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F.No.14/7/2007-DGAD
Government Of India
Ministry Of Commerce & Industry
Department of Commerce
Directorate General Of Anti-Dumping & Allied Duties
Udyog Bhavan, New Delhi

Dated the 24th April, 2009

NOTIFICATION

PRELIMINARY 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.

A. PROCEDURE

4. 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 Embassy of the subject country in New Delhi, known exporters from the subject country, importers and other known domestic producers 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 issue of the letter in accordance with the Rule 6(4).

iv) No response to the exporter's questionnaire has been received from any producer/ exporter of Korea RP within the prescribed time limit. However an incomplete response dated 4.2.2009 has been received from M/s DC Chemicals Co. Ltd., Korea RP on 19.2.2009, i.e., after prescribed time limit. Accordingly all the producers/ exporters from subject country have 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/ Views on initiation notification have been received from the following interested parties, which have been dealt with at appropriate place in the findings:

- a. The Fertiliser Association of India, New Delhi
- b. Star Chemicals (Bombay) Pvt. Ltd., Mumbai
- c. Hindustan Unilever Limited
- d. Madras Fertilisers Limited, Chennai
- e. Sandeep Organics Pvt. Ltd., Mumbai
- f. M/s Bhavita Chemicals 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 under the custom head dedicated for the subject goods; 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 optimum 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 been worked out provisionally so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;

x) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

xi) 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. Product under consideration and like article

5. 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.

6. 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.

7. 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. Comparison of essential product properties in respect of domestic product and imported product would show that the goods produced by the domestic industry are identical to the imported goods in terms of essential product properties. The goods produced by the domestic industry are like article to the goods imported from Korea RP.

B.1. Views of interested parties on Product under Consideration

8. M/s Fertilisers Association of India.

(i) The Indian Fertiliser Companies import Merchant Grade Phosphoric Acid, for the production of fertilizers. The nomenclature viz., Merchant grade Phosphoric Acid is the common nomenclature used by the members of FAI for phosphoric acid imported by them for production of fertilisers.

- (ii) The Indian Fertiliser industry faces continuous problems of availability of enough phosphoric acid at reasonable prices to domestically produce phosphatic fertilizers like DAP, NPK Complexes, etc.
- (iii) The Merchant Grade phosphoric acid, which is used as a raw material for manufacturing phosphate fertilizers, should be excluded from the scope of investigation.

9. **M/s Star Chemicals (Bombay) Pvt. Ltd., Mumbai**

- (i) The Korean Phosphoric Acid is of very high acetic content which is generally not accepted by the most of the end users and in view of this the same cannot be compared in quality with the domestic Phosphoric Acid (Technical). Korean Phosphoric Acid is also inconceivable for use as Food Grade Phosphoric Acid.
- (ii) The removal of Acetic acid content from the Korean Phosphoric Acid not only involves high cost but it is very difficult to remove the same and probably removal of entire acetic acid content is/ may not be possible.
- (iii) The high cost for such removal and the compromise in quality has to be factored into the landed cost to arrive at the effective and real costs of such imports from Korea.

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

- (i) Imports of Phosphoric Acid from south Korea is not of pure grade. It is re-cycled/ re-processed grade.
- (ii) As the material is recycled/ reprocessed, it is comparatively cheaper. The content of acetic acid (impurities) is high. So it is used in fewer industries.

11. The Applicants have made the following arguments on the submissions made by M/s Fertiliser Association of India:

- (i) The members of Fertiliser Association of India, who are the producers of fertilizers in India, consumes agricultural/ fertiliser grade Phosphoric Acid. There is nothing called 'merchant grade phosphoric acid'.

- (ii) Since the nomenclature 'merchant grade phosphoric acid' does not exist, it is possible that food grade material gets imported as merchant grade Phosphoric Acid.

B.2 Examination by the Authority

12. 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). M/s Star Chemicals and M/s. Sandeep Organics have not provided any evidence, i.e., comparable test reports etc., to show that the imported material is of high acetic content and cannot be compared in quality with the domestic Phosphoric Acid (Technical / Food Grade).

13. The Authority has examined the submissions of the Fertilizer Association of India in detail and notes that neither they nor any of their member have placed any evidence on record that 'Merchant Grade' is the nomenclature used by the producers of phosphoric acid globally for fertilizer grade of phosphoric acid and the technical/ food grade phosphoric acid cannot be imported under the name 'Merchant Grade'. The Authority has noted that one of the Indian fertilizer producers, M/s Madras Fertilisers Limited, Chennai has submitted that they have imported **Fertilizer Grade – Phosphoric Acid** during previous years for production of NPK Complex fertilizers. This substantiates the views of the domestic industry that the producers of fertilizers in India consume Fertilizer Grade – Phosphoric Acid.

14. With regard to submission of M/s Sandeep Organics Pvt. Ltd., Mumbai the Authority notes that they have neither defined the recycled phosphoric acid nor they have provided any evidence that the phosphoric acid produced and exported by the Korean producers are not like article to the goods produced by the domestic industry.

15. In view of the submissions made by the applicants and the facts available on record, the Authority holds that the product under consideration in the present investigation is Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade) for the purpose of preliminary findings.

16. The Authority further holds 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, prices and custom classification, therefore, the

products produced by domestic industry are being treated as 'like article' to the goods imported from Korea RP. However, the interested parties can make their submissions on the preliminary findings.

C Domestic industry

17. 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.

18. 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.

19. 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, in spite of the fact that they as a manufacturer of Phosphoric Acid would also get affected but we would like to suggest that no ADD be levied on imports from Korea in the larger interest of the consumers.

20. 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.

21. 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 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).

D. De Minimis Limits

22. 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.

E. Confidentiality

23. The Authority has examined the confidentiality claims of the interested parties. In this regard, the data of domestic industry in respect of customers, cost and prices have been kept confidential.

F. Other submissions and issues raised

24. 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) There is no dumping of phosphoric acid from South Korea
 - (a) 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 use it as a raw material. This increase will eventually hurt the Indian consumer, while domestic Indian manufacturers of phosphoric acid will make exorbitant profits at the cost of the consumers. This is against the principle of public interest.
 - (b) The imposition of an anti-dumping duty on imports from Korea will lead to the creation of a duopoly in the local market which will be exploited by these local manufacturers to the detriment of industrial users such as HUL and eventually the end-consumers of products using phosphoric acid as a raw material.

(ii) Allegation of dumping are purely self-inflicted

- (a) 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 industrial users, such as HUL, with adequate supply of phosphoric acid and we had to resort to increased imports in order to fill the gap that exists between the local demand and supply.
- (b) The petitioners have used this shortfall in the supply and availability of phosphoric acid in the domestic market to their advantage and have consistently increased the price of domestically manufactured material. The price of local phosphoric acid (technical grade) has increased by nearly 200% from Rs. 28 per kg in 2005-2006 to levels of 80 per kg in 2008.
- (c) Although international prices of phosphoric acid have seen a downward revision on account of the falling price of rock phosphate worldwide, and prices of phosphoric acid imported from Korea, amongst other countries, have gone back to 2005-2006 price levels the price charged by the domestic industry is still 60-70% higher than those charged in international markets. Consequently, phosphoric acid in India is substantially more expensive than the same product if imported from abroad from countries such as Korea. It is only through healthy competition from imports coming in from Korea that extortionate prices charged by local manufacturer manufacturers can be kept in checked.
- (d) The imposition of such an anti- dumping duty would not only be wholly unjustified on the basis of the data provided by the Petitioners, but would also effectively place the interests of the two domestic producers acting as a cartel in an duopolistic market, ahead of the millions of households consuming our product such as detergents and soaps.

25. M/s Bhavita Chemicals Pvt. Ltd., Mumbai submitted that their SSI Unit manufacturing Di Calcium Phosphate using Phosphoric Acid as basic raw material is closed down from Oct. 2006 and therefore, they are not in a position to give any details on the Initiation Notification.

Examination by the Authority

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

27. 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 provisional 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.

28. The submission that prices of rock phosphate have fallen worldwide has not been substantiated with any evidence whatsoever. It has also been admitted in the submissions that the prices of phosphoric acid imported from Korea have gone back to 2005-06 price levels and the price charged by the domestic industry is still 60-70% higher than those charged in international market. M/s HUL has admitted that the Korean prices are 60-70% lower than the domestic industry selling prices and has not furnished any evidence that same are not at dumped prices.

G Determination of Dumping Margin

G.1. Normal Value

29. 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 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 constructed cost of production including selling, general and administrative overheads and reasonable profit. The constructed normal value of Phosphoric Acid in packed form for all producers and exporters from Korea RP is determined as under:

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

G.2. Export price

30. The Authority has considered DGCI&S data and noted that 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 as no exporter from Korea RP has cooperated in the investigation. Therefore, for the purpose of preliminary findings, the data of imports in India as reported in IBIS data have been relied upon. The imports regarding agriculture/fertilizer have not been taken into consideration for determining the export prices. The transaction-wise imports data were further segregated for food and technical grades. From the IBIS import 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 that can come only in packed form.

31. In the imports data, the information has been provided on CIF value basis. The expenses incurred in export transactions on account of inland freight, Ocean Freight, Marine Insurance, etc. 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\$ *** PMT for technical grade and US\$ *** PMT for food grade and the average export price works out to US\$ *** PMT.

G.3. Dumping Margin

32. For the purpose of determination of dumping margin the ex-works normal value and export prices so determined provisionally have been compared at the same level of trade and dumping margin has been provisionally determined for the exporters from the subject country as follows:

US\$/MT

Exporter/ Producer	Normal Value	Export Price	Dumping Margin	Dumping Margin %
Technical Grade	****	****	****	35-45
Food Grade	****	****	****	70-80
Weighted Average	****	****	****	35-45

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

H. INJURY DETERMINATION

H.1 View of the domestic industry

33. The domestic industry have made the following submissions:-

- i) Volume of dumped imports has increased in absolute terms and in relation to production and consumption in India. As a result of increase in imports in absolute term and relative to production and consumption, share of the domestic industry has declined.
- ii) Weighted average import prices (after including basic customs duties) have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting. Reduction in the landed price of imports prevented the Indian Producers from effecting legitimate price increases.
- iii) The landed price of imports is significantly below the cost of production of the domestic industry and the imports have significantly depressed the prices of the domestic industry in the market.
- iv) Production, capacity utilization and sales of the domestic industry increased. However, Production and sales of the domestic industry declined in relation to demand of the product in India. The Domestic industry is still not able to utilize full effective production capabilities. The dumping has thus caused volume injury to the domestic industry.
- v) Due to continuous availability of dumped material, the petitioners are unable to improve their performance to

optimum level. Even though it is recognized that the financial losses (PBT) of the domestic industry reduced, it would be seen that the domestic industry continues to be in financial losses (PBT)

- vi) Though, imports are being made in packed form only, however, it is affecting prices of loose product also.
- vii) The market share of the domestic industry steeply decline during the investigation period. Domestic industry has gained market share in 2006-07 due to imposition of anti dumping duty against China, which is lost to Korea RP in 2007-08. It would be worthy to mention here that imports from Korea are historically highest level.
- viii) ROI (PBIT) of the domestic industry, which improved till 2005-06 deteriorated again thereafter. ROI improved in 2007-08 marginally over 2006-07. However, the same is a result of imposition of anti dumping duties on imports from China. In fact, ROI should have improved far more and the recovery of the domestic industry has been prevented by fresh dumping from Korea. Similar is the situation of cash profit as well.
- ix) The inventories with the domestic industry have declined. However, the same is still higher than the base year. This reflects the partial impact of imposition of anti dumping duties on imports from China.
- x) growth in terms of sales in absolute term, production, capacity utilization, has been positive and in terms of cash profits, profits, return on investment is negative in the proposed investigation period.
- xi) The dumping margin from subject country is not only more than de-minimus but also very substantial. The impact of dumping on the domestic industry is significant.
- xii) The performance of the domestic industry have suffered materially in the proposed period of investigation and domestic industry has thus suffered material injury.
- xiii) The injury to the domestic industry have been caused by the dumped imports.

H.2 Views of Other Interested parties

34. M/s Economic Law Practice, Mumbai on behalf of M/s Hindustan Unilever Ltd. have made the following submissions on injury to domestic industry:

- (i) There is no injury caused to the domestic Industry.

- (ii) Integrated Units: Both the Petitioners are integrated manufacturers who deal in a large number of products including Caustic Soda, HCL etc. and thus there is no serious threat of injury to them on account of Phosphoric Acid alone.
- (iii) Net Sales Realization: The Petitioners in their Petition have provided certain data for net-sales realization which are wholly inaccurate. The price at which the Petitioners are billing us as domestic consumers of phosphoric acid has increased by more than 150% over the last 3-4 years. The data pertaining to profitability of the domestic industry are inaccurate and should be re-examined and disregarded by the DGAD before considering the imposition of any anti-dumping duty.
- (iv) Injury is self-inflicted & no causal link with alleged dumping: There is no apparent injury to the domestic industry, but any alleged injury is purely self-inflicted. The Petitioners have created a domestic oligopoly and are acting as a cartel to keep domestic prices high by not adding any additional domestic capacities, thereby keeping domestic supply scarce and driving up the price of phosphoric acid in the market. They are using the anti-dumping to keep out imports from other countries which are willing to sell their products at prices commensurate with international prices. Therefore, injury to the domestic industry, if any, is purely self-inflicted and has no connection with the alleged dumping of phosphoric acid in the domestic markets.

H.3. Examination by the Authority

35. 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.”

36. 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.”

H.3.1 Volume and market share in imports

37. 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
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38. 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 appears to have 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.

39. 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 for POI 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 argument of the domestic industry that imports of the Phosphoric Acid of Food and Technical Grade during POI were made in packed form has been accepted for this Preliminary Findings.

40. Data shows that imports from Korea RP has increased significantly from Nil in 2004-05 to 15408 MT during POI. During the same period imports from other countries have declined significantly. 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.

H.3.2 Market share in demand

41. 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 –	38,462	42,074	51,767	52,465

domestic industry in MT				
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

42. 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.

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

43. 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	MT	43,574	50,616	54,040	56,101

production					
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

44. Authority notes from the above that:

- (i) Volume of dumped 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.

H.3.4. Capacity, production & capacity utilization

45. 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%

46. The data shows that 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 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.

H.3.5. Sales

47. 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

48. 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. The Authority notes that the import share of subject goods from subject country has substantially increased their market share in the Indian Market.

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

49. 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

50. 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.

51. 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.

52. 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

Price undercutting – POI	Technical Grade	Food Grade	Weighted Average for Technical & Food Grade
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%

53. 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

Price underselling – POI	Technical Grade	Food Grade	Average for Technical & Food Grade
Landed Price Rs. Per	26374	24062	26355

MT			
Non-Injurious Price Rs. Per MT for Packed	****	****	****
Price underselling Rs. Per MT	****	****	****
Price underselling %age	25-35%	35-45%	25-35%

54. 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 10-30% of the selling prices of the domestic industry depending upon the sizes of the press. The landed values were also below the non-injurious prices resulting in underselling in the range of 25-45%.

ii) Price suppression and depression effects of the dumped imports has been as under:

55. The Authority notes that the imports from Korea RP started in the year 2005-06. The Authority has therefore analysed the price suppression and depression effects of the dumped imports from 2005-06.

	2005-06	2006-07	2007-08
Cost of Sales (Rs. Per MT)	****	****	****
Indexed	100	107	108
Selling Price(Rs. Per MT)	****	****	****
Indexed	100	93	103
Profit/Loss(Rs. Per MT)	****	****	****
Indexed	-100	-694	-311

56. Cost of sales per MT has increased by 8% in POI as compared to 2005-06. In terms of rupees, cost of sales has increased by Rs. *** per MT. The corresponding sales value has increased by 3%, in terms of Rs. it increased by Rs. *** per MT. The Authority notes that in comparison to previous year, i.e., 2006-07, the performance of domestic industry improved as it was able to raise its selling prices due to imposition of anti-dumping duties on imports of subject goods from China PR from 22nd August 2007. However, the selling prices of domestic industry remained below its cost of sales

and the performance deteriorated during POI in comparison to 2005-06 indicating the suppression of prices

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

CIF Import Price from Korea RP		2005-06	2006-07	2007-08
Technical Grade	Rs./MT	24863	23382	23761
Trend	Index	100	94	96
Food Grade	Rs./MT	28034	23306	21677
Trend	Index	100	83	77
Avg – Technical & Food grade	Rs./MT	24866	23380	23743
Trend	Index	100	94	95
Landed Value				
Technical Grade	Rs./MT	28841	26538	26374
Trend	Index	100	92	91
Food Grade	Rs./MT	32520	26452	24062
Trend	Index	100	81	74
Average – Technical & Food grade	Rs./MT	28845	26536	26355
Trend	Index	100	92	91

58. 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.

59. 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.

H.4. Examination of other injury factors

60. After examining volume and price effect in the previous section, the Authority has examined the other mandatory injury parameters.

61. 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. Accordingly, other injury parameters have been examined from 2005-06 to the POI as under:

H.4.1. Profitability

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

	2005-06	2006-07	2007-08
Cost of Sales (Rs. Per MT)	****	****	****
Indexed	100	107	108
Selling Price (Rs. Per MT)	****	****	****
Indexed	100	93	103
Profit/Loss (Rs. Per MT)	****	****	****
Indexed	-100	-694	-311
PBIT Rs. Lacs	****	****	****
Indexed	100	-1404	-606
Net Fixed Assets Rs. Lacs	****	****	****
Indexed	100	91	103
Working Capital Rs. Lacs	****	****	****
Indexed	100	66	102
Capital Employed For Domestic Sales Rs. Lacs	****	****	****
Indexed	100	82	103
PBIT Rs. Lacs	****	****	****
Indexed	100	-1404	-606

Return on Capital Employed – NFA %	****	****	****
Indexed	100	-1703	-591

63. The above data shows that the domestic sales realization of the domestic industry has not increased in line with the increase in cost of production. The profit (PBIT) of the domestic industry has declined from 100 (indexed) in 2005-06 to (-) 606 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 2005-06 and during the POI the domestic industry had a return on domestic sales of (-) 591 (indexed) from 100 (indexed) of the 2005-06.

64. 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.

H.4.2. Cash Flow

65. 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. Hence the cash profit situation of the domestic industry has been determined, which shows that cash profits significantly declined from 100 in 2005-06 to (-) 51 in the POI, as shown below:

Particulars	Unit	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	-324	-51

H.4.3. Employment and Wages

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

	2005-06	2006-07	2007-08
Employment Nos.	****	****	****
Indexed	100	98	92
Wages Rs. Lacs	****	****	****
Indexed	100	125	130

H.4.4. Productivity

67. 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	2005-06	2006-07	2007-08
Production	MT	****	****	****
Employment	NO.	****	****	****
Productivity	MT	****	****	****
Trend	Indexed	100	111	123

68. 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.

H.4.5. Inventory

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

	2005-06	2006-07	2007-08
Inventory in MT	****	****	****
Indexed	100	126	58

Sales in MT	42662	51821	52483
Inventory for no. of days sales (Days)	****	****	****
Indexed	100	104	47

H.4.6. Growth

70. 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 profitability, including return on investment and cash flow.

H.4.7. Ability to raise capital/investment

71. 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 indicator of impact of dumping on the domestic industry.

H.4.8. Magnitude of Dumping

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

H.4.9. Factors affecting prices

73. The cost of sales has increased during POI as compared to the 2005-06 whereas the selling price has not increased in proportion to the cost of sales. 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.

H.5. Conclusion on injury

74. 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.

75. 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. Since the Domestic Industry was operating at its maximum capacity during POI therefore the decline in market share was imminent with the increase in demand. However, the Authority notes that the imports share from Korea RP has increased in the Indian Market.

76. 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. It is reasonable for domestic industry to 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.

77. During POI, the imports from Korea RP went up substantially as compared to 2006-07 and at the same time the domestic industry could raise its prices while average landed prices from Korea remained same. This was mainly due to imposition of anti-dumping duties on imports of subject goods from China PR from 22nd August 2007 as that arrested the volume of imports of subject goods from China PR to a large extent. However, inspite of increase in prices as compared to 2006-07, the selling prices remained below the cost of sales and the performance of the domestic industry deteriorated as compared to 2005-06.

78. The price undercutting is in the range of 10-30% and price underselling is in the range of 25-45%. 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.

79. Cost of sales per MT has increased by 8% in POI as compared to 2005-06 and in terms of rupees, by Rs. *** per MT. The corresponding sales value has increased by 3% amounting to Rs. *** per MT. This indicates that domestic industry could not increase

sales value in proportion to increase in cost since the period the imports from Korea RP commenced indicating the suppression of prices. Consequently, The profit (PBIT) of the domestic industry has declined from 100 (indexed) in 2005-06 to (-) 606 in POI. Similarly, the return on the Capital Employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the 2005-06 and during the POI the domestic industry had a return on domestic sales of (-) 591 (indexed) from 100 (indexed) of the 2005-06.

80. 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.

I. Causal Link and Other Factors

81. 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.

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

I.1. Factors establishing causal link

83. 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:

- (i) 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.
- (ii) 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.
- (iii) 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.

84. Therefore, the Authority provisionally 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.

J. Magnitude of Injury and injury margin

85. 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	Technical Grade	Food Grade	Average for Technical & Food Grade
Landed Price USD/ MT	647	590	647
NIP (Packed) USD/MT	****	****	****
Injury Margin USD/MT	****	****	****
Injury Margin %	35-45	65-75	35-45

K. Conclusions

86. 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 provisionally concludes that:

- (i) 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;
- (ii) The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;
- (iii) The domestic industry have suffered material injury and the injury has been caused to the domestic industry mainly by price effect of dumped imports of the subject goods originating in or exported from the subject country.
- (iv) The Authority thus considers necessary to recommend provisional anti-dumping duty on imports of subject goods falling under Chapter 28 of Customs Tariff Act originating in or exported from the subject country.

L. Indian Industry's Interest & Other Issues

87. 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.

88. 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.

M. Recommendations

89. 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 a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry, in terms of the Rules laid down and having provisionally 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 provisional measure is required to prevent injury being caused to the domestic industry during the investigation period.

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

91. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 9 of the table below is recommended to be imposed from the date of notification of this Provisional Findings 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.

No.	Sub-heading	Description of goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1.	2809.20	Phosphoric Acid	All grades & Concentrations (excluding Agricultural/Fertiliser grade)	Korea RP	Korea RP	Any	Any	218.63	MT	US\$

2.	-do-	-do-	-do-	-do-	Any other than country (ies) attracting anti-dumping duty.	Any	Any	218.63	MT	US\$
3.	-do-	-do-	-do-	Any other than country (ies) attracting anti-dumping duty.	Korea RP	Any	Any	218.63	MT	US\$

N. FURTHER PROCEDURE

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

- (i) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- (ii) Exporters, importers, applicants and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty (40) days from the date of publication of Preliminary Findings. Any other interested party may also make known their views within forty (40) days from the date of publication of these findings.

(R. Gopalan)
The Designated Authority