example, fertilizer grade is green in colour while, Korea exports colourless material.
- iv. The material is not used in pharmaceutical, phosphate salts & food (beverage & sugar) industries. It is used in textiles, electroplating & paper industry.

C.3. Examination by the Authority

22. The Authority notes that the item description in majority of import transactions of subject goods from Korea RP is Phosphoric Acid (Technical Grade) or Phosphoric Acid (Food Grade). The import documents provided by the importers also shows the import of Technical grade of phosphoric acid from Korea RP.

23. The exporters & importers have compared fertilizer grade - Phosphoric Acid with the Phosphoric Acid of Korean origin. The Authority notes that such comparison is not relevant to the investigation since the Fertiliser Grade phosphoric Acid is not covered under product under consideration.

24. Some of the importers have provided the test analysis Report showing that the technical grade phosphoric acid imported from Korea RP contains min 85% concentration of Phosphoric Acid. The Authority notes that the domestically produced technical grade phosphoric acid also contains minimum 85% concentration of Phosphoric Acid.

25. As regards the claim of high acetic acid content in the technical grade phosphoric acid imported from Korea, removal of which involves additional cost, the Authority notes that:

- a. As per the analysis reports enclosed with these submissions, the acetic acid content are lower than the Korean standards for the same;
- b. M/s Hindustan Unilever Ltd. claiming high acetic content has not imported the subject goods during the POI. Other importers who have claimed the high acetic acid content have not indicated the quantity imported by them during POI.

Similarly the exporters claiming the high acetic content have not mentioned the quantity exported by them during the POI. The Authority notes that the claim of high content of acetic acid by the importers who have not imported the subject goods and by those without indicating their import volume do not establish that the total imports of approx. 15,000 MT from Korea during POI were of high acetic content. Further, there is no evidence provided by any interested party that acetic acid content in the imported product was higher than the standards/ permissible limits mentioned by one of the exporter itself.

- c. The claim of M/s Hindustan Unilever that Post POI, they have imported spent phosphoric acid has not been substantiated. Even when the company has claimed to have imported the product under consideration post POI, the company has not provided any evidence that the same was described as “spent phosphoric acid”. Further, the transaction wise information on imports available with the Authority (made available by the IBIS and DGCI&S) and documents made available by various interested parties also does not show the nomenclature of the subject goods as “spent phosphoric acid”. Further, their claim that they are converting the imported material to pure phosphoric acid by removing impurities is also unsubstantiated. The Authority considers that neither the claim of higher impurities is established, nor the additional processing by the importers is established.

26. As regards the submissions by some of the Indian importers and Korean exporters that Korean Material is not used in Pharmaceuticals, phosphate salts & food (beverages & sugar) industries, the Authority notes that all the importers/ exporters who have given the submissions are dealing in the Technical grade Phosphoric Acid, whereas the Pharmaceuticals & food industries use food grade phosphoric acid. With respect to Phosphate salts, the Authority notes that one of the user and importer has given the comparison of the cost of production of Phosphate salt if indigenous phosphoric acid is used vis-à-vis imported phosphoric acid. It therefore appears that they are using phosphoric acid imported from Korea RP in the production of Phosphate Salts. Further, one of the importer has stated that there are number of applications where Korean Phosphoric Acid can easily be used. In any event, the Authority notes that the fact that the product is used in several applications and the fact that the imported product from Korea is used in limited application is irrelevant so long as the domestic industry is producing and supplying the product for the same functions & uses. None of the interested parties have disputed that the domestic industry is producing and supplying phosphoric acid for the same functions & uses for which the imported product has been used.

27. After due examination of the submissions made by the interested parties and the facts available on record, the Authority confirms the product under consideration as considered in the preliminary findings and notes that the goods produced by the domestic industry are technically and commercially substitutable to the imported product under consideration. The two are comparable in terms of product specifications, physical and

chemical properties, functions and uses, pricing and customs classification. The goods produced and supplied by the domestic industry are technically and commercially substitutable to the imported goods. The goods produced by domestic industry are therefore being treated as 'like article' to the goods imported from Korea RP.

D. Domestic industry

28. The application has been filed by the two domestic producers of the subject goods, i.e. M/s Gujarat Alkalies & Chemicals Limited and M/s Solaris Chemtech Limited. The Authority notes that there are three other producers of subject goods in India, i.e., M/s Star Chemicals, Mumbai, M/s STS Chemicals, Mumbai and M/s Punjab Chemicals and Crop Protection Ltd.

29. The domestic industry has submitted in their application that the production of M/s STS Chemicals shall not be included while determining the standing of the domestic industry, as they are not producing subject goods from basic stage and are procuring the subject goods in technical grade from the applicants and converting it into food grade.

30. Subsequent to Initiation, M/s Star Chemicals (Bombay) Pvt. Ltd., one of the domestic producers other than the applicants have opposed the petition for imposing anti-dumping duties against the import of Phosphoric Acid (excluding agricultural/ fertiliser grade) of all grades and concentrations from the subject country. They have submitted that reasonable degree of competitive pressure should remain on the domestic industry, from imports from Korea. They have further submitted that their submission is made only in the interest of the consumers/ end users at large, inspite of the fact that they as a manufacturer of Phosphoric Acid would also get affected.

31. M/s Punjab Chemicals and Crop Protection Ltd, who are also one of the domestic producer of the subject goods have provided their support to the petition before the initiation of the investigation. They have stated that it is very essential to impose anti-dumping duty against the import of subject goods from the subject country, otherwise, the applicant companies and M/s Punjab Chemicals and Crop Protection Ltd. will become sick and it will badly affect all the employees of the companies.

32. After taking into account the production of all the known producers of the subject goods in the Country (excluding M/s STS Chemicals), the Authority notes that the applicants commands more than 50% of the production of the subject goods in India (91% of the total production) and holds that for the purpose of this investigation the applicants M/s Gujarat Alkalies & Chemicals Ltd. and M/s Solaris Chemtech Ltd. command the standing in terms of Rule 5(3) and constitutes the domestic industry in terms of Rule 2(b).

E. De Minimis Limits

33. As per the import data received by the Authority from IBIS, as well as from DGCI&S, the imports from subject country are above the de minimis level.

F. Confidentiality

34. The Authority has examined the confidentiality claims of the interested parties. In this findings, the data of the domestic industry concerning capacity, production and sales and imports data have not been kept confidential. The data of domestic industry in respect of customers, cost, prices and the data that would give competitive advantage to their competitors have been kept confidential. The other information has not been considered as confidential unless the responding party has given sufficient justification for keeping the information as confidential.

35. Post Preliminary Findings and Public Hearing, M/s ELP, Advocates representing M/s Hindustan Unilever Ltd. submitted that excessive confidentiality has been claimed by failing to provide data related to volume of imports for the two distinct grades of phosphoric acid. The Authority after examining the claim has disclosed the imports data separately for the Technical Grade and food grade in this findings.

G. Other submissions and issues raised.

G.1. View of Domestic Industry

36. The domestic industry made the following submissions:

- i. Present petition is 3rd petition for the same product. DA earlier conducted investigation against China and recommended imposition of duty.
- ii. None of the exporters from Korea RP have responded to the questionnaire issued by the Authority.
- iii. The production of domestic industry accounts for more than 50 per cent of the total Indian production. Thus, petitioners account for “a major proportion in total eligible Indian production”. Thus the petitioners command the standing in terms of Rule 5(3) and constitute the domestic industry in terms of Rule 2(b).
- iv. Since none of the exporters from Korea RP have responded to the questionnaire issued by the Authority, the normal value may be determined for the subject goods in Korea RP considering constructed cost of production including selling, general and administrative overheads and reasonable profit.
- v. Considering the normal value and export price dumping margins works out not only significant, but also substantial.
- vi. The transaction-wise import data does not show that Spent Phosphoric Acid was the product imported in the POI.

G.2. Views of Users and Importers

37. M/s Economic Law Practice, Mumbai on behalf of M/s Hindustan Unilever Ltd. have made the following submissions other than those dealt with at relevant places in this findings:

- i. DGAD has chosen a POI, which expires nearly eight months before the initiation of the investigation. By failing to choose the POI close to the date of initiation, the DGAD has failed to rely on 'positive evidence' that can clearly show that the domestic industry is currently suffering injury or a threat of injury is existing at this point of time because of dumped imports.
- ii. The IBIS which covers limited ports shows higher imports than DGCIS which covers more ports than the IBIS sources. The methodology by which this data has been analyzed and relied upon has been kept confidential. This seriously impedes the ability of the interested parties to make submissions.
- iii. As the price of detergents is very sensitive to price of Phosphoric Acid, the anti-dumping duty would have a pernicious effect on the public interest through rise in price of detergents. The anti-dumping duty is used as a negotiation tool for artificially hiking the product price even in absence of any injury whatsoever.
- iv. The effects of volatile raw material as linked with the phosphoric acid clearly has an impact on the Industrial user, therefore the DGAD should re-consider to recommend the duties on reference price basis as compared to fixed duties. The fixed anti-dumping duties being enjoyed by the domestic industry have been built into their price, thus enabling them to enjoy unreasonably high margins at the cost of the user industries.
- v. Although no exporters from Korea RP have co-operated, the present incapacity of the Petitioners to meet Indian demand should be considered in larger community interest of the nation.

38. **M/s Vasu Chemicals, Mumbai:**

- a. Indian manufacturers have created the artificial shortage of Phosphoric Acid by making price cartel.
- b. Technical Phosphate Acid was imported from Korea and hence the prices of Indian manufacturers went downwards, which are still higher than what is available through imports.
- c. If anti-dumping duty is imposed on the Korean material, then the Indian manufacturers will take further advantage and again increase prices for their own benefit by making other users expensive.

39. **M/s Sandeep Organics Pvt. Ltd., Mumbai**

- i. The landing cost of imports of Phosphoric Acid has become cheaper. Thus, the domestic/ local producers/ manufacturers have become non-competitive. If the anti-dumping department brings in anti-dumping duty on imports of

- Phosphoric Acid, it will conflict with the basic idea/ purpose to reduce the basic duty on imports.
- ii. If the anti-dumping duty is not removed/ abolished, we will contract Finance Ministry, we will approach Parliament, we report this to News Agencies.
 - iii. The local manufacturers/ producers deal in many products. They may have suffered loss due to manufacturing of other products (& not Phosphoric Acid). The Local /Domestic Manufactures /Producers wanted to create a Monopoly. They are not competitive in this Global Market. If anybody complains to WTO (WORLD TRADE ORGANISATION) & NATO (NORTH ATLANTIC TREATY ORGANISATION) it will become an international issue, How come the Local / Domestic Producers / Manufacturers want Anti Dumping & Safeguard Duties on imports of all the products? Even after adding marine freights (international transportation), imports are cheaper than the Domestic / Local prices. The financial positions of local/ domestic producers are sound, good & competitive. Why local/ domestic manufacturers are manufacturing in spite of losses? They should close down their business.
 - iv. The increase in imports from Korea is not on account of the dumped prices, but instead, is because domestic manufacturers have been unable to provide adequate supply of phosphoric acid. There exists gap between the local demand and supply. The domestic manufacturers are using this shortfall in the supply to increase the prices of Phosphoric Acid. Therefore, the injury to the domestic industry is purely self-inflicted and has no connection with the alleged dumping of phosphoric acid.
 - v. The in-competitiveness of local/ domestic producers/ manufacturers will be reported to BSE, NSE & SEBI.
 - vi. Many authorized agents of local domestic producers/ exporters are importing phosphoric acid from Korea RP.
 - vii. Due to Recession, the prices of phosphoric acid from Korea RP have reduced from USD 1800 to USD 450 PMT cif NAVA SHEVA sea port. Both decline in CIF price and the decline in rate of Customs duty triggered a substantial reduction in the landed price of imports.
 - viii. People are clearing anti-dumping material without paying anti-dumping duty by clearing under DFIA license (Duty Free Import Authorization) of Leather & Sugar & under DFRC. So, there won't be any impact of anti-dumping.
 - ix. Phosphoric Acid comes in different packing, e.g., bulk (in isotanks), loss (20 kg to 330 kgs.), etc. The prices varies accordingly. This should be considered while deciding on anti-dumping duty.
 - x. Phosphoric Acid is coming from other countries also. Why only Korea RP is targeted and not other countries.
 - xi. Given the multitude of application of phosphoric acid in foods, detergents, chemicals, medicines, etc., the imposition of any-anti-dumping duty on all imports from Korea will directly result in escalation in prices of many end products which uses it as a raw material.
 - xii. There is protection of Essential Act under the fundamentals & Constitution of India. Anti-dumping can be challenged under this Act.

- xiii. Under the fundamental of Natural Justice, response of M/s DC Chemicals Co. Ltd., Korea RP should be considered even though it is incomplete or filed later.
- xiv. Why Merchant/ Fertiliser/ Agriculture grade is exempted?
- xv. Why production of M/s STS Chemicals shall not be included while determining the standing of the domestic industry?
- xvi. In the interest of the consumers/ end user at large, no ADD be levied on imports from Korea in the larger interest of the consumer.
- xvii. The anti-dumping department should consider the following components while deciding on the costs:
 - a. Local domestic producers: Excise/ Modvat/ Gatepass, Sales Tax, Agent's Discount/ Rebate/ Commission
 - b. Exporter/ Supplier of Korea RP: Packing Cost, Financing Cost, Exporter Margin, Freight, Agent, Indentor Commission/ Brokerage, Clearing Charges on Import & Export, Documentation Charges, Excise Duty, SAD Duty, Handling Charges, Sales Tax.
- xviii. Sale price should be compared instead of cost.
- xix. Effect of anti-dumping from China should be considered.
- xx. Trade restrictive practices by local/ domestic producers/ manufacturers..
- xxi. Imports continue even after levy of anti-dumping duty.
- xxii. Phosphoric Acid is also used in other industries.
- xxiii. Fertiliser grade is green in colour while technical & food grade is colourless.
- xxiv. Reduction in sales of domestic producers may be due to reduction in excise duty.
- xxv. Questionnaires should have been sent to many parties (importers, exporters, manufacturers, embassies, trade unions, etc).
- xxvi. India & South Korea has signed free trade pact recently. Anti-dumping will hamper relationship between these two countries.
- xxvii. South Korea will retaliate in the same way by bringing anti-dumping on exports from India.

40. **A. Choksey Chemical Industries, Mumbai**

- i. Because of anti-dumping duty on Phosphoric Acid, the cost of production of various phosphate salts has increased. The company has provided a comparison of the cost of production of Phosphate salt if indigenous phosphoric acid is used vis-à-vis imported phosphoric acid.
- ii. The consumers of Phosphate salts have started procuring their requirements by importing Phosphate salts since the imported material is very cheap. Thereby, our business is lost.
- iii. The total production capacity of Indian Manufacturers is comparably very meager than actual requirement for consumption in India. In prevailing Indian market, there will always be inflationary condition and Indian consumers of phosphoric acid cannot compete in Global market.
- iv. Majority of Phosphate industry falls under small scale industry.

- v. Production of Phosphate Salts with phosphoric acid 85% manufactured by Indian Company is not at all economical and there is every fear of collapsed of SSI Sector.
- vi. Ministry of Commerce & Industry shall interfere effectively in the interest of Indian Economy with available controlling tool against dumping of phosphate salts mainly Sodium Hexamite Phosphate 68% from China.

41. **Sandeep Chemical Corporation, New Delhi**

- i. Price varies according to concentrations, percentage, packing & grades.
- ii. Prices & profit of local manufacturers increased. Their market share decreased due to their high prices.
- iii. South Korea market share increased as the end user/ consumer changed their manufacturing process so that South Korea material can be accepted. They tried to reduce acetic acid contents.
- iv. Finance Ministry reduced import basic duty to 5% so as to increase the import of Phosphoric Acid. This decision was taken in the budget so as to make imports viable.
- v. Exporters of South Korea export under Chapter Head 2809201090. Indian customs classifies under Chapter head 28092010.
- vi. Local manufacturers are stocking & holding the material so as to create shortage in the market resulting increase in the price. They are not competitive. They get incentives.
- vii. Current imports are not viable from China & South Korea. South Korea has exported more due to recession and change/ fluctuation in their currency.
- viii. In South Korea, traders are exporting the material. So, there is margin of traders, indentor's commission, finance cost, credit cost, local administrative cost also. We request you to reduce the amount of anti-dumping duty.

G.3. **Views of Exporters**

42. Exporters from South Korea, namely M/s Bohrim Industry Corp., M/s Sebit Chem Co. Ld., M/s Canko Marketing Inc., and M/s MetaChem made the following submissions:

- a. Price varies according to concentrations, percentage, packing & grades.
- b. Prices & profit of local manufacturers increased. Their market share decreased due to their high prices.
- c. Finance Ministry reduced import basic duty to 5% so as to increase the import of Phosphoric Acid. This decision was taken in the budget so as to make imports viable.

- d. Local manufacturers are stocking & holding the material so as to create shortage in the market resulting increase in the price. They are not competitive. They get incentives.

G.4. Examination by the Authority

43. Regarding issues raised by interested parties with respect of injury, the Authority notes that injury have been analysed on the basis of verified data of the domestic industry.

44. As regards the sensitivity of price of detergents to the price of Phosphoric Acid, the Authority notes that the user industry has neither established its claim of adverse impact, nor the legal provisions under which the same should be considered and addressed.

45. As regards the impact of anti-dumping duty on the availability of imported product in India to fill in the gap of demand and supply, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers. Nor would imposition of anti dumping duty result in pricing increasing beyond what has been considered reasonable & fair, given that the quantum of anti dumping duty is being restricted to the extent of injury.

46. The submission has been made that effects of volatile raw material as linked with the phosphoric acid clearly has an impact on the Industrial user, therefore the DGAD should re-consider to recommend the duties on reference price basis as compared to fixed duties. The Authority notes that the interested parties have not established how reference price would address dumping and consequent injury. In fact, given that the prices of inputs are volatile, anti dumping duty in the form of reference price does not appear reasonable and fair in addressing injurious dumping.

47. As regards selection of the POI, it is noted that the investigations were initiated based on the sufficient evidence provided by the domestic industry and in accordance with the anti-dumping rules. The Authority has carried out an objective examination of alleged dumping and consequent injury to the domestic industry. As regards choosing the POI, which expires nearly eight months before the initiation of the investigation, the Authority notes that there is no legal requirement to not to consider the time gap of 8 months between POI and initiation of investigation.

48. The Authority notes that one of the Indian importers/users has admitted that that the landed cost of imports has become cheaper. Another importer/user has stated that both decline in CIF price and the decline in rate of customs duty triggered a substantial

reduction in the landed price of imports, which clearly establishes the contention of the domestic industry that the imports are undercutting the prices in the domestic market.

49. As regards the submission that many authorized agents of local domestic producers/ exporters are importing phosphoric acid from Korea RP, the Authority notes that the import of subject goods by any agent of domestic industry does not establish that the imports have not caused injury. On the contrary, the fact that authorized agents themselves are dealing in imported phosphoric acid establish that the imports are likely to cause injury to the domestic industry.

50. It has been submitted by the importers that the Exporter/ Supplier of Korea RP are incurring a lot of expenses on exports, e.g., Packing Cost, Financing Cost, Exporter Margin, Freight, Agent, Indentor Commission/ Brokerage, Clearing Charges on Import & Export, Documentation Charges, Handling Charges, Sales Tax, etc. The Authority notes the dumping margin is required to be determined at the same level of trade. The importers have admitted that the landed cost of imports has become cheaper inspite of all these expenses.

H. Determination of Dumping Margin

H.1. Normal Value

51. The only responding exporter from Korea RP, M/s DC Chemical Co. Ltd. has not provided any information on the domestic selling prices and cost of production of subject goods in Korea RP. Moreover, in view of grossly inadequate response and that too after the prescribed time limit, M/s DC Chemical Co. Ltd. has been treated as non-cooperative for the purpose of this investigation. The Authority has therefore proceeded to determine the normal value on the basis of best facts available as per Rule 6(8) of the Anti dumping rules. The Authority has determined normal value for the subject goods in Korea RP considering the raw materials for manufacture of Phosphoric Acid at the international prices, the consumption norms, conversion cost and selling, general and administrative overheads of the domestic industry and a reasonable profit. The constructed normal values of Phosphoric Acid in packed form for all producers and exporters from Korea RP are determined as under:

Grade of Phosphoric Acid	Packed (USD/MT)
Technical Grade	***
Food Grade	***
Weighted Average	***

H.2. Export price

52. The Authority notes that the information received from DGCI&S has not captured all the import transactions in the codes dedicated for the subject goods and therefore determined export price for the period of investigation as per the transaction-wise details of imports provided by the IBIS. No exporter from Korea RP has cooperated in the investigation. Therefore, for the purpose of this findings, the data of imports as reported in India in IBIS data have been relied upon. The imports regarding agriculture/fertilizer have not been taken into consideration for determining the export prices. The imports data were further segregated for food and technical grades. From the export data, it has also been noticed that imports of Phosphoric Acid (Food and Technical Grade) are in small consignments ranging from few Kgs. to 137 MT during POI, which can come only in packed form. Further, based on the submission of one of the importers that the Exporter/ Supplier of Korea RP are incurring a lot of expenses on exports, including Packing Cost, the Authority notes that the exports from Korea RP have taken place in packed form only.

53. In the imports data, the information has been provided on CIF value basis. The expenses incurred in export transactions on account of inland freight in exporting country, Ocean Freight, Marine Insurance and port expenses have been adjusted to arrive at the ex-factory export price. The ex-factory export price has been determined separately for technical and food grade. By adopting this methodology, the ex-factory export price has been determined as US\$ 519.56 PMT for technical grade and US\$ 469.72 PMT for food grade and the average export price works out to US\$ 519.15 PMT.

H.3. Dumping Margin

54. 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 country as follows:

Exporter/ Producer	Import Volume (MT)	Normal Value	Export Price	Dumping Margin	US\$/MT
					Dumping Margin %
Technical Grade	15281	***	***	***	35-45
Food Grade	127	***	***	***	70-80
Weighted Average		***	***	***	35-45

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

I. INJURY DETERMINATION

I.1 View of the domestic industry

55. The domestic industry have made the following submissions:-
- a. The performance of the domestic industry improved in terms of volume parameters, which clearly shows that the domestic industry is trying its best to compete in the market and sustain its operations.
 - b. Performance was expected to increase after imposition of duty against China.
 - c. Performance in terms of price parameters improved, but the industry continues to make significant financial losses.
 - d. Performance of the domestic industry improved in absolute terms in terms of sales volumes, capacity utilization, production, and productivity.
 - e. Performance of the domestic industry however remained *sub-optimal* in terms of prices, profits, cash profits, return on investments and market share.
 - f. Injury to the domestic industry has not been caused by the other factors, There is significant difference between the prices offered by the domestic industry and exporters from subject countries. Even when the domestic industry is offering sub-optimal prices, imports are increasing.
 - g. Price undercutting caused by the dumped imports is causing price pressure on the domestic industry. As a direct consequence, the domestic industry continues to suffer financial losses, which increased in the period of investigation.
 - h. Continued financial losses have been resulting in adverse performance in terms of cash flow and ROI. Thus, continued losses, negative return on capital employed and cash flow is directly due to dumped imports earlier from China PR and now from Korea RP.
 - i. The performance of the domestic industry has suffered materially in the period of investigation and domestic industry has thus suffered material injury
 - j. The injury to the domestic industry has been caused by the dumped imports.
 - k. Definitive anti – dumping duties on the imports of subject goods from Korea RP are required to be imposed on the phosphoric acid of all grades (excluding agriculture/ fertilizer grade)
 - l. Rising prices of inputs has not been identified as other known factor. On the contrary, this has been considered as a parameter of injury.
 - m. The domestic industry is unable to utilize its capacities optimally because of dumping in Indian market.
 - n. The domestic industry is unable to expand its capacities because of continued adverse performance of the product– first because of dumping from China and now because of dumping from Korea
 - o. The domestic industry can enhance capacities by 15-20% through de-bottlenecking alone. When current investments are making significant losses, expansion of capacities in such situations would only add fuel to the fire.
 - p. Inability of the domestic industry to meet the demand for the market cannot be hold as reason for dumped imports, an established position arising out of past decisions of the Designated Authority and CESTAT

- q. Capacity utilization increased, therefore, production increased, how domestic industry lost market share to imports from South Korea
- r. Productivity reduced due to employment loss and increased wages has been offset by increase in productivity.

I.2 Views of Other Interested parties

56. M/s Economic Law Practice, Mumbai on behalf of M/s Hindustan Unilever Ltd. have made the following submissions on injury determination:

- a) The Preliminary Findings are bad in law and in clear violation of anti-dumping Rules and anti-dumping agreement. The Hon'ble DGAD has wrongly determined a causal link between the injury factors and the alleged dumping.
- b) The DGAD is required to consider all the relevant injury factors listed in the Rules as well as other known factors and then establish a causal link between the dumped imports and the injury factors. DGAD failed to provide an adequate explanation as to how the domestic industry suffered injury despite positive trends in a number of the injury factors.
- c) The Preliminary Findings have been issued in clear violation of Annexure II (ii), (iv) and (v) of the Rules and Articles 3.2, 3.4 and 3.5 of the Anti-dumping Agreement.
- d) The domestic industry has not suffered any injury due to alleged dumped imports from South Korea.
- e) The Preliminary Findings are bad in law because while the data for the purpose of sales and imports has been considered from Period of Investigation going back three preceding years, price data specifically after paragraph 55 of the Preliminary Finding is considered for only the Period of Investigation going back two preceding years has been considered.
- f) In spite of positive trends in most injury factors, the DGAD has concluded that the domestic industry has suffered injury and failed to provided any reasoning for the same.
- g) The domestic injury suffered because of rising price of rock phosphate during the period of investigation. As a result there is no causal link between the injury and allgededly dumped imports.
- h) In view of the settled jurisprudence, the Hon'ble Designated Authority should evaluate the injury data for the Domestic Industry as a whole and not only the Petitioners even if they claim to have a majority.
- i) the injury analysis in the Preliminary Finding is clearly skewed which resultantly led to illegal imposition of anti-dumping duties.
- j) production and sales of the domestic industry have been constantly increasing. Further it can be seen that seen that the fall in market share is on account of the inability of the domestic industry to satisfy the demand of the domestic market.
- k) the size of the domestic market has increased 51%, whereas the sales of the domestic industry have only 31% because the domestic industry does not have capacity to supply to the domestic industry.

I.3. Examination by the Authority

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

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

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

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

I.3.1 Volume and market share in imports

59. Imports volume from subject country and other countries have been as under:

Imports in MT	2004-05	2005-06	2006-07	2007-08
Korea RP	0	324	772	15,408
Trend	0	100	238	4,756
China PR	3,148	4,600	3,378	2469
	100	146	107	78
Other Countries	2,974	230	429	252
	100	8	14	8
Total Imports	6,122	5,154	4,579	18,129
Trend	100	84	75	296
Market Share in Imports %				
Korea RP	-	6.29	16.86	84.99
Trend		100	268.19	1,351.98
China PR (Attracting Duty)	51.42	89.25	73.77	13.62
Trend	100	174	143	26

Other Countries	48.58	4.46	9.37	1.39
Trend	100	9	19	3

60. For analysis of imports, transaction-wise data of imports as per DGCIS has been relied upon for the years 2004-05 to 2006-07. However, for 2007-08, the imports reported by IBIS are much higher than those reported in DGCI&S. DGCI&S reported 6935 MT of subject goods from Korea RP as against 15408 MT reported by IBIS. Since the DGCI&S has not captured the full volume of imports of subject goods in the dedicated custom codes, the volume reported by IBIS has been relied upon for analyzing the volume effect. Following the disclosure statement, one of the interested party namely the importer has commented that the Authority has not fulfilled its responsibility by picking up import data from various sources of data without the same being in the petition and has asked the Authority to consider their submission in this regard. The submission of the importer has been analysed and an analysis of the DGCIS as well as IBIS data was made for the subject goods import from the subject country as well as other countries. On analyzing the data, it was noted that the volume of the import from earlier period i.e 2004-05 to 2006-07 has maintained a similar trend to that of DGCI&S. For example, the volume of import of subject goods in 2004-05 was nil for both DGCI&S as well as IBIS while it was 324 MT in DGCI&S and 403 MT in IBIS during 05-06. The same trend was maintained during 06-07 where the import of subject goods from Korea RP was 772 MT in DGCI& and 722 MT in IBIS. Thus, there is similarity of volume which has been reported from two sources till the beginning of POI. However, the Authority has taken the IBIS volume and price for the POI in the finding because of the large difference in the volume of the import from both the sources. It is also noted that the price per Kg of the subject goods from both the sources are also similar.

61. The imports of Phosphoric Acid can be made in packed and loose form. The domestic industry has argued in the application that imports are being reported in packed form only. The imports data shows that import consignments of Phosphoric Acid (Food and Technical Grade) from Korea RP ranges from 52 kg. to 137.20 MT. Since it may not be commercially viable to import such small quantity of Phosphoric Acid in loose form in ship loads, the Authority notes that imports of the Phosphoric Acid of Food and Technical Grade during POI can be made in packed form only. Further, based on the few import documents provided by the importers and the submission of one of the importers that the Exporter/ Supplier of Korea RP are incurring a lot of expenses on exports, including Packing Cost, the Authority notes that the exports from Korea RP have taken place in packed form.

62. Data shows that imports from Korea RP have increased significantly from Nil in 2004-05 to 15408 MT during POI. During the same period imports from other countries have declined significantly. Further, Korea RP holds significant market share of total imports in India. It is also seen that between 2004-05 and investigation period, whereas market share of Korean imports increased significantly from nil to 85%, the share of imports from other countries including China PR declined from 100% in 2004-05 to 15% in POI.

I.3.2 Market share in demand

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

Demand	2004-05	2005-06	2006-07	2007-08
Total Korean Imports in MT	-	324	772	15,408
Other Imports	6,122	4,830	3,807	2,721
Sales – domestic industry in MT	38,462	42,074	51,767	52,465
Sales – Other Producers in MT	4,286	4,759	4,500	3,000
Total Demand in MT	48,870	51,987	60,846	73,594
Trend	100	106	125	151
Market Share in Demand in %				
Domestic industry	78.70	80.93	85.08	71.29
Other Indian Producers	8.77	9.15	7.40	4.08
Korea RP	-	0.62	1.27	20.94
China	6.44	8.85	5.55	3.35
Other Countries	6.09	0.44	0.71	0.34

64. Data shows that demand of subject goods grew by 51% during POI as compared to base year. The market share of dumped imports in demand from Korea RP increased from Nil during 2004-05 to 20.94% during the POI whereas the market share of domestic industry has decreased from 78.70% to 71.29% during the same period.

I.3.3 Imports in relation to production of the domestic industry

65. The Authority notes that the imports from Korea RP have increased in relation to the Indian production and consumption of the domestic industry, as is evident from the following table:

	Unit	2004-05	2005-06	2006-07	2007-08
Imports from					
Korea RP	MT	0	324	772	15408
Production DI	MT	39,288	45,857	49,540	51,601
Production other domestic producers	MT	4,286	4,759	4,500	4,500

Total domestic production	MT	43,574	50,616	54,040	56,101
Demand	MT	48,870	51,987	60,846	73,594
Imports from Korea in relation to					
Production	%	-	0.64%	1.43%	27.46%
Consumption	%	-	0.62%	1.27%	20.94%
Market Share of Domestic industry	%	78.70	80.93	85.08	71.29

66. Authority notes from the above that:

- (i) Volume of imports from Korea RP has increased significantly in absolute terms over the period.
- (ii) Imports from Korea RP have increased significantly in relation to production and consumption in India.
- (iii) As a result of increase in imports in absolute term and relative to production and consumption, share of the domestic industry has declined.

I.3.4. Capacity, production & capacity utilization

67. Capacity, Production and Capacity Utilization of the domestic industry have been as under:

	2004-05	2005-06	2006-07	2007-08
Capacity MT	50,306	50,306	50,306	50,306
Indexed	100	100	100	100
Production MT	39,288	45,857	49,540	51,601
Indexed	100	117	126	131
Capacity Utilization %	78%	91%	98%	103%
Indexed	100	117	126	131
Total Demand in MT	48,870	51,987	60,846	73,594
Indexed	100	106	125	151
Production in relation to Demand	80.39%	88.21%	81.42%	70.12%
Sales in relation to Demand	78.70%	80.93%	85.08%	71.29%

68. The data shows that demand of subject goods grew increased by 51% during POI as compared to base year. During the same period the production and capacity utilization of the domestic industry increased by 31%. The Authority notes the domestic industry has increased their production and capacity utilization to extent possible to meet the increase in demand inspite of financial losses.

69. The domestic industry has attributed the dumping, first from China PR and now from Korea RP, and the consequent adverse performance as a reason for its inability to expand its capacities. The domestic industry claimed that they can enhance capacities by 15-20% through de-bottlenecking alone but when current investments are making significant losses, expansion of capacities in such situations would only add fuel to the fire.

70. The Authority notes that during POI, even at the maximum utilization of the capacity, the domestic industry is not able to recover at least its cost of production.

I.3.5. Sales

71. Sales Volume of the domestic industry have been as under:

	2004-05	2005-06	2006-07	2007-08
Sales in MT	38,462	42,074	51,767	52,465
Indexed	100	109	135	136
Demand in MT	48,870	51,987	60,846	73,594
Indexed	100	106	125	151
Market Share in Demand in %	78.70	80.93	85.08	71.29
Indexed	100	103	108	91

72. The data shows that sales of the domestic industry increased by 36% during POI as compared to the base year. In comparison the demand of the subject goods increased by 51% during the same period. The share of domestic industry in demand declined from 78.70% in 2004-05 to 71.29% in POI. Since the domestic industry was operating at the optimum level of capacity utilization, the decline in market share was imminent with the increase in demand. However, the Authority notes that the market share of subject goods from subject country has substantially increased their market share in the Indian Market.

I.3.6. Price Effect of the Dumped Imports on the Domestic Industry

73. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

i. Price undercutting and underselling effects

74. To determine price undercutting, the comparisons have been made by comparing the phosphoric acid of the same grades. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the IBIS data of import prices from the subject country.

75. In determining 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 rebated.

76. Price undercutting has been determined while making comparison of landed value of Technical and food grades of subject goods imported during POI with the identical grades produced by the domestic industry. Weighted average price undercutting is as under:

Price undercutting

	Tech Grade	Food Grade	Weighted Avg. for Tech & Food Grade
Price undercutting – POI			
Landed Price Rs. Per MT	26374	24062	26355
Net Selling price Rs. Per MT for Packed	***	***	***
Price undercutting Rs. Per MT	***	***	***
Price undercutting %age	10-20	20-30	10-20

77. Price underselling has been determined by comparing the weighted average landed price of imports of subject goods with the Non-injurious price of the same produced by the domestic industry during the POI. Weighted average price underselling has been under:

Price underselling

	Tech Grade	Food Grade	Avg. for Tech & Food Grade
Price underselling – POI			
Landed Price Rs. Per MT	26374	24062	26355
Non-Injurious Price Rs. Per MT for Packed	***	***	***
Price undercutting Rs. Per MT	***	***	***
Price undercutting %age	25-35	35-45	25-35

78. The above data shows that the landed value of the dumped imports is significantly below the net sales realization of the domestic industry and causing undercutting in the range of 15-30% of the selling prices of the domestic industry. The landed values were also below the non-injurious prices resulting in underselling in the range of 30-45%.

ii) Price suppression and depression effects

	2004-05	2005-06	2006-07	2007-08
Cost of Sales (Rs. Per MT)	***	***	***	***
Indexed	100	90	97	98
Selling Price(Rs. Per MT)	***	***	***	***
Indexed	100	99	92	102
Profit/Loss(Rs. Per MT)	***	***	***	***
Indexed	-100	-19	-133	-60

79. It is **noted** from the above that performance of the domestic industry for product under consideration, which improved in 2005-06 deteriorated in 2006-07 due to imports mainly from China PR. After levy of anti-dumping duties on imports of subject goods from China PR in 2007-08, the performance of the domestic industry improved in 2007-08 over 2006-07, yet, the domestic industry remained in significant losses during 2007-08. The domestic industry could not increase its selling prices to match the cost of sales indicating the suppression of domestic prices.

80. The information regarding CIF prices from Korea RP and corresponding landed value is given in the following table:

CIF Import Price from Korea RP		2004-05	2005-06	2006-07	2007-08
Technical Grade	Rs./MT	No imports	24863	23382	23761
Trend	Index		100	94	96
Food Grade	Rs./MT	No imports	28034	23306	21677
Trend	Index		100	83	77
Avg – Technical & Food grade	Rs./MT	No imports	24866	23380	23743
Trend	Index		100	94	95
Landed Value					
Technical Grade	Rs./MT	No imports	28841	26538	26374

Trend	Index		100	92	91
Food Grade	Rs./MT	No imports	32520	26452	24062
Trend	Index		100	81	74
Average – Technical & Food grade	Rs./MT		28845	26536	26355
Trend	Index	No imports	100	92	91

81. It is noted from the above that the CIF price of imports from Korea RP have consistently declined over the injury period. Both decline in CIF price and the decline in rate of Customs duty triggered a substantial reduction in the landed price of imports. One on the user and importer of the subject goods, M/s Sandeep Organics Pvt. Ltd., Mumbai have confirmed in their submissions that both decline in CIF price and the decline in rate of Customs duty triggered a substantial reduction in the landed price of imports.

82. The landed price of imports is significantly below the cost of production of the domestic industry. As a result, the imports had made a suppressing impact on the prices of domestic industry in the market.

I.4. Examination of other injury factors

83. After examining volume and price effect in the previous section, the Authority has examined the other injury parameters in the following paragraphs.

84. The Authority notes that the imports from Korea RP increased from nil during 2004-05 to 15408 during POI. The performance of the domestic industry remained significantly deteriorated from 2005-06 to POI, i.e., the period of commencement of imports of subject goods from Korea RP.

I.4.1. Profitability

85. The profit/ loss of the domestic industry from the sale of the subject goods in domestic market were as follows:-

	2004-05	2005-06	2006-07	2007-08
Cost of Sales (Rs. Per MT)	***	***	***	***
Indexed	100	90	97	98
Selling Price(Rs. Per MT)	***	***	***	***
Indexed	100	99	92	102

Profit/Loss(Rs. Per MT)	***	***	***	***
Indexed	-100	-19	-133	-60
PBIT Rs. Lacs	***	***	***	***
Indexed	-100	25	-345	-149
Net Fixed Assets (Rs. Lacs)	***	***	***	***
Indexed	100	100	91	103
Working Capital Rs. Lacs	***	***	***	***
Indexed	100	127	83	129
Capital Employed For Domestic Sales Rs. Lacs	***	***	***	***
Indexed	100	108	89	110
PBIT Rs. Lacs	***	***	***	***
Indexed	-100	25	-345	-149
Return on Capital Employed – NFA %	***	***	***	***
Indexed	-100	23	-389	-135

86. The data shows that the average cost of sales as compared to base year declined by 3% in 2006-07, and 2% during POI as compared to 2004-05. During the same period, the average selling price declined by 8% in 2006-07 but increased by 2% during POI. Although the domestic industry was able to increase its prices during POI consequent to levy of anti-dumping duties on imports from China PR, the sales realization still remained below the cost of sales. At the same time, imports from Korea RP increased to 15408 MT during POI from nil during 2004-05. The performance of the domestic industry remained significantly deteriorated over the injury period.

87. The profit (PBIT) of the domestic industry has declined from (-)100 (indexed) in 2004-05 to (-) 149 in POI. Consequently, the return on the Capital Employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the 2004-05 and during the POI the domestic industry had a return on domestic sales of (-) 135 (indexed) from (-)100 (indexed) of the 2004-05.

88. The Authority further notes the domestic industry is not able to realize even its operational cost of production of the subject goods resulting not only in the significant financial losses but significant cash losses.

I.4.2. Cash Flow

89. The Authority notes that both the constituents of the domestic industry are multi products, multi-location companies. None of the companies maintain separate Information regarding cash flow of the product under consideration. Cash losses came down during the POI due to levy of anti-dumping duties against China PR but still continued to remain negative at significant levels, as shown below:

Particulars	Unit	2004-05	2005-06	2006-07	POI
Profit / loss before tax	Rs. Lacs	***	***	***	***
Depreciation on domestic sales	Rs. Lacs	***	***	***	***
Cash profit on domestic sales	Rs. Lacs	***	***	***	***
Trend	Indexed	-100	74	-241	-38

I.4.3. Employment and Wages

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

	2005-06	2006-07	2007-08
Employment No	***	***	***
Indexed	100	98	92
Wages Rs. Lacs	***	***	***
Indexed	100	125	130

91. The level of employment and wages do not show any adverse trend during the injury period.

I.4.4. Productivity

92. Productivity of the domestic industry, as reflected in terms of production per employee, has improved over the injury period due to optimum utilization of the available capacity, as shown below:

	Unit	2004-05	2005-06	2006-07	2007-08
Production	MT	39,288	45,857	49,540	51,601
Employment	No.	***	***	***	***
Productivity	MT/No.	***	***	***	***

Trend	Indexed	100	112	124	138
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93. It may be seen from the above that injury caused to the domestic industry cannot be attributed to the loss in the productivity, which has infact improved during the POI.

I.4.5. Inventory

94. The domestic industry has maintained the optimum inventory levels as shown below:

	2004-05	2005-06	2006-07	2007-08
Inventory in MT	***	***	***	***
Indexed	100	477	600	277
Sales in MT	38,934	42,662	51,821	52,483
Inventory for no. of days sales (Days)	***	***	***	***
Indexed	100	435	451	205

95. It is noted that these inventory levels are not very significant and may not taken as an effect of injury.

I.4.6. Growth

96. The domestic industry has shown positive growth in terms of absolute volume of production and sales over the injury period. However, the growth is negative when examined in terms of market share, profit before interest & tax and return on investment.

I.4.7. Ability to raise capital/investment

97. The Authority notes that negative profitability and negative cash profits may affect the credit rating of the domestic industry to raise the fresh capital/ investment. However, both the petitioners are multi product companies and ability to raise investment may not be an indictor of impact of dumping on the domestic industry.

I.4.8. Magnitude of Dumping

98. The dumping margin determined for the subject country and the applicant exporter is **substantial** and above de minimis level.

I.4.9. Factors affecting prices

99. The selling price of domestic industry continued to remain below the cost of sales in the period of investigation. The undercutting of selling price by imports continued throughout from 2005-06. It has also been noted that the basic custom duty also declined from 15% in 2005-06 to 10% in POI.

I.5. Examination of injury by the Authority and Conclusions on injury

100. The imports from Korea RP have increased significantly from Nil in 2004-05 to 15408 MT during POI. In percentage terms, the Imports share from Korea RP has increased in total imports to India from nil to 85% whereas imports from other countries including China PR has declined from 100% in 2004-05 to 15% in POI.

101. The market share of dumped imports in demand from Korea RP increased from Nil during 2004-05 to 20.94% during the POI whereas the market share of domestic industry has decreased from 78.70% to 71.29% during the same period. The Domestic Industry was operating at its maximum capacity during POI and the decline in market share was imminent with the increase in demand. The domestic industry has attributed the dumping, first from China PR and now from Korea RP, and the consequent adverse performance as a reason for its inability to expand its capacities. The domestic industry claimed that they can enhance capacities by 15-20% through de-bottlenecking alone.

102. The demand of subject goods increased by 51% during POI as compared to base year. During the same period the production and capacity utilization of the domestic industry increased by 31%. The domestic industry increased its production and capacity utilization to extent possible to meet the increase in demand inspite of financial losses. It is noted that the domestic industry is not able to realize even its operational cost of production of the subject goods resulting not only in the significant financial losses but significant cash losses. The domestic industry must recover at least its cost of production at the maximum utilization of the capacity, which has been denied by the adverse market conditions created by the dumped imports from Korea RP.

103. The price undercutting is in the range of 15-30% and price underselling is in the range of 30-45%. The undercutting of selling price by imports continued throughout since 2005-06. It has also been noted that the basic custom duty also declined from 15% in 2005-06 to 10% in POI.

104. The average cost of sales as compared to base year declined by 3% in 2006-07, and 2% during POI as compared to 2004-05. During the same period, the average selling price declined by 8% in 2006-07 but increased by 2% during POI. Although the domestic industry was able to increase its prices during POI consequent to levy of anti-dumping duties on imports from China PR, the sales realization still remained below the cost of sales due to presence of imports from Korea RP, which increased from nil during 2004-

05 to 15408 during POI. The performance of the domestic industry remained significantly deteriorated over the injury period.

105. The profit (PBIT) of the domestic industry has declined from (-)100 (indexed) in 2004-05 to (-) 149 in POI. Consequently, the return on the Capital Employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the 2004-05 and during the POI the domestic industry had a return on domestic sales of (-) 135 (indexed) from (-)100 (indexed) of the 2004-05. The domestic industry is not able to realize even its operational cost of production of the subject goods resulting not only in the significant financial losses but significant cash losses.

106. Thus, the analysis of economic parameters indicate significant decline in financial performance and material injury to the domestic industry. The above analysis indicates that though domestic industry was in position to increase production and sales, there was sharp decline in profitability showing material injury to the domestic industry. Thus, on the basis of the above examination, it is concluded that the domestic industry has suffered material injury on account of dumped imports from subject goods from subject country.

107. The Authority notes that the Rules require examination and assessment of performance of the domestic industry over the period, by considering a number of parameters listed under the Rules. Further, while the Rules provide for examination and assessment of all listed parameters, it does not provide that the performance of the domestic industry must deteriorate in terms of each and every parameter. Further, the Rules provide for assessment of whether the performance of the domestic industry has deteriorated or declined in respect of these parameters and whether such deterioration is significant. Therefore, in context of injury to the domestic industry in an anti-dumping investigation, the overall assessment of injury is required to be made on the basis of performance of the domestic industry in respect of various parameters.

J. Causal Link and Other Factors

108. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, price underselling and price suppression, and depression effects, other indicative parameters listed under the Rules and Agreement on Anti Dumping have been examined to see whether there is any other factor, other than the dumped imports which could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:

i) Volume and Prices of imports not sold at the dumped prices

It is noted from IBIS data that about 85% imports are from Korea RP during POI and the balance 14% from China PR are already attracting anti-dumping duties. The imports from other countries are just 1%. Therefore, the imports from other countries do not affect the prices in the domestic market;

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

Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, the injury to the domestic industry has nothing to do with the lack of demand in the country. The data on consumption and demand does not show any change in the pattern of consumption of the product and has not been a factor causing injury to the domestic industry.

iii) Trade restrictive practice and competition between the foreign and domestic producers

The goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic production and sales. No evidence of conditions of competition or trade restrictive practices has come to the knowledge of the Authority.

iv) Development in technology

No significant changes in technology have come to notice, which could have caused injury to the domestic industry.

v) Export performance of the domestic industry

Domestic industry does not have significant exports over the injury period. However, the analysis of financial performance has been done for domestic sales only. Hence, export performance has not been considered in the analysis of injury to the domestic industry. Therefore, the export performance cannot be considered as factor causing injury to the domestic industry.

vi) Productivity of the Domestic Industry

Productivity of the domestic industry has improved. Therefore, this cannot be attributed to the injury to the domestic industry.

109. The above non-attribution analysis shows that no other known factors, other than the dumped imports, appear to have affected the domestic industry.

J.1. Factors establishing causal link and conclusions on causal link

110. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

- a. The volume of dumped import from the subject country has sharply increased at significantly lower prices during the injury investigation period, resulting in

significant price undercutting and underselling. As a direct consequence, the domestic industry could not increase its prices in line with increase in the cost of production resulting in financial losses.

- b. The increased market share of Korea RP at dumped prices has created adverse market conditions and caused price pressure on the domestic industry and has denied the domestic industry to recover at least its cost of production at the maximum utilization of the capacity.
- c. The dumped imports from Korea RP caused suppression of domestic prices that adversely affected the profits, cash flow and return on investments of the company.

111. Therefore, the Authority concludes that the domestic industry suffers material injury and the injury to the domestic industry has been caused by the dumped imports from the subject country.

K. Magnitude of Injury and injury margin

112. The non-injurious prices for Technical and Food grade of Phosphoric Acid produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin. The weighted average landed price of the exports from the subject country and injury margins have been worked out as follows:

Injury Margin – POI	Tech Grade	Food Grade	Average for Tech & Food Grade
Landed Price USD/ MT	***	***	***
NIP (Packed) USD/MT	***	***	***
Injury Margin USD/MT	***	***	***
Injury Margin %	35-45	65-75	35-45

L. Conclusions

113. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:

- a. The subject goods have been exported to India from the subject country at prices less than their normal values in the domestic market of the exporting country;
- b. The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;

- c. The domestic industry have suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country.
- d. The Authority thus considers necessary to recommend anti-dumping duty on imports of subject goods falling under Chapter 28 of Customs Tariff Act originating in or exported from the subject country.

M. Indian Industry's Interest & Other Issues

114. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to facilitate to re-establish a situation of open and fair competition.

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

N. Recommendations

116. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on various aspects of dumping, injury and causal links. Having initiated and conducted investigation into dumping, injury and causal links between dumping and injury to the domestic industry, in terms of the Rules laid down and having established positive dumping margin against the subject country and having concluded that the domestic industry suffers material injury due to such dumped imports, the Authority is of the opinion that imposition of anti-dumping measure is required to prevent injury being caused to the domestic industry during the investigation period.

117. Therefore, the Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

118. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of 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, antidumping duty equal to the amount indicated in Col 9 of the table below is recommended to be imposed by the Central Government on imports of Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade) falling under Chapter 28 of Custom Tariff Classification Act 1975, originating in or exported from the Korea RP.

Duty Table

(1)	(2)	(3)	(4)	(5) (6)		(7)	(8)	(9)	(10)	(11)
Sr. No.	Sub heading	Description of goods	Specification	Country of		Producer	Exporter	Amount	Unit of measurement	Currency
				Origin	Export					
1	2809-2010	Phosphoric Acid	All grades & Concentrations (excluding Agricultural/Fertilizer grade)	Korea RP	Any	Any	Any	221.64	MT	US\$
2	-do-	-do-	-do-	Any	Korea RP	Any	Any	221.64	MT	US\$

119. Subject to the above, the Authority confirms the preliminary findings dated 22nd June, 2009.

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

(R. Gopalan)
Designated Authority