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**No.15/1010/2012-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi**

NOTIFICATION

(Final Findings)

Dated the 8th November, 2013

Subject: -Sunset Review anti dumping investigation concerning imports of 'Phosphoric Acid- Technical Grade and Food Grade (including Industrial Grade)'originating in or exported from China PR.

No. 15/1010/2012-DGAD.– Whereas having regard to the Customs Tariff Act, 1975, as amended from time to time, and the Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time.

A. BACKGROUND

1. 15/1010/2012-DGAD: Whereas having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules), definitive anti-dumping duty was originally recommended by the Designated Authority (hereinafter referred to as the Authority) on import of 'Phosphoric Acid- Technical Grade and Food Grade (including Industrial Grade)' (hereinafter referred to as the subject goods) originating in or exported from China PR (hereinafter referred to as the subject country) vide Notification No. 14/7/2006-DGAD dated 3rd January, 2008 and whereas the Ministry of Finance implemented the recommendation vide its Notification No. 17/2008-Customs dated 19th February, 2008.
2. Whereas M/s Gujarat Alkalies & Chemicals Limited and M/s Punjab Chemicals & Crop Protection Ltd (also referred to as "petitioner companies" or "petitioners") filed a petition under section 9A (5) of the Customs Tariff Act, 1975, read with Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti

Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, before the Designated Authority requesting Sunset Review of anti dumping duties earlier imposed on imports of Phosphoric Acid- Technical Grade and Food Grade (including Industrial Grade) originating in or exported from China PR. The petitioners have claimed that cessation of anti dumping duties imposed on the subject goods from the subject country is likely to lead to continuation or recurrence of dumping and injury and they have, therefore, requested the Authority for extension of duties already in place.

3. And, whereupon in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules, the Authority issued a public notice dated 10th September, 2012, published in the Gazette of India, Extraordinary, initiating the sunset review investigation to review the need for continued imposition of duties in force and to examine as to whether the cessation of such duties is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
4. And, whereas the antidumping duties as notified were extended up to 12th September, 2013 vide Notification No.45/2012-Customs (ADD) dated 25th September, 2012 in terms of Section 9(A)(5) of the Act.

B. PROCEDURE

5. In this investigation, the procedure described herein-below has been followed:
 - a. The Embassy of the subject country in India was informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.
 - b. The Authority sent copies of the initiation notification to the Embassy of the subject country, known exporters/producers from the subject country, known importers and other interested parties, as per the available information. Parties to this investigation were requested to file the questionnaire responses and make their views known in writing within the prescribed time limit.
 - c. Copies of the questionnaire and the letter sent to the known exporters/producers were also sent to the Embassy of the subject country along with a list of known exporters/producers with a request to advise other exporters/producers, if any, from the subject country to respond to the questionnaires within the prescribed time.
 - d. Questionnaires were sent to the following known exporters/producers from the subject country in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

Guangxi Qinzhou Capital Success Chemicals Co., Ltd. 102, The Nanzhu East Street, Qinzhou, Guangxi, China	Liuzhou Xianmi Trading Co., Ltd 230-1, Donghuan Avenue , Liuzhou, Guangxi, China
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Shijiazhuang Liao Chemical Co., Ltd. Western Industrial Park, Wubai Village, Gaoyi County, Shijiazhuang , Hebei, China (Mainland) Zip : 051330	Yunnan Yuntianhua International Chemical Co., Ltd No. 1417 , Dianchi Road , Kunming, Yunnan, China (Mainland) Zip : 650228
Guangxi Yizhou Yisheng Fine Chemical Co., Ltd. Sanchang, Huaiyuan Town, Yizhou City , Hechi, Guangxi, China (Mainland) Zip: 546300	Jinan Tianqiu Import and Export Co., Ltd 702, Unit No. 1, Cyberport Building, 16# east road of garden village, Jinan city, Shandong, China
Qin Zhou Rong De Chemicals Co., Ltd. # 6 Shiling Road, Qinzhou City. Qinzhou, Guangxi China 535000	Lianxing chemical Co., Ltd 10th Floor No. 121 Binjiang Road, Xunyang District Jiujiang City Jiangxi Province
Qingzhou Kedi Chemical Co., Ltd Qingzhou City Gaoliu Town Dujiayao Village	Guangxi Skyland Corporation Ltd. No. 137 Rd, Guangxi Foreign Bldg., Nanning, Guangxi, China (Mainland)
M/s Yunnan Chemphos Corporation Dongjiawan building, Dong feng dong lu, Kunming, Yunnan, China	

- e. In response thereto, none of the exporter/ producer from China responded and provided any questionnaire response.
- f. Questionnaires were sent to the following known importers, users and associations of the subject goods in India seeking information.

Albright & Wilson Chemicals I Ltd. Raj Mahal, 84 , Veer Nariman Road Mumbai 400 020	Bhavita Chemicals Pvt. Ltd. Plot No. D- 7/2 Chemicals & Alkali Society Ltd. Midc, Ttc Industrial Area Navi Mumbai
C.J. Shah & Co. 105, Bajaj Bhavan , 10th Floor Nariman Point Mumbai 400 021	Jaydip Agencies 94, Kazi Syed Street 2/B, Gangavihar Mumbai 400 003
Pharmachem Traders Pvt. Ltd. 11, Pollock Street, 3rd Floor, Calcutta	Betzdearborn India Pvt. Ltd. 15/16 MG Road Bangalore
Fertilizers And Chemicals Travancore Floor Udyog Mandamml Po Cochin, Kerala.	Madras Fertilizers Ltd. Manali Madras 600 068
Excel Industries Ltd. 184. S. V. Road Jogeshwari West Bombay 400 102	Hind Lever Chemicals Ltd.A-5 Phase li B Focal Point Rajpura, Punjab
Reliance Industries Ltd. Hari Kunj , Carter Road No. 4 Near Mangal Kunj Borivali East Bombay	Carborandum Universal Ltd. Mfg Unit, Bonded Abrasives PB No. 2272, Ttiruvottiyur
Tonira Pharma Ltd. 301 , Yogi Complex 44 Sampatrao Colony Alkapuri Baroda 390005	Berger Auto & Industrial Coat 19, Dda Commercialcomplex, Kailash Colony Extension New Delhi
LG Electronic India Pvt. Ltd. 221, Okhla Phase Iii New Delhi 110 020	Sudeep Pharma Ltd. 402, "Yashkamal" Bldg Sayajigunj Baroda 390005
Mangalore Chemicals & Fertilizers Lt PO Panambur Mangalore Karnataka 575010	ICI India Ltd. Pharmaceuticals Buisness Ennore Express Highway Ennore Madras 600057
Bharat Electronics Ltd. C 22 - Encl Gangotri Enclave New Delhi 110 019	Tosif Silktex 96, Rabindra Sarani 2nd Floor Kolkata Wb 700073
Torrent Pharmaceuticals Ltd. Bajaj Bhawan Nariman Pt. Bombay 400 021	

- g. None of the importers, users and associations of the subject goods in India responded and provided any questionnaire response.

- h. The Period of Investigation (POI) for the purpose of the present review is from 1st April 2011 to 31st March 2012 (12 months). However, injury analysis covers the years Apr'08-Mar'09, Apr'09-Mar'10, Apr'10-Mar'11 & the POI. The data beyond the POI has also been examined to determine the likelihood of dumping and injury.
- h. The imports data for the period of investigation and preceding three years was called from the Directorate General of Commercial Intelligence and Statistics (DGCI&S).
- i. The Authority made available the non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- j. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- k. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 24th July, 2013. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions received from the interested parties have been considered, wherever found relevant, in the Final Findings Notification.
- l. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the interested parties.
- m. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- n. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has examined the issue on the basis of the 'facts available'.
- o. A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 26.8.2013. Only the Domestic Industry responded to the Disclosure Statement and no opposing interested party responded to the said Disclosure Statement. The post Disclosure Statement submissions received from the domestic industry have been considered, to the extent found relevant, in this Final Findings Notification.

- p. The original date for issuance of Final Findings was 9.9.2013. The same was extended by the Ministry of Finance up to 9.11.2013 at the request of the Authority.
- q. *** marked in this Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.
- r. Exchange rate of Rs.48.14 per USD has been taken as per the Ministry of Finance, Government of India Notification.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Submissions made by the opposing interested parties

- 6. No opposing interested party has responded to this investigation and hence, there are no submissions by them with regard to the product under consideration and the like article.

Submissions made on behalf of the domestic industry

- 7. The domestic industry, in brief, has contended as follows:
 - a. The product under consideration in the present investigation is Phosphoric Acid- Technical Grade and Food Grade (including Industrial Grade).
 - b. Present petition is for sunset review, continuation and enhancement of anti dumping duty. The product under consideration would remain the same as defined in the original investigation.
 - c. Phosphoric Acid is normally produced and sold in terms of weight, expressed in Kg or MT.
 - d. Phosphoric Acid is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, etc. The subject goods are also being used in Pharmaceutical applications, Beverages, Seed processing, Sugar juice clarification and sugar refining, Food phosphate manufacturing, etc.
 - e. Goods produced by the them are like article to the imported product from the subject country in terms of parameters such as physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification.
 - f. Phosphoric Acid is an inorganic chemical classified under Chapter 28 of the Customs Tariff Act, 1975.

Examination of Authority

- 8. The product under consideration is 'Phosphoric Acid- Technical Grade and Food Grade' (Including Industrial Grade). In the Final Findings dated 3rd January, 2008 of the original anti-dumping investigation, the Designated Authority defined product under consideration as under:

"The Product under consideration in the present investigation is "Phosphoric Acid - Technical Grade & Food Grade" (including industrial grade).

Phosphoric Acid is used for the production of sodium phosphate, calcium phosphate, magnesium phosphate, ammonium phosphate, pharmaceutical applications, beverages, seed processing, sugar juice and sugar refining, food phosphate manufacturing, etc. Phosphoric Acid is classified under Customs subheading No. 28092010. The custom classification is however, indicative only and has no binding on the scope of the present investigation.”

9. The Authority holds that the present investigation being a review investigation, the product under consideration remains the same as has been defined in the original investigation. Further, there has been no significant development in the product over the period.
10. Further, the petitioners have submitted that the goods produced by the them are like article to the imported product from the subject country in terms of parameters such as physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification. The Authority further notes that the present investigation is a sunset review investigation and the issues of like article have been already dealt in the previous investigation. Further, no opposing interested party has responded to this investigation and raised any issue in this regard. The Authority, therefore, holds that Phosphoric Acid- Technical Grade and Food Grade’ (Including industrial grade) produced by the domestic industry and imported from China PR is the like article within the meaning of the Rules.

D. SCOPE OF THE DOMESTIC INDUSTRY

Submissions by the opposing interested parties

11. No opposing interested party has responded to this investigation and raised any issue with regard to standing of the domestic industry.

Submissions by the domestic industry

12. Following submissions have been made by the domestic industry:
 - a. Application is filed by Gujarat Alkalies & Chemicals Limited and Punjab Chemicals & Crop Protection Ltd, on behalf of the domestic industry.
 - b. These companies are the major producers of the subject goods in India.
 - c. There are two more producers of the product in India, namely, Solaris Chemtech and Star Chemicals.
 - d. Production of the petitioners constitute a major proportion in the total production of the product under consideration in India.

- e. Domestic producers expressly supporting the application account for more than 50 percent of the total production of the like product produced by the Indian industry.
- f. Petitioners, therefore, satisfy the requirement of standing to file the present petition. Further, participating companies constitute 'Domestic Industry' within the meaning of the AD Rules.

Examination by the Authority

13. Rule 2(b) under the AD Rules provides as follows:-

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

14. The petition has been filed by M/s Gujarat Alkalies & Chemicals Limited and M/s Punjab Chemicals & Crop Protection Ltd. The Petitioners' production accounts for 51.88 % of the total production of the subject goods in India, and, hence, constitutes a major proportion in the Indian production. In view of the foregoing, the Petitioners satisfy the requirement of standing to file the present petition and the Petitioner Companies constitute 'Domestic Industry' as per the Rules.

E. OTHER ISSUES

15. Request was made by the Authority to the DGCI&S to provide the transaction wise import data regarding the imports of the product concerned in India. The same was received by the Authority. The domestic industry has provided the IBIS transaction wise import data regarding the imports of the product concerned in India. Both the data has been analysed. The Authority notes that import volume from China PR as per DGCI&S data in the period of investigation comes to 10,606 MT whereas petitioners have claimed that as per IBIS data import volume in the period of investigation was of 9,792 MT. Therefore, the volume of imports as reported by DGCI&S is marginally higher. With regard to the price, the Authority notes that the import price from China PR as per DGCI&S data is Rs.44.40 per kg and the same as per IBIS is Rs.45.13 per kg. Therefore, there is no significant variation in the price reported by DGCI&S and IBIS as well. The volume and value of the imports of the subject under consideration from China PR from both the sources are also comparable. The Authority, therefore, adopts the DGCI&S data for determination of volume and value of imports in India in the entire injury period.

F. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS

Dumping

Submissions by the opposing interested parties

16. No opposing interested party has responded to this investigation and raised any issue with regard to dumping.

Submissions by the domestic industry

17. Following submissions have been by the domestic industry:

- a. None of the WTO Member countries has granted market economy status to Chinese producers on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph 8(3).
- b. None of the Chinese producers can satisfy market economy status.
- c. China PR has been treated as a non market economy by European Commission and the United States of America in the past three years. European Union and United States are members of World Trade Organization.
- d. In India also, the Authority has treated China PR as non-market economy. The Authority has treated China as non-market economy in practically all the investigations initiated against China PR after the amendment dated 31st May 2002.
- e. European Commission, in the matter of trichloroisocyanuric acid; certain seamless pipes and tubes of stainless steel; oxalic acid; hand pallet trucks and their essential parts; barium carbonate, has treated China as a non-market economy. USA has treated China as a non-market economy in the matter of anti-dumping investigations such as Certain Woven Electric Blankets, Seamless Refined Copper Pipe and Tube, Narrow Woven Ribbons with Woven Selvedge and Certain Magnesite Carbon Bricks.
- f. Even after the amendment dated 4th January, 02, the Authority has treated China PR as a non-market economy.
- g. Designated Authority has treated China as a non-market economy in practically all the investigations initiated against China after the amendment dated 4th June, 2002.

- h. It has been agreed by China PR also, under its Accession Treaty, that WTO Members could use an NME antidumping methodology till December 11, 2016.
- i. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
- j. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.
- k. Market economy status cannot be given unless the responding exporter establishes that their books are audited in line with international accounting standards.
- l. Market economy status cannot be granted even if one of the parameters is not satisfied.
- m. Responding Chinese exporters are to establish that they are operating under market economy conditions.
- n. Normal Value cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available.
- o. That Normal Value must be “*comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country*”. In order to arrive at Normal Value on this basis, the Designated Authority shall require complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade).
- p. Principles of fair comparison as laid down under Article 2.4 of the Anti dumping Agreement are also relevant in this respect.
- q. Petitioners have not been able to procure such information from a producer in market economy third country.
- r. Petitioners have, therefore, determined Normal Value in China PR on the basis of cost of production in India, duly adjusted. Consumption norms of one of the petitioners companies’ production have been considered for major raw materials and utilities.
- s. Export price has been determined as weighted average import price of the product under consideration. It is to be noted that the export price is calculated at the CIF level. According to the WTO Agreement on Anti Dumping and Indian Anti dumping Rules, comparison of normal value and export price should be done at the same level of trade. Therefore, the export price has been adjusted for the expenses, which may have been incurred by the exporter for exporting the subject goods to India.
- t. Dumping Margin is not only more than limits prescribed but also substantial.

Examination by the Authority

Dumping Margin:

a) Normal Value

18. The Authority notes that in the past China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure of Anti-dumping Rules, China PR is treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules
19. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-
- a. the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
 - b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
 - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and,
 - d. the exchange rate conversions are carried out at the market rate.
20. The Authority notes that in the present investigation no response has been received from any producer/exporter from China PR. None of the exporters/producers from the subject country has cooperated with the Authority and responded to the present investigation. Further none of the interested parties has provided any other alternate basis on which normal value can be determined. In view of the above position, the Authority considers China PR as a non market economy country. In view of the above position, the Authority constructs the normal value based on the facts available by adopting the cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. For this purpose, the Authority has taken the international price of major raw material and conversion cost of the most efficient of the domestic industry. Accordingly, the constructed normal value is determined as US\$ *** per MT for Technical Grade and US\$*** per MT for Food Grade.

b) Export Price

21. With regard to the export price, the Authority noted that none of the exporters from the subject country has cooperated in the subject investigation. Therefore, the Authority has considered weighted average export price based on the DGCI&S import data. The weighted average net ex-works export price of the subject goods from China PR as per DGCI&S import data for the POI, after adjustments of Ocean freight, Marine insurance, Commission, Port Expenses, Inland Freight, Bank Commission and VAT comes to US \$*** per MT for Technical Grade and US \$*** per MT for Food Grade.

c) Dumping Margin

22. On the basis of the constructed normal value and net export price so determined as explained above at ex-factory level, the dumping margin arrived at for all exporters of the subject goods from the subject country during POI is as given in table below. The Authority notes that the dumping margin of the exports of the subject goods from the subject country is positive and above de-minimis.

China PR	Normal Value (US\$/MT)	Export Price (US\$/MT)	Dumping Margin (POI 2011-12) (US\$/MT)	Dumping Margin (POI) %	Dumping Margin (POI) Range
All producers and exporters from China PR					
• Technical Grade	***	***	***	***	40-50
• Food Grade	***	***	***	***	95-105
Weighted Average	***	***	***	***	50-60

G. ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK

Assessment of Injury

Submissions by the opposing interested parties

23. No opposing interested party has responded to this investigation and raised any issue with regard to injury.

Submissions by the domestic industry

24. Following submissions have been by the domestic industry:

- a. Information has been provided in respect of like article to the extent feasible and is separately available. However, in those situations where the

information is not separately available in respect of the like article because separate identification of that information is not feasible, information has been provided in respect of narrowest group/range of products, which includes the like article and for which the necessary information is available and can be provided.

- b. While conducting sunset review investigation, the Authority is required to consider the extent to which any improvement in the performance of the Domestic Industry is related to the anti dumping duty in force and whether the Domestic Industry is vulnerable to the injury if the existing orders are allowed to expire. In a sunset review investigation, injury analysis consists of consideration of the economic situation of the Domestic Industry at the time of the original investigation vis-à-vis the post investigation developments in the economic situation of the Domestic Industry.
- c. In order to determine the current situation of the Domestic Industry, the production, capacity, its utilization, sales, stocks, employment, demand, market share, price parameters, profitability, investments and other factors are required to be considered. If it is found that the imports are continuing at dumped prices and causing injury to the Domestic Industry, it can be concluded that the expiry of the duty in force would only lead to a further deterioration in performance of Domestic Industry.
- d. Petitioners request the Authority to investigate and examine the likelihood of continuation of dumping of the subject goods and consequent likelihood of continuation of injury to the Domestic Industry.
- e. There has been overall increase in demand of product concern in India. Significant jump in 2010-11 in demand over 2009-10 may be due to significant increase in imports from Israel and Taiwan, against which Authority has recently concluded the investigation and recommended imposition of anti dumping duty.
- f. Imports have shown an increasing trend in the POI as compared to the base year. In fact, the imports from China PR have increased very significantly between the base year and the POI and in relation to demand in India.
- g. Landed price of imported product from China PR is significantly below the net sales realization of domestic industry, causing significant price undercutting.
- h. Decline in cost of sales is less than decline in prices. The continued dumped imports are, therefore, causing price suppression and depression in the Indian market.
- i. Both the cost of production and the selling price first declined and then increased. Further, the imports are undercutting the domestic prices. The imports are thus likely to have depressing effect on the prices in the market.

- j. There has been a significant increase in the dumped imports, both in absolute terms or relation to production or consumption in India. Further, there has been a significant price undercutting by the dumped imports as compared with the price of like product in India and the effect of the imports is to depress the domestic prices and prevent price increases which otherwise would have occurred, to a significant degree.
- k. There is increase in demand of the subject goods. However, despite sufficient demand in the country, sales and production of the Domestic Industry did not increase.
- l. Capacity utilization of domestic industry declined.
- m. Due to easy availability of dumped imports, domestic industry was not able to increase its production and sales in same proportion to increase in demand, as a result, there has been production and sales loss of 7044 MT and 4886 MT in POI.
- n. Post imposition of anti-dumping duty, domestic industry expected to increase its sales and market share, which did not increase, and in fact declined.
- o. Market share of domestic industry has decreased due to the increasing imports and has not improved inspite of anti dumping duty in force.
- p. Performance of the domestic industry has not improved over the years as a result of continued dumping. The domestic industry has suffered losses. Though domestic industry earned some profits in current POI, the level of the same remained quite low. The return on capital employed earned by the domestic industry is quite low.
- q. Productivity of the domestic industry has declined in spite of imposition of duty. The performance of the domestic industry over the years in terms of productivity shows improvement with the exception of 2010-11, but has again declined due to the dumped imports.
- r. Employment and wages have shown improvement given the fact that the constituents of domestic industry are multi product companies. These parameters may not be reflective of the continued injury suffered by the domestic industry.
- s. The volume parameters such as production and sales volume are reflecting negative growth. Market share has declined and inventories are high. Thus, the volume growth cannot be described as satisfactory. Even though price parameters such as profits, profit before interest and tax, cash profit and return on investment are showing positive growth, the same are grossly unsatisfactory. The domestic industry is still facing price underselling. It is submitted that revocation of anti dumping duty at this stage would result in severe injury to the domestic industry.

Examination by the Authority

25. The domestic industry has alleged continued dumping and injury and requested for enhancement of the anti-dumping duty in force. The subject sun set review investigation is for assessing the situation of continued dumping and injury or likelihood of dumping and injury and for reviewing the necessity for continuance/enhancement of the anti dumping duty in force.
26. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.
27. Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide for 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 the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
28. As regards the impact of the dumped imports on the domestic industry, para (iv) of Annexure-II of the Anti Dumping Rules states as follows:
- “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.”*
29. For the purpose of assessing present state of injury, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority notes the concern of the parties about analysis of injury parameters

and has addressed the same by undertaking analysis of all mandatory injury parameters. The Authority has adopted the DGCI&S data for its analysis.

I. Volume Effect: Volume effect of dumped imports and impact on domestic industry

Demand and Market Share

30. The Authority has determined demand or apparent consumption of the product in the Country as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed can be seen in the table below.

Import Volume	UOM	2008-09	2009-10	2010-11	POI
					(2011-12)
-China PR (Subject Country)	MT	2,733	2,579	7,905	10,606
-Countries attracting anti dumping duty	MT	10,462	16,189	25,613	12,957
-Others Countries	MT	110	1,153	1,851	3,071
Total Imports	MT	13,304	19,922	35,368	26,635
Sales of the domestic industry	MT	22,353	22,550	25,122	23,071
Sales of other Indian producers	MT	23,765	22,647	10,869	22,610
Total Consumption/Demand in India	MT	59,422	65,119	71,359	72,316
Total Indian Production	MT	48,498	45,099	35,894	45,877
Imports from China PR in relation to					
-Total Imports	%	20.54%	12.95%	22.35%	39.82%
-Total Consumption/Demand	%	4.60%	3.96%	11.08%	14.67%
-Total Indian Production	%	5.63%	5.72%	22.02%	23.12%

31. It would be seen that demand of the product shows increasing trend compared to the base year. In the POI, the imports from China PR increased and China PR captured significant market share during the POI.

Import Volume & Market Share

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

Import Volume	UOM	2008-09	2009-10	2010-11	POI
Imports from China	MT	2,733	2,579	7,905	10,606
Imports from China in relation to-					
Total Imports	%	20.54%	12.95%	22.35%	39.82%
Total Consumption/Demand	%	4.60%	3.96%	11.08%	14.67%
Total Indian Production	%	5.63%	5.72%	22.02%	23.12%

33. The Authority notes that there has been significant and continuous increase in the imports in the entire injury period in spite of existing anti-dumping duties. Subject imports also have increased in relation to total imports, Indian production and consumption/demand in India.

II. Price Effect: Price effect of dumped imports and impact on domestic industry

34. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject country has been examined with reference to price undercutting and price underselling. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject country. A comparison for the subject goods during the period of investigation was made between the landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission offered by the domestic industry have been adjusted. The Authority has worked out a non-injurious price and compared the same with the landed value. The non-injurious price has been evaluated for the domestic industry by appropriately considering the cost of production for the product under consideration during the POI. The position is as follows:

Price Undercutting and Underselling

35. The price undercutting/underselling effects in the POI are examined below:

Technical Grade

Particulars	UOM	2008-09	2009-10	2010-11	POI
Net Sales Realisation	Rs./MT	***	***	***	***
Landed Price	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting Range		(25-35)	8-15	8-15	12-25
Non Injurious Price	Rs./MT				***
Landed Price	Rs./MT				***
Price Underselling	Rs./MT				***
Price Underselling	%				***
Price Underselling Range					13-22

Food Grade

Particulars	UOM	2008-09	2009-10	2010-11	POI
Net Sales Realisation	Rs./MT	***	***	***	***
Landed Price	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting Range	%	50-100	40-80	40-80	20-50
Non Injurious Price	Rs./MT				***
Landed Price	Rs./MT				***
Price Underselling	Rs./MT				***
Price Underselling	%				***
Price Underselling Range					40-55

36. The Authority notes that the landed price of imports is below the selling price as well as the non injurious price of the domestic industry, resulting in significant price undercutting and underselling.

Price Suppression/Depression

37. To examine price suppression and depression effect, the Authority has examined cost of sales and selling price per unit of the domestic industry during the POI and the injury period. The trends in this regard are given in the table below:

Technical Grade

Particulars	UOM	2008-09	2009-10	2010-11	POI
Cost of sales	Rs/MT	***	***	***	***
Trend		100	77	82	86
Selling Price	Rs/MT	***	***	***	***
Trend		100	72	79	91

Food Grade

Particulars	UOM	2008-09	2009-10	2010-11	POI
Cost of sales	Rs/MT	***	***	***	***
Trend		100	67	81	91

Selling Price	Rs/MT	***	***	***	***
Trend		100	56	55	57

38. From the above, the Authority notes that for Technical Grade, cost of sales of the domestic industry decreased in the POI in comparison to the base year. However, the selling price which has also decreased in the same period shows slightly increasing trend in comparison to the cost of sales. The trend is reverse for Food Grade.

III. Examination of other injury parameters

39. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of the subject goods. Further Annexure II (iv) of the Rules lays down as follows:-

“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 the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments”

Production, Capacity and Capacity Utilization

40. The Authority notes from the table below that production of the domestic industry has declined during the POI as compared to the base year.

Particulars	UOM	2008-09	2009-10	2010-11	POI
Capacity	MT	29,730	29,730	29,730	29,730
Production	MT	24,842	22,317	24,790	23,800
Capacity Utilization	%	84%	75%	83%	80%

Sales

41. Sales volume of domestic industry is given in the following table:

Particulars	UOM	2008-09	2009-10	2010-11	POI
Sales Volume of the Domestic Industry	MT	22,353	22,550	25,122	23,071
Market share of Domestic Industry in demand	%	37.62	34.63	35.20	31.90

42. The Authority notes that sales of domestic industry which was increasing till 2010-11 declined in the POI inspite of the fact that there is sufficient demand of product in India.

43. The Authority further notes that the market share of the domestic industry has decreased during the POI as compared to the base year as well as the immediate preceding year. The Authority notes that decline in share of domestic industry in demand has been captured by imports from China PR. Further, even when the anti dumping duties remained in effect, the volume of imports has not been impacted by the existing anti dumping duties.

Profit/loss, Return on Investment and Cash Flow

44. The return on investment, profit/loss before and after interest, return on investment and cash profit are as shown in the table below:

Particulars	UOM	2008-09	2009-10	2010-11	POI
Cost of Sales	Rs./MT	***	***	***	***
Cost of Sales Indexed	Trend	100	77	82	86
Selling Price	Rs./MT	***	***	***	***
Selling Price Indexed	Trend	100	72	79	91
Profit/Loss	Rs./MT	***	***	***	***
Profit/Loss Indexed	Trend	100	(75)	(14)	229
Profit/Loss	Rs./Lacs	***	***	***	***
Profit/Loss Indexed	Trend	100	(75)	(16)	217
Cash profit	Rs./Lacs	***	***	***	***
Cash profit Indexed	Trend	100	30	54	151
Return on Investment	%	***	***	***	***
Return on Investment Indexed	Trend	100	(37)	18	192

45. The Authority notes that imposition of anti dumping duty resulted in providing some relief to the domestic industry which can be seen in the profit made in the base year. In 2009-10 and 2010-11, domestic industry made losses, which turned into profits in the POI.

Inventories

46. The inventory position of the domestic industry has been as under:

Particulars	UOM	2008-09	2009-10	2010-11	POI
Average Stock	MT	***	***	***	***
Indexed	Trend	100	169	149	157
Average Stock for Number of Days Sales	Days	***	***	***	***

47. The Authority notes that average stock of the domestic industry increased in the POI as compared to the base year. Stock, which was equal to 21 days sales in the base year increased to 35 days sales in the POI.

Employment and Wages

48. Employment and wages position of domestic industry is given below:

Particulars	UOM	2008-09	2009-10	2010-11	POI
Employment	Nos	***	***	***	***
Indexed	Trend	100	110	109	101
Wages	Rs. Lacs	***	***	***	***
Indexed	Trend	100	162	165	167

49. The Authority notes that the employment level of the domestic industry shows a marginal positive trend in the POI in comparison to the base year and at the same time, wages paid by the domestic industry increased during the entire injury period.

Productivity

50. Information relating to productivity of domestic industry is given below:

Particulars	UOM	2008-09	2009-10	2010-11	POI
Productivity per Day	MT/Day	***	***	***	***
Indexed	Trend	100	90	100	96
Productivity per Employee	MT/Nos	***	***	***	***
Indexed	Trend	100	82	92	95

51. It is seen that productivity of the domestic industry declined both in terms of production per day and production per employee in the POI in comparison to the base year.

Growth

52. The Authority notes that the domestic industry has lost market share in the POI which is gained by the imports from China, result of which can be seen on production and sales of the domestic industry. The inventory of the domestic industry has increased in the POI in comparison to the base year. In terms of return on investment and profits, the domestic industry has shown positive growth.

Ability to raise capital investments

53. The Authority notes that the domestic industry is a multi product company. Their ability to raise further investment is not a relevant factor in this investigation.

54. In view of the above, it is noted that:

- a. The volume of imports from China increased in the POI in comparison to the base year.
- b. Price undercutting/underselling without prevailing anti dumping duties is positive.
- c. Performance of the Domestic Industry in terms of production, capacity utilisation, and market share in sales volume has shown decreasing trend.
- d. Performance of the Domestic Industry in terms of profits and return on investments has shown improvement.

Examination of Causal Link and Other Known Factors

55. In addition to the examination of likelihood of dumping and injury, the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. The Authority examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted as follows:

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

56. The Authority observes that the imports of the product under consideration from other countries are either attracting anti dumping duty or volume is negligible.

(ii) Trade restrictive practice and competition between the foreign and domestic producers

57. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. Further there is no perceptible competition among the domestic producers, except that is obvious of a market economy.

(iii) Contraction of demand or Changes in the pattern of consumption

58. The Authority notes that there is no contraction in demand during the injury period. Hence, contraction in demand has not caused injury to the domestic industry.

(iv) Export performance

59. Domestic industry does not have significant export activities for the product concern. Hence, export performance has not affected the injury to the domestic industry.

Magnitude of Injury and Injury Margin

60. The non-injurious price of the subject goods 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 during the POI. Thus compared, the injury margin is worked out as under:

Particulars	UOM	Technical Grade	Food Grade	Average
Non Injurious Price	Rs./MT	***	***	***
Landed Value	Rs./MT	***	***	***
Injury Margin	Rs./MT	***	***	***
Injury Margin	%	***	***	***
Injury Margin Range		13 to 22	45-55	20-30

61. On the basis of the above analysis, the Authority concludes as under:

- a. In spite of the anti-dumping duty in force, the Chinese exporters command a significant share in the Indian market.
- b. The landed value of imports, even with anti dumping duty, is lower than the domestic selling price.
- c. The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimis.
- d. The imports of product under consideration from the subject country have substantially increased during period of investigation as compared to base year

as well as preceding year and have remained significant over the current injury period in absolute terms.

- e. The imports of the subject goods from the subject country continued to be at dumped prices in spite of existing anti dumping duties.
- f. Price Undercutting with and without anti-dumping duty is positive and substantial
- g. Price Underselling effect with and without anti-dumping duty is positive.
- h. The overall economic health of the domestic industry has improved in terms of profitability and return on investment.
- i. The subject goods are entering the Indian market at dumped prices and the dumping margin is above de-minimus.

LIKELIHOOD OF CONTINUATION/RECURRENCE OF DUMPING AND INJURY

62. The Authority notes that no response/submission was made by either the producers/exporters from the subject country or by the Indian importers of the subject goods during the investigation. The Authority has examined the likelihood of recurrence/continuation of dumping and injury and noted as under:

Submissions by the opposing interested parties

63. No opposing interested party has responded to the investigation and, thus, there are no submissions in this regard.

Submissions by the domestic industry

64. Following submissions have been by the domestic industry:

- a. Dumping of the product under consideration continued from China PR even after the imposition of anti dumping duty. The Designated Authority had earlier conducted investigations relating to this product and noted significant dumping of the product concerned in India. It is submitted that dumping by the subject country is restricting fair competition in the market, which would ultimately affect the interests of the consumers of the product concerned.
- b. Either there could be “continued” dumping and injury, or in the absence of continued dumping and injury, likelihood of recurrence of dumping and injury thereof. Thus, Rules and the other provisions of sunset review clearly envisage a situation where the Domestic Industry would not have suffered continued injury after imposition of anti dumping duties. Following can be situations/equations of likelihood of dumping and injury.

- I. In case of continued imports of product concerned from the subject country.
 - i. Dumping has continued and injury has also continued.
 - ii. Dumping has continued but there is no injury to the Domestic Industry because duty is in force.
 - iii. There is no dumping and injury has continued. Further, revocation of duty shall result in continued or intensified injury.
 - iv. The dumping and injury is likely to recur in case of revocation of duty.
- II. In case of no imports of product concerned from the subject country.
 - i. There is no dumping but dumping is likely to recur in case of revocation of duty.
 - ii. There is no injury. However, dumping will recur, which would lead to recurrence of injury.
- c. Examination of material injury to the Domestic Industry is required to be made in accordance with the manner as laid down under Article 3 of the AD Agreement and Annexure II to the AD Rules, 1995.
- d. The phrase ‘mutatis mutandis in Rule 23(3) acknowledges that there may be improvement in various parameters relating to performance of the Domestic Industry. Therefore, the investigating authority should examine the matter on mutatis mutandis basis.
- e. In the original investigation, Designated Authority has determined significant and positive dumping margin as is evident from the table below –

Name of the Exporter	Dumping Margin (%)
M/s Yunnan Chemphos Corporation	43.14%
Non cooperating producers and exporters	55.42%

- f. Dumping margin determined now is also not only more than limits prescribed but also significant. Continued and positive dumping margin clearly shows that there is likelihood of continued dumping in the event of revocation of the duty.
- g. The volume of exports has significantly increased. More importantly, the increase in volume is despite imposition of anti dumping duty and at dumped prices. Therefore, it cannot be said that there would be no continuation of dumping in case of revocation of duty.
- h. Producers in China PR maintain huge capacities to produce phosphoric acid. In case of revocation of anti dumping duty, the volume of subject goods’ imports is bound to increase further.

- i. Imports from China are undercutting the prices of the Domestic Industry. The producers and exporters from China PR are in a position to increase their realization, still they would get the better market opportunities.
- j. Subject country captured significant market share which is lost by domestic industry. The market share of dumped imports has increased. This situation exists in spite of the present anti dumping duty.
- k. Exporters from China PR have very high export orientation worldwide. The export percentage of the Chinese companies varies from 11%-100%. Hence, the dumping and injury is likely to recur at aggravated level in case the existing anti-dumping duties are revoked at this stage.
- l. The dumping is likely to continue and consequent injury to the Domestic Industry is likely to be caused in the event of revocation of anti dumping duty.
- m. In a situation where there is no continued injury to the Domestic Industry, Designated Authority is required to examine likelihood of recurrence of injury to the Domestic Industry in the event of expiry of the anti dumping duty in force. In the present case, the import volumes from China PR are quite significant, despite current level of anti dumping duties, as may be seen from the table below:

SN	Year	Unit	Imports in MT
1	2008-09	MT	2,733
2	2009-10	MT	2,579
3	2010-11	MT	7,905
4	2011-12 (POI in the present investigation)	MT	10,606

- n. Producers in subject country are having excessive production capacities. It is submitted that in case of cessation of the present duty, dumping from China would definitely lead to increase and ultimately cause intensified volume and price injury to the Domestic Industry which is at the recovery stage under the protection cover of the anti dumping duty.
- o. Producers in China PR maintain huge capacities to produce phosphoric acid. The capacities of some of the Chinese producers/exporters as pointed out in by them in their websites are as in the table below. In case of revocation of anti dumping duty, the volume of subject goods' imports is bound to increase further.
- p. Vulnerability of the domestic industry relates to whether the industry would be susceptible to material injury in the event of cessation of antidumping duty imposed. In such a situation, the Authority must consider whether the industry will deteriorate further upon revocation or termination. In the instant case, continued presence of dumped imports has prevented the domestic industry

from recovering from past effects of dumping. In the event of cessation of current antidumping duty, the domestic industry will have to either, decrease the selling price by the amount of ADD or will maintain the current selling price.

- q. In the event of cessation of current anti-dumping duty and if Domestic Industry chooses to sell at import prices, the Domestic Industry would suffer significant financial losses. The return on investment and cash profit would also be significantly negative. Therefore, it is submitted that cessation of anti-dumping duty would have significant adverse effect on the prices in the market.
- r. Consideration of the current levels of import volumes and dumping margin from the subject country creates great possibility that expiry of duty will result in intensified dumping of subject goods from the subject country in the Indian market given the fact that subject country holds excessive capacities. It is submitted that present anti dumping duties are supposed to be acting as a restraint, despite which the volume of imports is so significant. Revocation of such duty implies that the Indian market would be catered only by the Chinese producers.
- s. The prices at which subject goods are being imported from China are substantially lower than the price at which the goods are being sold in the domestic market. Therefore, in case of expiry of duty, exporters would further channelize their output in the Indian market as they are already holding excessive capacities and are in fact selling subject goods to third countries at substantially lower prices. All such circumstances would result in likelihood of injury to the Domestic Industry.
- t. While the foregoing establishes that the present anti dumping duties should be extended further, it is submitted that the responding exporters in the investigation must establish that dumping is unlikely to continue or recur in the event of revocation of anti dumping duties. Information that the exporters must provide to the Designated Authority in order to establish no likelihood of continuation of dumping in the event of revocation of duty is listed in the questionnaire prescribed by the Designated Authority. Unless the exporters establish on the basis of this information that dumping and consequent injury is unlikely to continue, intensify or recur in the event of revocation of anti dumping duties, it must be held that the dumping would continue or recur or intensify in the event of revocation of anti dumping duties.

Examination by the Authority

65. The Authority has examined the likelihood of recurrence/continuation of dumping and injury and noted as under:
- c. The Authority notes from the information available on the websites of some of the Chinese producers and other websites that these Chinese producers have tremendous production capacity of the subject goods and some of them are

claiming to export 55% to 90% of their production capacity. Their minimum known annual production capacity, as can be seen from the table below, is 5,02,000 MT.

Producers In China	Production Capacity
Liuzhou Xianmi Trading Co. Ltd	30,000 MT
Shijiazhuang Liao Chemical Co. Ltd	12,000 MT
Guangxi Yizhou Yisheng Fine Chemical Co. Ltd	40,000 MT
Qin Zhou Rong De Chemicals Co. Ltd	20,000 MT
Lianxing Chemical Co., Ltd	35,000 MT
Yunnan Chemphos Corporation	30,000 MT
Guangxi Qinzhou Capital Success Chemical Co. Ltd	20,000 MT
Qingzhou Kedi Chemical Co. Ltd	10,000 MT
Skyland Chemical Corporation Ltd	5,000 MT
Yunnan Yuntianhua International Co. Ltd	3,00,000 MT
Minimum Known Capacity in China PR	5,02,000 MT

- d. From the above, the Authority notes that the minimum known production capacity of 5,02,000 MT of the Chinese producers is much more than the demand in India which stands at meager 72,316 MT in the period of investigation in comparison. The minimum known production capacity of the Chinese producers is more than 700% of the Indian demand in the period of investigation. In such a scenario, in the event of cessation of the existing anti-dumping duty, it would not be difficult for the Chinese producers/exporters to completely replace the producers of the subject goods in the Indian market.
- e. The Authority notes that the domestic industry has also provided the transaction wise export data of China Customs for exports of the product under consideration from China PR to third countries. In the absence of any response to the investigation from Chinese exporters and importers in India, this data has been relied upon by the Authority and analysed. From this data, the Authority notes that China PR has exported 5,13,747 MT of the product under consideration to countries other than India, which means that the total production capacity in China is much more than the minimum known production capacity. Further, this export to other countries is at average price of US\$ *** per MT (FOB), which is the dumped price if these exports are compared with the constructed normal value in China. This dumped export is more than 700% of the Indian demand. Further, if these exports are diverted to India, the landed price of these exports will be significantly below the non injurious price of the domestic industry. Therefore, these exports which are more than 700% of the total Indian demand are at dumped as well as injurious price.
66. Based on the above analysis of dumping, injury and likelihood of dumping and injury, the Authority concludes that the subject goods from the subject country are entering the Indian market at dumped prices and the dumping margin is

significant; these dumped imports are also causing injury to the domestic industry and the injury margin is significant; and in the event of cessation of the existing anti-dumping duty, there is likelihood that the subject country will divert the subject goods to India at dumped and injurious prices.

I. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

67. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

68. 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, therefore, would not affect the availability of the product to the consumers.

J. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES

J.1 Post Disclosure Statement submissions by the opposing Interested Parties

69. The Authority notes one importer/user M/s Sandeep Organics Private Limited, Mumbai, claimed to be an interested party in this investigation. The Authority, thus, had sent the Disclosure Statement to the said importer but the said importer did not file any submissions on the Disclosure Statement. No other exporter/importer/user and opposing interested party has responded to the Disclosure Statement.

J.2 Post Disclosure Statement submissions by the Domestic Industry

70. Following are in brief the post Disclosure Statement submissions made by the domestic industry:

- a) The non injurious price determined is too low. The raw materials utilization should not necessarily be considered at the best achieved levels. Actual raw material and utilities consumption must be considered. Actual production must be the basis for determination of non injurious price and production weight used to determine non injurious price should be the same as production used to determine non injurious price of the particular company.
- b) Amount of cost adjusted for on account of VAT refund while determining net export price is not clear. Evidence from website shows that there is no VAT

refund available for phosphoric acid. Therefore, 17% is the VAT cost that needs to be adjusted from the export price.

- c) There is continued dumping of the subject goods into the country and the imports commands significant share in the domestic market despite existence of anti dumping duty.
- d) The facts & circumstances established on the basis of positive evidence clearly show that dumping and consequent injury to the domestic industry is likely in the event of withdrawal of anti dumping duties.
- e) Even though the performance of the domestic industry improved, the same is still lower than reasonable levels.
- f) The dumping and injury margin is positive and significant.
- g) Imports are undercutting the domestic prices and margin of undercutting is positive. Thus, in the event of withdrawal of anti dumping duty, the domestic industry would be forced to reduce the prices. Withdrawal of anti dumping duty would therefore have adverse price effect.
- h) The form of measure is required to be kept as fixed quantum expressed in US\$.

J.3 Examination by the Authority

71. The Authority notes that no one except the Domestic Industry has responded in this investigation. The Authority has examined the submissions made by the Domestic Industry and notes that most of them are repetitive and have already been dealt with under appropriate headings in this Notification. As regard the argument that non injurious price determined is low, the Authority notes that non injurious price has been determined as per Annexure III to the Anti dumping Rules, based on verified data and consistent practice of the Authority. As regard the argument on VAT refund, the Authority notes that necessary adjustment for VAT difference has been made in the dumping margin determined.

K. **CONCLUSION AND RECOMMENDATION**

72. Having regard to the contentions raised, information provided and submissions made by the domestic industry and facts available before the Authority and on the basis of above analysis including analysis of likelihood of continuation of dumping and injury and post Disclosure Statement submissions made by the Domestic Industry, the Authority concludes and recommends that:

- i) The subject goods are entering the Indian market at dumped and injurious prices.
- ii) The imports of the subject goods from the subject country continued to be at dumped prices in spite of existing anti dumping duties.
- iii) The overall economic health of the domestic industry has improved in terms of profitability and return on investment but Price Undercutting with and without anti-

dumping duty is positive and substantial. Price Underselling effect with and without anti-dumping duty is also positive.

iv) In the event of cessation of the existing anti-dumping duty, there is likelihood that the subject country will divert the subject goods to India at dumped and injurious prices.

73. The Authority, thus, in order to remove dumping and injury to the domestic industry considers it necessary to recommend continuation of definitive anti dumping duty on all imports of the subject goods from the subject country as per the Duty Table below.

74. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty as per amount specified in the table below is recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from the European Union.

Duty Table

SNo	Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	280920	Phosphoric Acid	Technical Grade and Food Grade (including Industrial Grade)	China PR	China PR	Any	Any	249.38	MT	US\$
2	-do-	-do-	-do-	China PR	Any other than China PR	Any	Any	249.38	MT	US\$
3	-do-	-do-	-do-	Any other than China PR	China PR	Any	Any	249.38	MT	US\$

75. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

76. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(J S Deepak)
The Designated Authority