

No. 14/44/2010-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

NOTIFICATION

Dated the 2nd February 2012

Final Findings

Subject: - Anti-dumping investigation concerning imports of ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ originating in or exported from Israel and Taiwan.

No. 14/44/2010-DGAD: - Whereas the Designated authority, having regard to the Customs Tariff Act, 1975, as amended (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended, (hereinafter referred to as the AD Rules); recommended imposition of Anti Dumping duty on the imports of ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ originating in or exported from Israel and Taiwan vide notification dated 25th October 2011 and the Corrigendum dated 20th December 2011 thereof.

A. BACKGROUND OF THE CASE

2. Having regard to the Act and the AD Rules, the Designated Authority (hereinafter referred to as the Authority), under the AD Rules, received a written application from M/s. Gujarat Alkalies & Chemicals Limited, Baroda (hereinafter referred to as the Applicant) on behalf of the domestic industry, alleging dumping of ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ (hereinafter also referred to as the subject goods); originating in or exported from Israel and Taiwan (hereinafter also referred to as the subject countries).
3. And whereas, the Authority on the basis of sufficient evidence submitted by the applicant issued a public notice dated 4th February 2011, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied would be adequate to remove the injury to the domestic industry.
4. The Authority recommended imposition of provisional Anti-dumping duty on the imports of ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ originating in or exported from Israel and Taiwan vide notification dated 25th October 2011 and the Corrigendum dated 20th December 2011 thereof..

B. PROCEDURE

5. The procedure described herein below has been followed:
- i. The Authority sent a copy of initiation notification dated 4th February 2011 to the Embassy/ /Economic & Cultural Centre of the subject countries in India, known exporters from the subject countries, known importers/ users and the domestic producers as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
 - ii. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Embassy/ /Economic & Cultural Centre of the subject countries in India in accordance with Rule 6(3) supra.
 - iii. The Embassy/ /Economic & Cultural Centre of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their countries to respond to the questionnaire within prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.
 - iv. The Authority sent questionnaires to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:

S.N.	Name of Producer/ Exporter
1	M/s Gwohuah Chemical Taiwan,
2	M/s Taiwan Alum Chemical Industrial Co. Ltd., Taiwan
3	M/s Green Mountain Co, Taiwan
4	M/s Yirher Chem & Hort Co. Ltd. Taiwan
5	M/s South flower Trading Company, Ltd, Taiwan
6	M/s Core Chemical Inc. Taiwan
7	M/s Israel Chemicals Ltd, Israel

- v. In response to the above notification, the following exporters/producers/Association from the subject countries have responded:
1. M/s Yeou FA Chemical Co. Ltd, Taiwan
 2. M/s Israel Chemicals Limited, Israel
 3. M/s Hiforce Chemicals Corporation, Taiwan

vi. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

S.No.	Name of Importers/Exporters
1	M/s Albright & Wilson Chemicals Ltd ,Mumbai
2	M/s Bhavita Chemicals Pvt Ltd, Maharashtra
3	M/s C J Shah & Co., Mumbai
4	M/s Jaydip Agencies, Mumbai
5	M/s Pharmachem Traders Pvt. Ltd., West Bengal
6.	M/s Betzdearborn India Pvt. Ltd., Karnataka
7.	M/s Fertilizers And Chemicals, Kerala
8	M/s Madras Fertilizers Ltd., Manali Madras
9.	M/s Excel Industries Ltd., Maharashtra
10	M/s Hind Lever Chemicals Ltd., Punjab
11	M/s Reliance Industries Ltd., Maharashtra
12	M/s Carborandum Universal Ltd, Chennai
13	M/s Tonira Pharma Ltd. , Baroda
14	M/s Berger Auto & Industrial Coat, New Delhi
15	M/s LG Electronic India Pvt. Ltd., New Delhi
16.	M/s Sudeep Pharma Ltd., Baroda
17.	M/s Mangalore Chemicals & Fertilizers Ltd., Karnataka
18	M/s ICI India Ltd., Madras
19.	M/s Bharat Electronics Ltd., New Delhi
20	M/s Tosif Silktex. Kolkata
21	M/s Torrent Pharmaceuticals Ltd, Bombay
22	M/s Star Chemicals Pvt. Ltd., Mumbai.
23	M/s Punjab Chem & Crop Protection Ltd., Mumbai.
24	M/s Solaris Chemtech Limited, Karnataka

vii. Request for extension of time to file the questionnaires' response was received from some interested parties. The Authority granted the time extension, keeping in view the time constraints.

viii. Responses to the Importer's questionnaire have been received from the following importers of the subject goods In India:

1. M/s Chem Tall Rai India Ltd

- ix. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- x. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, including the period of investigation.
- xi. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xii. Investigation was carried out for the period starting from **1st April 2009 to 30th June 2010 (15 Months)** (POI). The examination of trends, in the context of injury analysis, covered the periods April 2006-March 2007, April 2007-March 2008, April 2008-March 2009 and the POI.
- xiii. The Authority, having regard to the Act and the AD Rules; vide Notification No. 14/44/2010-DGAD dated 25th October 2011 recommended imposition of provisional Anti Dumping duty on imports of the subject goods from the subject countries and the Corrigendum dated 20th December 2011 thereof..
- xiv. 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 30th November 2011. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. Interested parties were also provided opportunity for rejoinder submissions on the views expressed by opposing interested parties.
- xv. The arguments made in the written submissions / rejoinders received from interested parties have been considered, wherever found relevant, in these final findings.
- xvi. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating producer/exporter.
- xvii. In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the known interested parties and comments received on the same have been duly considered, wherever found relevant, in these final findings.
- xviii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted; and such information has been considered 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.
- xix. 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 recorded these findings on the basis of the facts available.

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

C. SUBMISSIONS MADE BY THE INTERESTED PARTIES POST DISCLOSURE STATEMENT

6. The following comments, in brief, have been made by the interested parties after issuance of the Disclosure statement:

Post Disclosure Statement Comments

Comments made on behalf of M/s ICL-Rotem:

The following comments, in brief, have been made on behalf of M/s ICL-Rotem:

Procedure

- GACL does not produce Food Grade Phosphoric Acid; but, the Hon'ble Authority has not addressed the above contentions with respect to GACL's inability to produce Food Grade Phosphoric Acid. It appears that the Authority has only relied upon the statements made by PCCPL with respect to 'so called' production of Food Grade Phosphoric Acid. Even if any information, specification have been submitted by PCCPL, the same have not been shared with ICL-Rotem, in order to sufficiently rebut their claim of producing Food Grade Phosphoric Acid.
- The Authority has also not taken into consideration the standards laid down by the Bureau of Indian Standards with respect to Food Grade Phosphoric Acid. Any Phosphoric Acid not conforming to the said BIS standards cannot be categorised as Food Grade Phosphoric Acid and consequently cannot be consumed and used by the food processing, edible oil extraction or pharmaceutical industry.
- Importers have no choice but to import Food Grade Phosphoric Acid.
- The Authority may note that ICL-Rotem's Food Grade Phosphoric Acid is being imported and used in place of technical grade phosphoric acid only where the technical grade phosphoric acid of GACL has been found not fit for consumption. The quantity of Phosphoric Acid (under the label Technical Grade) as exported by ICL-Rotem to such consumers of Phosphoric Acid is negligible and in no way competing with the technical grade phosphoric acid produced by GACL.
- A product not produced by the domestic industry should not be made part of any anti-dumping investigation for lack of causal link. ICL-Rotem relies on all its submissions for injury, response to preliminary findings, written submissions to public hearing and rejoinder submissions in this respect. The same are not being repeated herein for the sake

of brevity. Therefore, it is grossly erroneous to conclude that even if GACL does not produce Food Grade Phosphoric Acid; the Authority is not inclined to consider whether the demand of the Food Grade Phosphoric Acid shall be met by GACL.

Product under consideration and Like Article (Excessive Product Scope)

- The scope of the Product under Consideration in both the Initiation Notification and the Preliminary Findings is excessive and far too widely defined, covering two completely different products of two different grades.
- The 'like product' has a different meaning, depending whether it is used for the dumping determination or for the injury determination. In both cases, the two products should ideally be identical. It has been contended that Products that do not compete simply cannot be 'like products'. Thus, Food Grade Phosphoric Acid as produced and exported by ICL-Rotem is not in direct competition with GACL's Technical Grade Phosphoric Acid and therefore should be excluded from the definition of like products even though they might be physically similar, based on substitutability.
- Mere purification may not be able to lead to production of Food Grade Phosphoric Acid. Its production of Food Grade Phosphoric Acid is not a mere purification. There are differences in the manufacturing process, technical specifications, functionality, end-use, consumer perception etc of Food Grade Phosphoric Acid and Technical Grade Phosphoric Acid and that these should be taken into consideration

Scope & Standing of Domestic Industry

- It is most humbly submitted that as stated by GACL/ Domestic Industry in para 35, that GACL has not executed any agreement with ICL's group company/ subsidiary is totally false and baseless, especially in the light of the fact that a copy of the agreement (license of technology) has been submitted with the Authority in 'confidential' version earlier. We understand that the same has not been disputed by the Authority.
- IMI TAMI has absolute and complete control over the production capacity of GACL for the PUC (Technical Grade Phosphoric Acid). Based on the same, the finding of the Authority that "There is apparently no legal and operational control of ICL's group company over M/s GACL" is flawed. In terms of the contract IMI TAMI has a right to inspect GACL's Technical Grade Phosphoric Acid producing plant anytime during the continuance of license contract and verify the quantity of Technical Grade Phosphoric Acid produced at GACL's plant. Therefore, any denial by of non-operational control over GACL for the PUC is not maintainable.
- It is settled principle under the law that 'purification' can in NO way termed as 'manufacturing'. Therefore, the activity of 'purification' not being capable of being termed as 'manufacturing' would necessitate PCCPL not being considered as domestic industry for the purposes of Food Grade Phosphoric Acid.

- 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.” In light of the above, any inclusion of PCCPL and its products in the present investigation shall be erroneous and bad in law.
- Food Grade Phosphoric Acid as produced by ICL-Rotem is not purification of Technical Grade Phosphoric Acid. As a matter of fact ICL-Rotem does not even produce Technical Grade Phosphoric Acid and the process adopted by ICL-Rotem for production of Food Grade Phosphoric Acid (using food grade raw materials) is in no way similar to domestic industries process.
- In terms of para 39 the Authority has observed that PCCPL has submitted information with respect to the injury parameters. It is submitted that even if any such information was filed by PCCPL, the Authority has violated the Rule 7, by not making available the sufficient non-confidential summary of the confidential information so submitted by PCCPL to ICL-Rotem.

Incorrect Determination of Normal Value

- The Authority has erred in determination of normal value for ICL-Rotem by not considering the comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country, consequentially; it led to incorrect determination of normal value.

Injury and Causal Link

- This Authority has given no observations on the contentions raised by Chemetall Rai in para 60. As regards, the Authority’s observation under para 62, it is re-iterated that the said statement has been reproduced from the Annual Report of the GACL and therefore, the observation of the Authority is incorrect.
- The observations of the Authority in para 87 are incorrect. PCCPL is not a manufacturer of Food Grade Phosphoric Acid and therefore should be excluded from the present investigation.
- It is further submitted that the landed price of imports from Israel is below the net sales realization as the cost of production for ICL-Rotem is lower than the domestic industry’s net sales realization on account of significant differences in manufacturing process, price of raw materials.

- The comparison with 2008-09 would not result in appropriate and effective comparison as the same was impacted from recession. Further, the Authority in para 68 has acknowledged recession in the preceding year i.e. 2008-09. Furthermore, the Authority has contested/ denied any claims for the year 2008-09 as the same being with respect to a period preceding the POI. However, in the above para and para 119 the same years have been taken into account to determine price depression.
- GACL has been charging very high price for its Phosphoric Acid and any technology used by domestic industry is expensive.
- The scope of the PUC is too wide Product Scope of the investigation is excessive and far too widely defined and therefore the present proceedings should be dropped;
 - a) PCCPL being not a manufacturer of PUC should be excluded from the present investigations;
 - b) Since GACL production capacity and its operations with respect to PUC are being controlled by IMI TAMI, a subsidiary of ICL-Rotem, GACL cannot be considered constituting domestic industry;
 - c) The petitioner has filed information contradictory to its own claims and has mislead the Designated Authority;
 - d) The Authority has erred by conducting cumulative assessment of two very different products.
 - e) The Authority has erred by not segregating the dumping and injury analysis for Food Grade Phosphoric Acid and Technical Grade Phosphoric Acid.
 - f) The methodology for the construction of normal value is grossly erroneous and not prescribed under the law.
 - g) There is no material injury to the Domestic Industry from the imports of Food Grade Phosphoric Acid, which is technically and functionally different from Technical Grade Phosphoric Acid produced/ manufactured by Domestic Industry and thus should be excluded from the current proceedings;
 - h) GACL cannot produce Food Grade Phosphoric Acid at all and if accepted PCCPL is mere purifier.
 - i) There are various other factors like global recession, limited channels of procurement of raw materials, restrained capacity (under contractual obligations) affecting production and capacity utilization of the applicant and injury on this count cannot be attributed to the imports of Food Grade Phosphoric Acid from ICL-Rotem.
 - j) In the absence of causal link between imports from ICL-Rotem and injury to the alleged domestic industry, the present investigations against ICL-Rotem shall be terminated.
 - k) Any move to impose Anti Dumping Duty on the subject product will deprive the user industry from cost effective products therefore instead of domestic injury, the user industry would suffer from injury and for this reason also no anti-dumping duty should be imposed.
 - l) Thus, the present Investigation be terminated and no duty should be imposed on Food Grade Phosphoric Acid.

Comments made by M/s Canberra Chemicals:

The following comments, in brief, have been made on behalf of M/s Canberra Chemicals:

- GACL is not manufacturing Food Grade Phosphoric acid. It does not have requisite technology to produce food Grade Phosphoric acid & can produce only technical grade Phosphoric acid. In past we have used GACL's Phosphoric acid and our material got rejected by Pharma Industries in India as well as by Pharma Industries abroad. We being Micro Industries suffered a huge loss of export business as well as indigenous business. Hence, we have switch to import Food Grade Phosphoric acid.
- Nandesari Industries Association has contended that there is no one in India to supply food grade Phosphoric acid and M/s. Gujarat Alkalies & Chemicals Ltd., does not supply it. Hence their members have no alternate but to import it.
- Different grade of Phosphoric acid are not "like product" hence the scope of "Product under consideration" should be limited to the Technical grade of Phosphoric acid actually produced by M/s. Gujarat Alkalies & Chemicals Ltd..
- M/s. Gujarat Alkalies & Chemicals Ltd., must improve their quality of Phosphoric acid to capture entire market in to-day's globalization world rather than ask for anti dumping duty on imports of Phosphoric acid of all grades.
- Ministry of Commerce, Govt. of India must help micro and small scale Industries like us who are interested in quality products rather than government organisations. M/s. GACL who are not interested in improving quality of their products.
- Ministry and commerce must force domestic industry GACL to purify technical grade Phosphoric acid to Food grade Phosphoric acid "as per their statement that only steam is required for this purification" but never favour them by imposing anti-dumping duty.
- Further, the production capacity is restricted for M/s. Gujarat Alkalies & Chemicals Ltd., Therefore non-attribution analysis is not accorded appropriately. There cannot be a claim for volume injury because the rates / production of GACL is limited / controlled in terms of the contract with M/s. IMI TAMI which license agreement is for production of technical grade Phosphoric acid only.

Comments made by M/s Hiforce Chemicals Co., Ltd.

The following comments, in brief, have been made on behalf of M/s Hi Force Chemicals Co., Ltd.:

- It did its best to approach the Authority the moment it learnt about antidumping investigation against Taiwan and requested for providing some more time.
- Thereafter upon provisional finding dated on 25th Oct 2011, it submitted its response by our letter dated 23rd Nov 2011 with complete exporter's questionnaire duly filled enclosed with same and couriered to you thru FedEx on 26Nov 2011 and that this courier may have reached you by 28 Nov2011. On 22nd December 2011, it repeated its mail adding the request to provide price undertaking.

- It has requested to decide antidumping duty based floor price based on minimum landed value as per data of POI submitted by each interested party including petitioner based on which this antidumping investigation has been initiated as that would give sufficient protection to petitioner against antidumping margin decided based on data of POI considered for each country against which antidumping investigation has been done.

Comments made on behalf of the Domestic industry

The following comments, in brief, have been made on behalf of the Domestic industry:

- The Authority has rightly included food grade phosphoric acid into product scope. Particularly in view of the fact that the exporter has admittedly having exported food grade phosphoric acid as technical grade. Further PCPL is producing food grade phosphoric acid and the fact is undisputed.
- Since the exporter has failed to provide all relevant information, even during verification, the questionnaire response filed by the exporter must be rejected.
- The dumping and injury margin of Taiwan are quite low, in spite Taiwan is having lowest export price for Technical grade. Therefore the calculations may please be reviewed.
- Petitioner submits that the anti dumping duty may be imposed only as fixed quantum of anti dumping duty (fixed form of duty), expressed as duty in US\$/kg.
- The Authority should consider actual raw material and utilities consumption. As consumption over the years depends on a number of complex factors and is not a result of inefficiency of the domestic industry. Ignoring actual production and adopting any other production for determination of non injurious price is not appropriate. The Authority is required to determine actual cost of production and not a notional lower cost of production. Some expenses are apportioned on production basis. Having apportioned such expenses on actual production basis, these expenses again cannot be absorbed on the higher production level. Had the domestic industry produced higher volume, the share of expenses chargeable to the product would have been higher. The non injurious price is reduced for non operational misc. income. Neither non operational business expense nor non operational business income can form part of the non injurious price calculations. Capital employed should be determined considering present value of fixed assets, or at the least gross value of fixed assets. Further, the turnover ratio has been determined after adding turnover of captive products into company's total turnover. However, the product under consideration turnover does not include turnover of captive inputs. The production to determine non injurious price should be the same as production weight used to determine non injurious price of the particular company.

Examination by the Authority

7. The Authority has examined all the issues that were considered pertinent in the instant matter as follows:

- As regards the claims made by M/s Hi Force Chemicals Co., Ltd.; the Authority reiterates that it did not receive the company's exporter's questionnaire response duly filled in as per the prescribed format at all. In the absence of individual dumping margin, it is not feasible to work out the Price undertaking.
- As regards the contention relating to anti-dumping duty based on floor price; the Authority notes that it decides to recommend the form of duty on basis of facts and merits of each case and would do so in the instant matter as well.
- As regards the contention that M/s GACL does not produce Food Grade Phosphoric Acid; the Authority notes that it has already been recorded that M/s PCCPL, a domestic producer of the subject goods, produces Food Grade Phosphoric Acid. Besides, it has reputed clientele to whom it supplies Food Grade Phosphoric Acid and thus any arguments regarding its quality are devoid of any merit.
- The Authority further notes that it is not seeking to stop imports; but seeks to redress injury caused to the domestic industry on account of dumped imports of the subject goods.
- The Authority also notes that M/s ICL-Rotem's contention that Food Grade Phosphoric Acid is being imported and used in place of technical grade phosphoric acid only where the technical grade phosphoric acid of GACL has been found not fit for consumption has not been substantiated. During the course of investigation, no interested party has claimed with any evidence that technical grade phosphoric acid of M/s GACL has been found not fit for consumption and thus the contention is baseless and in the nature of mere allegation.
- As regards the contention that a product not produced by the domestic industry should not be made part of any anti- dumping investigation for lack of causal link; the Authority reiterates that M/s PCCPL, a domestic producer of the subject goods, produces Food Grade Phosphoric Acid and hence the contentions is devoid of any merit.
- The Authority notes that the scope of the Product under Consideration was well defined in the Initiation Notification itself and the same was reiterated in the Preliminary Findings.
- As regards the contention that the 'like product' has a different meaning, depending whether it is used for the dumping determination or for the injury determination; the contention is not based on the correct reading of the rules on the subject. As regards the contention that the Products that do not compete simply cannot be 'like products'; the

Authority notes that in the instant matter it has been clearly observed that food grade quality of the subject goods have also supplanted technical grade requirements of the domestic users and hence the contention is untenable.

- The Authority further notes that M/s PCCPL does not merely undertake purification of the technical grade phosphoric acid but produces the Food Grade Phosphoric Acid by adopting its own process and has been supplying the same to reputed clients.
- As regards the contention regarding the agreement (license of technology); the Authority reiterates its view that simply license of technology and any monitoring thereof shall make M/s GACL ineligible for being considered as a domestic producer in terms of Rule 2(b) of the AD Rules.
- Food Grade Phosphoric Acid as produced by ICL-Rotem is not purification of Technical Grade Phosphoric Acid. As a matter of fact ICL-Rotem does not even produce Technical Grade Phosphoric Acid and the process adopted by ICL-Rotem for production of Food Grade Phosphoric Acid (using food grade raw materials) is in no way similar to domestic industries process.
- The Authority notes that M/s PCCPL has submitted information with respect to the injury parameters and a Non-confidential version thereof was placed in the public file.
- As regards the contention that the Authority has erred in determination of the Normal value for M/s ICL-Rotem by not considering the comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country; the Authority notes that the contention is based on wrong reading of the relevant rules. As per the rules & regulations on the subject, it has been, *inter alia*, stipulated that if the domestic sales of the like article of the concerned exporter/producer do not satisfy the ordinary course of trade test, then the Normal value has to be determined on the basis of a comparable price of the like article when exported to an appropriate third country, provided that this price is representative; or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. Thus, the Authority has a choice to determine the Normal value based on either a comparable price of the like article when exported to an appropriate third country, provided that this price is representative; or on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. This view has also been upheld by the Hon'ble Supreme Court in the Haldor Topsoe case. Besides, even the comparable price of the like article when exported to an appropriate third country is subject to the ordinary course of trade test. In the instant case, the ordinary course of trade test was not satisfied at all.
- As regards the contentions raised by M/s Chemetall Rai; the Authority has already addressed the issue in the relevant sections of these findings.

- As regards the contention that M/s PCCPL is not a manufacturer of Food Grade Phosphoric Acid; the Authority notes that the same is factually incorrect as M/s PCCPL does manufacture Food Grade Phosphoric Acid.
- As regards the contention that the landed price of imports from Israel is below the set sales realization as the cost of production for ICL-Rotem is lower than the domestic industry's net sales realization on account of significant differences in manufacturing process, price of raw materials; the same is devoid of any merit, as the company has been found to be dumping the subject goods and the landed value thereof is causing 'injury' to the domestic industry.
- As regards the contention relating to 2008-09 period; the Authority has already noted in the context of the domestic producer's performance that the 2008-09 period is a period preceding the POI. However, it has been further noted that the domestic industry has suffered material injury in respect of the subject goods.
- As regards the contention that M/s GACL has been charging very high price for its Phosphoric Acid and any technology used by domestic industry is expensive; the Authority notes that the domestic industry's performance during the POI in terms of profits, return on investment and cash flow is far from satisfactory.
- As regards the contention that the production capacity of M/s. GACL is restricted in terms of the contract with M/s. IMI TAMI; the Authority notes that the same does not have any bearing on the injury analysis, as the AD rules & regulations do not stipulate that the domestic producer must have ample capacity to meet the entire domestic demand.
- As regards the contention that the dumping and injury margin of Taiwan are quite low, in spite of Taiwan having the lowest export price for Technical grade; the Authority has determined the same based on facts available on record and in terms of relevant rules on the subject.
- As regards the contention relating to anti-dumping duty based on fixed quantum of anti-dumping duty; the Authority notes that it decides to recommend the form of duty on basis of facts and merits of each case and would do so in the instant matter as well.
- As regards the contention relating to determination of non-injurious price; the Authority notes that it has determined the same based on facts available on record and in terms of relevant rules on the subject.
- Besides the above, the Authority notes that all other issues have already been appropriately addressed in relevant sections of these findings and are not being repeated for the sake of brevity.

D. MISC. SUBMISSIONS MADE BY INTERESTED PARTIES

Submissions made by M/s Hiforce Chemicals Corporation, Taiwan

8. M/s. Hiforce Chemicals Corporation, Taiwan has, *inter alia*, stated that they have learnt from Taiwanese market about the investigation on the instant subject and that they have not received any notice from the DGAD so far and has thus requested that it be provided an opportunity to file the exporter's questionnaire granting them sufficient time to do so the same.
9. M/s. Hiforce Chemicals Corporation, Taiwan vide their letter dated 22nd December, 2011, *inter-alia*, has claimed to enclose exporter's questionnaire duly filled in. The company has also contended that they had recovered phosphoric acid from spent acid mixture obtained from LCD/TFT producers and after its distillation and purification they got 85% phosphoric acid which can be applied for very limited applications. This grade has relatively lower cost they have also used second hand packing material to keep their costs lower and therefore could offer the subject goods at a workable price to Indian market. Besides, the total quantity exported by them is very low approximately 1422 MT which is less than 2% of the total demand in India. It also offered to provide a price undertaking.

Examination by the Authority

10. In response to the above, the Authority noted that the investigation in the instant matter was initiated on 4th February, 2011. In terms of the AD Rules, the known interested parties from the subject countries were duly advised to file the exporter questionnaire's response within forty days vide letter dated 25th February, 2011. Besides, vide the letter dated 25th February, 2011 the Taiwan Economic & Cultural Centre was also forwarded a copy of the initiation notification along with the Non-confidential version of the application and a copy of the questionnaire, *inter alia*, intimating them that the known exporters are being requested separately to furnish the relevant information in the form of response to the questionnaire sent to them, however, there may be more producers/exporters of the subject goods who may be interested in this investigation and therefore, they were requested to bring it to the notice of all concerned, so that they can defend their interests effectively. Thus, it was expected that Taiwan Economic & Cultural Centre would suitable advise the exporters/producers from Taiwan.
11. Besides, there is no obligation under the AD Rules or WTO's AD Agreement which requires that each and every producer exporter from the subject country must be intimated about the initiation notification. Besides, not only the initiation notification was published vide the Govt. of India Gazette notification but it was also hosted on the web-site of the Department of Commerce. An exporter/producer from the subject country that has not been specifically named in the application filed before the DGAD is expected to file the response to the questionnaire (which could have been downloaded from the Department's website) within the stipulated time as indicated in the initiation notification. In view of the above, considering

the time constraints to complete the investigation, the request of time extension could not be acceded to.

12. M/s. Hiforce Chemicals Corporation, Taiwan submissions made vide their letter dated 22nd December, 2011 were examined. It is noted that no exporter's questionnaire duly filled in was enclosed with the said letter. As regards lower costs on account of using second-hand materials/inputs, the Authority notes that the company should have filed its exporter's questionnaire duly filled in as per the prescribed format by the stipulated time. As the company has failed in its basic obligation to submit the requisite information/data, the Authority is not able to take any cognizance of its unverified/unsubstantiated claims made at this late stage of the investigation. As regards the offer of a price undertaking; the Authority is not able to accept the same as no individual dumping margin has been determined in respect of the company.

Submissions made by M/s ICL-ROTEM (ISRAEL)

13. M/s ICL-Rotem, in brief, has contended as follows:

- Rotem Amfert Negev Limited (producer and exporter of Food Grade Phosphoric Acid) is wholly owned subsidiary of Israel Chemicals Limited, Israel ("ICL") and both the entities are collectively referred to as ICL-Rotem.
- M/s GACL does not have requisite technology to produce Food Grade Phosphoric Acid and can produce only Technical Grade Phosphoric Acid.
- During the POI, even with the 100% capacity utilization, domestic demand would not have been met and imports were a necessity. Howsoever, the demand for food grade cannot be taken care by M/s GACL as it does not produce food grade.
- In the event of confidentiality, ICL-Rotem is unable to comment upon other factors related to data of M/s GACL. The data pertaining to capacity and production is claimed confidential by Authority inspite of its declaration in petition by M/s GACL.

Submissions made by M/s Canberra Chemicals

14. M/s Canberra Chemicals, in brief, has contended as follows:

- M/s GACL has confirmed in writing that it will not be possible for M/s GACL to supply food grade Phosphoric acid. Technical grade contains fluoride and lead, which are poisonous.
- M/s GACL statement that food grade and technical grade is same is baseless.
- They are a micro scale industry and therefore it is very difficult for them to use Advance license mechanism for exports. Moreover, they also supply to indigenous industries as well.

Submissions made by M/s Sudeep Pharma Ltd.

15. M/s Sudeep Pharma Ltd., in brief, has contended as follows:

- As their product is being used by pharma and food industries, they have to use only Food Grade of Phosphoric acid.
- M/s GACL is not manufacturing Food grade phosphoric acid.
- Imposition of anti-dumping duty will increase their production costs. For their finished product, DI calcium Phosphate, anti-dumping duty is not applicable and hence they will be adversely impacted.

Submissions made by M/s Chemetall Rai India

16. M/s Chemetall Rai India, in brief, has contended as follows:

- Unlike other investigations, M/s Solaris Chemtech is not part of the domestic industry in this investigation. The data of M/s Solaris has been kept out of present investigation since M/s Solaris was out of production due to plant shutdown. M/s Solaris has been for quite some years facing this problem of plant shutdown on account one or the other internal problems i.e., be it workmen strike, shortage of power or otherwise.
- Food grade and technical grade are two separate articles and the scope of investigation should be restricted to technical grade only. Technical Grade and Food Grade – Phosphoric Acid has different technical and chemical specifications and are used by different industries as per the suitability of their end products. one cannot be used as substitute of the other.

Submissions made by Nandesari Industries Association

17. The Association, in brief, has contended as follows:

- The Association in brief, has contended that there is no one In India to supply food grade phosphoric acid and that M/s GACL does not supply it; hence its members have no alternative but to import it.

Examination by the Authority

18. The Authority has accepted M/s ICL-Rotem's response as a Group entity for the purposes of this investigation.

19. As regards the contentions that M/s GACL does not have requisite technology to produce Food Grade Phosphoric Acid and can produce only Technical Grade Phosphoric Acid; the Authority notes that M/s PCCPL does manufacture food grade quality of the PUC and has reputed clientele for supplying the same. Besides, M/s ICL-Rotem in its response has

acknowledged that it has exported food grade quality of the PUC as technical grade as well to India during the POI and thus has directly competed with the technical grade of the Like Article manufactured by the domestic industry.

20. As regards the contention that during the POI, even with the 100% capacity utilization, domestic demand would not have been met and imports were a necessity and that the demand for food grade cannot be taken care by M/s GACL as it does not produce food grade: the Authority notes that AD Rules & Regulations do not require that the domestic industry must be able to meet the domestic demand before seeking redressal of injury caused to it on account of dumping.
21. The Authority has reflected the data pertaining to capacity and production as per the Non-confidential version of the submissions made by the domestic producers in the relevant sections of these findings.

E. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE

22. The product under consideration is '*Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)*'. Phosphoric Acid is an inorganic chemical 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.
23. Though Phosphoric Acid is classified under sub-heading no. 28092010 in the Customs Tariff Act but there is no dedicated Customs' classification for the product under consideration. The Customs classification is indicative only and in no way binding on the scope of this investigation.

Submissions made by M/s Yeou FA Chemical Co. Ltd, Taiwan

24. The company in its declaration filed with the Authority, inter alia, claimed that their process of production of the subject goods is a Dry Method which is different from the domestic industry's Wet Method and that they have patented their Phosphoric Acid purification process and thus their cost structure is incomparable to that of the domestic industry. It has also been contended that the subject goods should be categorized into different market segments as per the user's application. It has been further contended that they are not listed as a known exporter of the subject goods according to the application and stated that they will provide the relevant information if required by the Designated Authority.

Submissions made by M/s ICL- Rotem

25. M/s ICL- Rotem, in brief, has contended as follows:

- M/s GACL produces only Technical Grade Phosphoric Acid AND does not produce Food Grade Phosphoric Acid, whereas ICL-Rotem produces only Food Grade Phosphoric acid and does not produce Technical Grade Phosphoric Acid.
- Different grades of Phosphoric Acid are not ‘like product’, hence the scope of “product under consideration” should be limited to the grade of Phosphoric Acid actually produced by M/s GACL (during the POI). The Authority has incorrectly treated the “Food Grade” Phosphoric Acid and “Technical Grade” Phosphoric Acid as “like product”. Food grade phosphoric acid is totally different in technical specifications, capability, functionality and end use (application) from the technical grade phosphoric acid produced by M/s GACL. The Domestic Industry has misled the Authority by not presenting the complete facts about the difference in grades of phosphoric acid (as produced by M/s GACL and as imported from M/s ICL-Rotem) and by not highlighting the difference in functions, usage, application, market and consumers of both the grades of phosphoric acid.
- The quality, manufacturing process and technology of producing food grade phosphoric acid by M/s ICL-Rotem is better than M/s GACL’s technical grade phosphoric acid; then also the cost of production of food grade phosphoric acid by M/s ICL-Rotem is much lower than M/s GACL’s technical grade phosphoric acid.

Submissions made by M/s Chemetall Rai India

26. M/s Chemetall Rai India, in brief, has contended as follows:

- Food grade and technical grade are two separate articles and the scope of investigation should be restricted to technical grade only. Technical Grade and Food Grade – Phosphoric Acid has different technical and chemical specification and are used by different industries as per the suitability of their end products. one cannot be used for substitute of the other. The contention of the Petitioner that the subject good is to be classified as Phosphoric Acid only instead of Phosphoric Acid – Technical Grade and Phosphoric Acid – Food Grade is not legally or factually tenable. The petitioner is trying to twist and present the submission of the exporter that it is a producer of only Food Grade – Phosphoric Acid to mean that the goods exported by the exporter has been made to user of technical grade – phosphoric acid only. While maximum share of Food Grade – Phosphoric Acid exported to India has been exported to/imported by the user of Food Grade – Phosphoric Acid user only and only a miniscule portion of the same has been imported by the users of technical grade phosphoric Acid that too on account of frequent shut down by one of the major producer of Phosphoric Acid or on account of non-supply of goods of requisite specification. The petitioner is producing Technical Grade – Phosphoric Acid only and does not have capability to produce Food Grade. The users of food grade phosphoric acid has repeatedly sought supply of food grade – phosphoric acid from the petitioner’s company but company turned them away on account of their inability to supply the same.

Technical Grade Phosphoric Acid produced by the petitioner company cannot be used in pharmaceutical, edible oil extraction or food processing industries and for customers (in food processing industries etc.) whose requirement is specifically with respect to Food Grade Phosphoric Acid. Phosphoric Acid produced by Petitioner has very high fluoride content. Import of Food Grade – Phosphoric Acid has resulted as a matter of compulsion rather than as a matter of option, on account of non-availability of Food Grade in domestic market. M/s Solaris one of the major producers has been intermittently going on and off the production thereby leaving the users of phosphoric acid in a state of quandary. The user industry in order to maintain its production and delivery schedule has been forced to import the same from the subject countries. The export figures and statistic presented by the exporter clearly belies the claim of the petitioner that the imports of food grade were in fact intended for applications where technical grade were being used. There are three producers of Phosphoric Acid in India.

- Even if it is assumed that M/s Solaris is a producer of food grade phosphoric acid in India, it has neither joined as a petitioner in this investigation nor has supported the same. Hence, any submissions made by the petitioner on behalf of M/s Solaris are legally untenable. With respect to M/s PCCPL, the company has merely supported the petition of the petitioner company but has not shared its information with respect to all the 15 economic indices except information pertaining to sales that too without break-up of Food Grade and Technical Grade. In the absence of its production capacity, production and profitability etc. no arguments could be advanced in respect of M/s PCCPL. As per the averments made by the petitioner it is clear that M/s PCCPL is not a producer of Phosphoric Acid but procures the same from M/s GACL. Credentials of M/s PCCPL as a producer of phosphoric acid are itself doubtful on the basis of sales information alone which is also showing increasing trend and no injury analysis could be made in favour of the contentions of the petitioner. Keeping in view of the above mentioned facts and circumstance, the Authority is requested not to treat the food grade and technical grade – phosphoric acid as one and same but two distinct goods and exclude food grade phosphoric acid from the purview of present investigation and duty net.

Submissions made by the Domestic industry

27. The domestic industry, in brief, has contended as follows:

- The Applicant has claimed that there is no known significant difference in the subject goods produced by the Indian industry and the subject goods exported from the subject countries. The subject goods produced by the Indian industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

- Product under consideration is 'Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)'. Even though producers of phosphoric acid world over broadly follow either of the two paths, viz. the wet process or the dry process but the technology and production process of the two are comparable to the best of their knowledge.
- Food Grade Phosphoric Acid is nothing but purified form of Technical Grade Phosphoric Acid. Only additional purification process is required for conversion of Technical Grade Phosphoric Acid into Food Grade Phosphoric Acid in which only steam is used.
- M/s GACL produces technical grade whereas food grade is produced in India by M/s Solaris Chemtech and M/s Punjab Chemicals & Crop Protection Limited. M/s Punjab Chemicals & Crop Protection Limited has furnished complete information to the Authority which has been considered by the Authority in the preliminary determination.

Examination by the Authority

28. With regard to like articles, Rule 2(d) of the AD Rules provides as under: -

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

29. As regards the submissions filed by M/s Yeou FA Chemical Co. Ltd, Taiwan, the same were perused and it was found that the company has simply filed certain sheets detailing the export sales and domestic sales records without bothering to file the exporter questionnaire's response as per the format prescribed. In response to their submissions, the Authority vide its letter dated 6th April, 2011, *inter alia*, communicated to M/s Yeou FA Chemical Co. Ltd that they were expected to file the Exporter Questionnaire's response as per the prescribed format in order to substantiate their claim that they were not dumping the subject goods into India. A copy of the questionnaire was enclosed and it was clarified that the same could also be downloaded from www.commerce.nic.in website. It was clarified vide this letter that in the absence of requisite information/ data, the Authority would be constrained to record its findings on the basis of facts available to it in terms of Rule 6(8) of the Anti-Dumping Rules.
30. The Authority notes that M/s Yeou FA Chemical Co. Ltd failed to provide the requisite information/data inspite of the above clarification. As the company has failed to substantiate its claims and did not submit its response as per the prescribed format; the Authority is constrained to proceed on the basis of 'facts available' on record in terms of the AD Rules.
31. As regards the contentions that M/s GACL produces only Technical Grade Phosphoric Acid and does not produce Food Grade Phosphoric Acid, whereas M/s ICL-Rotem produces only food grade phosphoric acid and does not produce Technical Grade Phosphoric Acid; the Authority notes that M/s PCCPL does manufacture food grade quality of the PUC and has

reputed clientele for supplying the same. Besides, M/s ICL-Rotem in its response has acknowledged that it has exported food grade quality of the PUC as technical grade as well to India during the POI and thus has directly competed with the technical grade of the Like Article manufactured by the domestic industry.

32. As regards the contentions that different grades of Phosphoric Acid are not ‘like product’; the Authority notes that the PUC in the instant matter was clearly defined at the stage of initiation of this investigation as ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ and as per Rule 2(d) of the AD Rules the domestic industry does manufacture the Like Article. Besides as noted above, M/s PCCPL does manufacture food grade quality of the PUC. Further, M/s ICL-Rotem in its response has acknowledged that it has exported food grade quality of the PUC as technical grade as well to India during the POI and thus has directly competed with the technical grade of the Like Article manufactured by the domestic industry.
33. As regards the contentions that the quality, manufacturing process and technology of producing Food Grade Phosphoric Acid by M/s ICL-Rotem is better than GACL’s Technical Grade Phosphoric Acid; then also the cost of production of food grade phosphoric acid by ICL-Rotem is much lower than M/s GACL’s technical grade phosphoric acid; the Authority notes that in order to arrive at fair comparison, both dumping margins and injury margins have been determined on grade-wise basis to the extent feasible. As regards lower cost of production of ICL-Rotem, the same has been duly considered while determining their dumping margin.
34. After considering the information on record, the Authority is of the view that there are primarily two grades of the subject goods, namely food grade and technical grade which are exported from the subject countries and further notes that the two grades are being produced by the Indian industry. It is further noted that the differences in the manufacturing processes would not tantamount to different subject goods. Any adjustment demonstrating to have impact on the prices have been allowed as per the claims made and verified by the Authority in terms of the AD Rules. It is also noted that the two grades of the subject goods produced by the Indian industry are comparable to the imported subject goods in terms of chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. They are technically and commercially substitutable. It is also noted that at times food grade has also substituted the technical grade, as per the acknowledgement of the M/s ICL-Rotem.
35. Thus, the Authority is of the view that the subject goods produced by the domestic industry is like article to the product under consideration in accordance with the AD Rules.

F. SCOPE OF DOMESTIC INDUSTRY & STANDING

Submissions made by M/s ICL-ROTEM (ISRAEL)

36. M/s ICL- Rotem, in brief, has contended as follows:

- M/s GACL is a related party to ICL as it has a contract with the group company for technology and knowhow. Also, the company restricts/controls the production of technical grade phosphoric acid of M/s GACL.
- No declaration is made by M/s PCCPL regarding non-importation of goods, which is a mandatory procedural requirement. Therefore, its support letter should be rejected. Without the support of M/s PCCPL, M/s GACL would not amount to 50% share in total Indian production.

Submissions made by M/s Chemetall Rai India

37. M/s Chemetall Rai India, in brief, has contended as follows:

- As investigation was initiated on the basis of the petition filed by M/s GACL and M/s GACL does not produce food grade; hence there is no *locus standi* to file a petition or seek imposition of duty on an article which is not produced by it. The standing of the petitioner being a producer of Technical Grade Phosphoric Acid cannot be extended to include food grade – phosphoric acid. It is denied that M/s PCCPL has submitted information with respect to all injury parameters. The only information as evidently available from the petition as well as Preliminary Findings is related to the sales figures. M/s PCCPL has not filed any information in the prescribed format to enable any injury determination on the basis of M/s PCCPL. Hence, the standing of the petitioner to file a petition for seeking imposition of AD duty is limited to technical grade – phosphoric acid and the same cannot be presumed to cover food grade – phosphoric acid as well.

Submissions made by the Domestic industry

38. The domestic industry, in brief, has contended as follows:

- M/s GACL has not signed any agreement with IMI (ICL's Group Company). Even if it is assumed that M/s GACL is related to IMI, in any case, there is no relationship between M/s GACL and M/s ICL in view of absence of legal and operational control. Purchase of technology by one party from other party in any case is a business between the two parties and does not lead to legal relationships within the meaning of Rule 2(b).
- Application has been filed by M/s. Gujarat Alkalis & Chemicals Limited, Baroda on behalf of the domestic industry and has been supported by M/s Punjab Chemicals & Crop Protection Ltd. Applicant accounts for a major proportion of the domestic production. Further, the production of the Applicant along with the supporter is more than 50% of the Indian production.
- On initiation, the Designated Authority is required to call information from other interested parties, including other domestic producers. In such a case, if information

has been provided to the Designated Authority, the same cannot be rejected. Therefore, PCCPL's response cannot be rejected.

Examination by the Authority

39. Rule 2(b) of the AD Rules defines domestic industry as under: -

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

40. The Authority notes that it had written to all the domestic producers to file the requisite information/data as per the AD Rules. In response thereto, while M/s Solaris Chemtech has not responded but M/s Punjab Chemicals & Crop Protection Ltd. submitted the information/data which has been verified and considered in this investigation.
41. The Authority notes that M/s PCCPL has filed its declaration stating that no importation of the product under consideration was made by it during the POI and the injury period. Notwithstanding this fact, there is no requirement under the AD Rules and regulations that domestic industry must account for 50% share in total Indian production, before seeking redressal of injury caused to it on account of dumping.
42. M/s PCCPL has also submitted information with respect to the injury parameters and the company does produce food grade of the subject goods as well. Thus, any argument that the investigation be restricted to technical grade of phosphoric acid is not tenable, being not based on facts.
43. As regards M/s GACL's contract with the ICL's group company for technology and knowhow; the Authority notes that same would not debar M/s GACL for being considered as domestic industry in terms of Rule 2(b). There is apparently no legal and operational control of ICL's group company over M/s GACL; besides, M/s GACL continues to be a major producer of the subject goods in India and has not abdicated its role as a domestic producer. In fact, M/s GACL is the applicant in the instant matter, which has sought redressal of injury caused to it on account of dumping of the subject goods.
44. The application has been filed by M/s. Gujarat Alkalis & Chemicals Limited, Baroda on behalf of the domestic industry and has been supported by M/s Punjab Chemicals & Crop Protection Ltd. As per information available on record, the Applicant accounts for about 45 % of the total Indian production. The production of the Applicant along with the supporter is more than 50% of the Indian production.

45. Thus, the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules and the Applicant along with the supporter is being treated as ‘domestic industry’ within the meaning of Rule 2(b) of the AD Rules.

G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

Normal value

Submissions made by M/s ICL-ROTEM (ISRAEL)

46. M/s ICL-Rotem, in brief, has contended as follows:
- It submitted all relevant information pertaining to domestic sales and cost of production as and when desired by Authority. It may be incorrect to allege that M/s ICL-Rotem has not provided relevant information. The Authority has not accorded reasons for not relying upon the appendices as submitted by M/s ICL.
 - The normal value cannot be determined on the basis of the cost of production for manufacturing in India. The international prices for HCL cannot be accorded to the Normal value for Israel as M/s ICL does not use HCL.
 - The differences in manufacturing process have to be taken into account and accordingly incorporated in the determination of landed value for Israel. Further, the Normal value should be calculated separately for food grade and technical grade phosphoric acid. The Authority should have calculated the Normal value, price undercutting for technical grade considering the volume of imports for each grade of phosphoric acid.

Submissions made by M/s Chemetall Rai India

47. M/s Chemetall Rai India, in brief, has contended as follows:
- Petitioner has made a bald statement that the reasonable efforts were made by it to information/evidence of prices of subject goods in domestic market of subject countries. However, no evidence of such exercise was filed by the petitioner to substantiate the same. The exporters from both subject countries have responded to the exporter questionnaire response in the form and format prescribed by the Authority. The best available information with respect to the subject countries in general and responding exporters in particular are contained therein. Hence, the Authority is requested to use the same to the extent feasible especially with respect to raw materials cost, consumption norms and conversion costs.

Submissions made by the domestic industry

48. The domestic industry, in brief, has contended as follows:

- The domestic industry has estimated separate dumping margin for food and technical form. Thereafter, weighted average dumping margin has been determined considering associated weights. Dumping margin so calculated, is not only significant, but also substantial.
- The exporter did not provide relevant information despite being asked by the Authority within the stipulated time. The Authority has noted specific finding on this aspect.
- Regarding non use of HCL by the exporter, it may be noted that, as pointed out by the Authority in the Preliminary Finding, the company did not furnish complete information, Authority has therefore, proceeded on the basis of best information available.
- Duty is determined as lower of dumping margin and injury margin and not undercutting. Higher undercutting may be due to lower export price; however, dumping margin may be lower than the injury margin due to lower Normal value in the said market.

Examination by the Authority

49. As regards the contention that M/s ICL-Rotem had submitted all relevant information pertaining to domestic sales and cost of production as and when desired by Authority; the Authority draws attention to the Preliminary findings, where it has been specifically recorded that the company had not provided data in the relevant Appendixes to enable the Authority to carry out an appropriate ordinary course of trade test. Accordingly, the company was requested to furnish the requisite information/data vide a deficiency letter. It was also noted that despite providing an opportunity; the company did not provide the relevant information within the stipulated time. Therefore, the Authority was not able to determine the Normal value on the basis the company's domestic sales and was constrained to do so, on the basis of 'facts available' in terms of the AD Rules.
50. As regards the claim that the Normal value cannot be determined on the basis of the cost of production for manufacturing in India; the Authority notes that it was not able to determine the Normal value on the basis the company's domestic sales and was constrained to determine the same on the basis of 'facts available' in terms of Rule 6(8) of the AD Rules for the purposes of determining the preliminary findings.
51. As regards the contention that the differences in manufacturing process have to be taken into account and accordingly incorporated in the determination of landed value for Israel; the Authority notes that AD Rules & Regulations do not require that any difference in manufacturing processes have to be taken into account for the purposes of determination of landed value. However, in order to have a fair comparison for determination of injury margins, the landed values have been compared with the relevant NIP on a grade-wise basis. Further, the normal values and price undercutting have been determined separately for Food Grade and Technical Grades.

52. As regards the contention that the Applicant has made a bald statement that the reasonable efforts were made by it to information/evidence of prices of the subject goods in domestic market of subject countries and that no evidence of such exercise was filed by the petitioner to substantiate the same; the contention is not correct. Besides, only one exporter from Israel has cooperated in this investigation and none of the exporters from Taiwan has responded to the Authority by filing the exporter's questionnaire response in the form and format as prescribed. Notwithstanding the same, the best available information available on record has been used for the non-cooperating exporters/producers.

General methodology

53. The Authority has noted that there have been significant variations in the prices of major raw-materials during the POI; hence, the determination of the Normal values, Export prices and consequent Dumping margins have been undertaken based on a month-wise analysis. Besides, as noted above, the analysis has been undertaken considering the differences in grades within the subject goods, to the extent feasible.

Determination of Normal value in respect of Co-operative Exporters / Producers from Israel and Taiwan

54. The Authority sent questionnaire to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. However, only M/s Israel Chemical Limited-Rotem Amfert Negev Limited, Israel has filed its exporter's questionnaire' response in the instant matter.

M/s Israel Chemical Limited Rotem Amfert Negev Limited, Israel

55. The questionnaire' response submitted by the company was perused. It has been stated that the company produces only food grade phosphoric acid and that in case there is a demand for technical grade; the same is met by supplying the food grade as technical grade. It has been further stated that while the goods produced and sold in the home market and goods exported to India are identical but there is a difference in their concentration level. It was noted that the company had not provided data in the relevant Appendices, particularly Appendix 8B, to enable the Authority to carry out an appropriate ordinary course of trade test. Accordingly, the company was requested to furnish the requisite information/data vide a deficiency letter.
56. It is, however, noted that despite providing an opportunity; the company has not provided the relevant information within the stipulated time. Even during the on-the spot verification, the company could not provide satisfactory information as regards its fixed expenses. Therefore, the Authority is not able to carry out an appropriate ordinary course of trade test and thus is unable to determine the Normal value on the basis the company's

domestic sales and is constrained to do so, on the basis of 'facts available' in terms of the AD Rules. For this purpose, variable costs of M/s Rotem Amfert Negev Limited namely; raw-materials and utilities have been considered. However, considering that the company could not submit the relevant documents during the on-the spot verification, other elements for determining the Normal value have been adopted on the basis of best information available on record. However, actual profit realized by the company has been adopted for this purpose.

Determination of Normal value in respect of Non-Co-operative Exporters / Producers

57. The Authority notes that no other exporter/producer from Israel and Taiwan has responded to the exporter's questionnaire. Therefore, the Normal values in their cases have been determined on the basis of 'facts available'. The Normal Values have accordingly been constructed on the basis of best information available. While in case of Israel, the Normal value for the co-operative exporter has been adopted which work out as US \$ ***. But for Taiwan, the same has been constructed considering international prices of raw materials namely Rock Phosphate and Hydrogen Peroxide; consumption norms and conversion costs as per best information available on record and a profit margin of 5% has been added to the costs so arrived, to determine the constructed Normal value, which work out as US \$ ***.

EXPORT PRICES

Export price for the responding exporters

M/s Israel Chemicals Limited, Israel through M/s Rotem Amfert Negev Ltd.

58. The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The respondent has furnished information in Appendix 2 relating to exports to India. It is noted that the company has exported *** MT of the subject goods to India during the POI. The adjustments on account of inland freight, overseas freight, local expenses, commission, storage, packing cost, marine insurance, ICL fees, credit costs, credit insurance, bank charges and packing costs were noted during the course of on-the-spot verification. Certain corrections were made to the claims made by the company as per the documents shown during the verification process and the same as verified have been accepted. Besides, it was noted that the company does not get the VAT refund; hence, adjustment on this account has also been made to the Export price. Thus, the net export price so determined works out as US \$ ***/ MT.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers

59. Since no other response has been received from any other producer/exporter of the subject goods; the Authority has determined the Export price as per 'facts available' in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information available on record. Accordingly, net export price in respect of the other producers/exporters from

Israel has been worked out as US \$ ***/ MT. Further, net export price in respect of the producers/exporters from Taiwan has been worked out as US \$ ***/MT.

DUMPING MARGIN

60. Considering the Normal values and Export prices as determined above, the dumping margins have been determined as follows:

Sr. No.	Country	Producer	Exporter	Normal Value	Net Export Price	Dumping Margin	In US\$/MT
							Dumping Margin % (Range)
1.	Israel	M/s Rotem Amfert Negev Ltd.	M/s Israel Chemicals Limited	***	***	***	25 -40
2.	Israel	All other exporters/ producers		***	***	***	30-45
3.	Taiwan	All exporters/ producers		***	***	***	15-30

H. INJURY AND CAUSAL LINK

61. The Authority has noted that there have been significant variations in the prices of major raw-materials during the POI; hence, the injury analysis has been undertaken by considering the data on a month-wise basis, to the extent feasible. Besides, while doing so the differences in grades within the subject goods have been duly considered.

Submissions made by M/s ICL-ROTEM (ISRAEL)

62. M/s ICL-Rotem, in brief, has contended as follows:
- M/s GACL produces technical grade phosphoric acid after importing Rock Phosphate from Jordan. The performance of M/s GACL has been affected due to the one source or channel for the procurement of raw materials. On the contrary M/s ICL has never faced with any such difficulty. M/s GACL had difficulties in procuring the raw materials (Rock phosphate) which is not the case with M/s ICL-Rotem.

- Cumulative assessment of effect of imports with respect to food grade phosphoric acid is highly inappropriate.
- The Authority has calculated lower range of price undercutting for Israel howsoever the Authority has assessed incorrectly the injury caused to the domestic industry.
- It has been contended that GACL has conceded the impact of recession in the year 2008-09 while assessing its performance for the year and the same should be rejected. M/s GACL has claimed in its annual report (2008-09) that 'during the year 2008-09 the company has achieved a high operational efficiency of all the plants and highest ever sales' with respect to Phosphoric Acid.
- If the imported product is of a different grade from the one produced in India; then the imported product is not substitutable by the product produced in India. The imported product is also not in commercial competition with the domestically produced product and thus it causes no material injury to the domestically produced product and that there cannot be a causal link between the imported product and the injury, if any, experienced by the domestic industry. Food Grade Phosphoric Acid cannot be used to calculate injury to M/s GACL as it does not produce food grade phosphoric acid. The majority of exports to India are of food grade phosphoric acid, which would not have affected the performance of the domestic industry. Further, if the dumped imports do not cause injury to the domestic industry imposition of anti-dumping duty is not warranted as it only increases the cost to the Indian importers without affording any protection to the Indian manufacturers. Furthermore, in the absence of injury and causal link imposition of anti-dumping duty is not permissible.
- The end consumers will be over burdened by the imposition of ADD when they are already facing inflation in the light of depreciation of INR. Any move to impose ADD on the subject goods would deprive the end user industry from cost effective products therefore instead of domestic injury, they would suffer from ADD. Newly set up industries/factories in India which require only Food Grade Phosphoric Acid for production of their products may not be able to sustain themselves considering that they will have to import the duty levied Food Grade Phosphoric Acid from ICL-Rotem.
- As the import of food grade phosphoric acid from Israel Chemicals Limited and/ or Rotem Amfert Negev Limited (Israel) causes no material injury to the Domestic Industry that produces only Technical Grade Phosphoric Acid and that there cannot be a causal link between the import of Food Grade Phosphoric Acid from Israel and the injury, if any, experienced by the Domestic Industry; therefore no anti-dumping duty should be imposed on imports of Phosphoric Acid from Israel Chemicals Limited and/ or Rotem Amfert Negev Limited, Israel.
- Further, the production capacity is restricted for M/s GACL. Therefore non-attribution analysis is not accorded appropriately. There cannot be a claim for volume injury because the rated production of M/s GACL is limited/ controlled in terms of the contract with M/s

IMI TAMI (a group company of ICL), which license agreement is for production of technical grade phosphoric acid only.

- The petitioner has filed information inflated data / contradictory to its own claims and has misled the Authority and therefore the Investigation should be terminated; it may be held that food grade phosphoric acid are not subject to the proposed (recommended) anti-dumping duty.
- M/s GACL's export sales have increased from 4 MT in 2008-2009 to 49 MT during the period of investigation. The said figures point towards the fact that M/s GACL is more inclined in exporting the subject product to other countries.
- One product segment cannot be protected at the cost of another.
- Food Grade Phosphoric Acid is already subjected to a basic duty of 2.5% and a total duty of 17.98%.
- There is no decrease in market share of M/s GACL's Technical Grade Phosphoric Acid due to import of M/s ICL-Rotem's Food Grade Phosphoric Acid. The decline in sales is not due to the Food Grade Phosphoric Acid exported by M/s ICL-Rotem.
- There is misrepresentation regarding threat of the injury, which is on account of misleading capacity details of the ICL-Rotem. There is no threat of injury to domestic industry on account of export of Food Grade Phosphoric Acid by ICL-Rotem.
- Domestic industry is trying to create cartel concerning the product.
- The annualized domestic sales of M/s GACL when compared with the permissible limits in the contract amounts to 82% utilization. Therefore, the submissions of domestic industry with respect to capacity utilisation (of 74%) are to mislead the Authority. M/s GACL has made contradictory declaration in its petition, proforma and annual report with regard to the performance in production and sales. A close look at the data with respect to capacity, production, domestic sales and total sales of M/s GACL filed under Proforma IV A along with the petition evidences that M/s GACL is claiming to make more domestic sales (in terms of quantity) than even the claimed capacity that it has to produce Phosphoric Acid from April 2006 to June 2010. Furthermore, total sales of M/s GACL are consequently not only higher than the production of M/s GACL, but also the capacity of M/s GACL. In light of the above, the injury claimed by M/s GACL with respect to production, capacity utilization and sales (by import of food grade phosphoric acid) is baseless. Data pertaining to sales by M/s PCCPL is incorrect and misleading. The information submitted by M/s GACL and M/s PCCPL is much lower than that assessed by the Authority.

Submissions made by M/s Chemetall Rai India

63. M/s Chemetall Rai India, in brief, has contended as follows:

- Injury to Petitioner if any has been on account of non-availability of rock phosphate. The petitioner is importing Rock Phosphate at far higher price as compared to M/s Solaris Chemtech. It is precisely the same reason, which enables M/s Solaris to price its phosphoric acid below the price of petitioner company. The prices of M/s Solaris Chemtech are much lower than the prices of M/s GACL. The comparison of landed value of subject goods from subject country with sales price of Solaris would show that the landed value of imported phosphoric acid is higher than the sales price of phosphoric acid by M/s Solaris. Hence, any price injury occurring to M/s GACL cannot be attributed to imported goods since the imported goods are mainly food grade – phosphoric acid which is not produced by the petitioner. The imported goods are also mainly imported by the users of food grade – phosphoric acid which requires application of food grade for their end products manufacturing. Moreover the prices of M/s Solaris Chemtech being lower are setting the benchmark pricing for competition in India.
- The petitioner is taking into consideration all types of phosphoric acid for the purpose of injury analysis regardless of the fact that it is a producer of technical grade phosphoric acid only. In the absence of classification of volumes of import and its end user, it cannot be concluded that the imported subject goods are in direct competition with the phosphoric acid manufactured by the petitioner. No injury has been caused to the petitioner as M/s GACL is the producer of technical grade phosphoric acid only while as per the information disclosed by the responding exporter, majority of imports are that of food grade phosphoric by the user of food grade phosphoric acid for the purpose of undertaking manufacturing/production operation in the pharmaceutical and food processing industries. The claims of the petitioner that the products manufactured by the producers from the subject countries and the products manufactured by the petitioner has comparable properties as the evidence presented on record by the various interested parties completely belies the claim of the petitioner. It is denied that there are common parties who are resorting to use of the imported subject goods from various sources and the goods produced by the petitioner. No such evidence has been brought on record by the petitioner to establish such a bald claim made by the petitioner. The averment made by the petitioner that the exporters from the subject countries and domestic industry have sold the product in the same periods to the same set of customers is again devoid of merits and is not supported by any corroborating evidence. As per the material brought on record, the material produced by the petitioner or for that matter even M/s PCCPL is not conducive for the purpose of use in pharmaceutical applications. The contention of the petitioner that the import volume has increased significantly is wrong and denied. Due regard is warranted with respect to nature of material, volume and its users. The majority of imports constitute imports of food grade phosphoric acid by the user of food grade phosphoric acid for its application in manufacture of goods requiring phosphoric acid having least amount of impurities and other imperfections such as high level of fluorine etc.

- Out of two major producers of the subject goods in India i.e., M/s GACL and M/s Solaris, the other producer of the subject goods has been struggling to maintain the operations of the company, thereby leading to supply disruption. The users of the phosphoric acid in general and food grade phosphoric acid in particular have to depend of the import of the subject goods in India. Importation of phosphoric acid is directly linked to shutdown/suspension of the production by M/s Solaris. The non-supply and non-availability of subject goods has not only disturbed the delivery schedule of the user industry but has also at times resulted in forced shut-down on account of non-availability of raw material. M/s GACL is taking advantage of the situation due to shutdown of M/s Solaris and has increased its price. In order to overcome such hurdles and frequent hardship, the user industry including responding users are left with no other option but to rely on the imports of phosphoric acid from abroad.
- There is no price effect or suppression/depression as the import of the subject goods are not directly in competition with the phosphoric acid produced by the petitioner company, there can be no adverse price effect of the same on the performance of petitioner company.
- The economic parameters presented by the petitioner are with respect to technical grade only. Since the imports of subject goods are not directly in competition with the goods, there is no injury on account of imported goods. There is import of food grade phosphoric acid and the petitioner company is producing technical grade phosphoric acid. M/s PCCPL has neither given its credentials nor provided its data. The imported goods are not competing with the technical grade produced by the petitioner company.
- M/s GACL is not the producing food grade– phosphoric acid but the prices of M/s GACL are higher than the phosphoric acid produced and sold by Solaris. It is submitted that the prices of the M/s GACL are much higher that the prices of phosphoric Acid sold by M/sSolaris. Moreover M/s GACL has increased its prices in the month of October 2011 by an increase of approximately 32% within a short period of 3 months. The prices are expected to further go up once the preliminary AD duty comes into effect. The AD duty being recommended in fixed terms will further push the prices of phosphoric acid to enable petitioner seek unreasonably higher returns instead of reasonable profits.
- Duty, if recommended should be on reference price basis, particularly as devaluation of Indian Rupee has increased the protection level of the petitioner. The fixation of AD duty on reference prices is warranted keeping in view the following:
 - Petitioner is not a producer of Food Grade Phosphoric Acid.
 - M/s Solaris i.e., the other major producer of phosphoric acid having nearly 50% production capacity has been time and again suspended its production on account of its internal problems thereby leaving user industry in dire straits, who have to necessarily depend on import of phosphoric Acid especially Food Grade.
 - The fixation of AD in fixed terms will allow extortion of super profits on the part of the petitioner as the prices will be fixed keeping in view the quantum

of duty rather than reasonable returns on investment. The fixed anti-dumping duties being enjoyed by the Indian industry have been built into their price, thus enabling them to enjoy unreasonably high margins at the cost of the user industries.

➤ De-valuation of Rupee has further increased the protection level for the petitioner as the imports have become costlier.

- Injury to the petitioner has been due to non-availability of rock-phosphate. The petitioner has been importing rock-phosphate at much higher prices as compared to M/s Solaris.
- The effect of wage increase has not been properly examined. The increase in wages has led to decrease in productivity and has led to decline in profitability of the petitioner.

Submissions made by the domestic industry

64. The following submissions, in brief, have been made by the domestic industry:-

- Even when the imports of the subject goods from the subject countries appeared for the first time in 2008-09, the volumes increased significantly in the POI. Imports have increased significantly in relation to production, total imports and consumption in India. The share of imports from the subject countries, which was Nil in the base year, went up by 17.41% in the POI.
- Imports are undercutting the prices of the domestic industry. The price undercutting is leading to price depression much beyond the decline in the cost of production and preventing the price increase that would have occurred in the absence of dumping.
- Performance of the domestic industry has declined in terms of production, sales, capacity utilization, market share, profits, return on investment, cash flow and inventories in the POI when the imports are showing a significant increase. Employment and wages have not shown decline. This is due to the fact that petitioner is a multi product company and employment and wages are not solely dependent on the subject goods performance.
- The domestic industry was in the process of recovering from past effects of dumping; but the recovery has been prevented by the fresh dumping of the product. The industry was earlier faced with fresh dumping from Korea. The industry is now faced with fresh dumping from the subject countries. Performance of the domestic industry was expected to improve after imposition of the anti dumping duty on imports from China PR & Korea RP. Performance in terms of price parameters did improve briefly in 2008-09; but the same has deteriorated once again in 2009-10.
- The deterioration in the performance during the current period is material and quite significant.

Other Issues

- There is no material on record to establish that the imposition of anti dumping duty on food grade will severely affect the interests of consumers in this segment. The averment is a mere statement and lacks substantiation.
- Petition has been filed by M/s GACL. Hence, petition contains data of M/s GACL. Whereas M/s PCCPL has furnished data subsequent to the initiation of the investigation. Figures given in the preliminary finding are for domestic industry as a whole. Therefore, data submitted in the petition and the data given in the PF ought to be different.
- There are no efforts to include M/s Solaris Chemtech. The opposing parties have given wrong statement that M/s Solaris is closed and not in production, which was opposed by the company and company in its letter to representative of domestic industry confirmed that the company is producing product regularly.
- Increase in the consumption of food grade phosphoric acid is not in food application. Food grade phosphoric acid is being consumed where the consumers were earlier using technical grade phosphoric acid. The responding exporter has admitted that it has supplied food grade phosphoric acid to those customers who were using technical grade phosphoric acid. Thus, the increase in food grade phosphoric acid is not because of increase in the requirement of food grade phosphoric acid. It is because of availability of food grade phosphoric acid at the prices close to technical grade phosphoric acid, thus substituting the market of technical phosphoric acid.
- M/s PCCPL has in fact made a declaration with regard to import in its authorization letter dated 05-05-2011 as is available with the Authority.
- M/s PCCPL's information has been incorporated in the preliminary finding and M/s PCCPL does not publish separate information on capacity, production etc for product concerned, hence, the information is not available in public domain. Therefore, the Authority rightly kept the information confidential.

Examination by the Authority

65. As regards the contention with respect to M/s GACL produces technical grade phosphoric acid after importing Rock Phosphate from Jordan and that the performance of M/s GACL has been affected due to the one source or channel for the procurement of raw materials; the Authority notes that the contention has not been substantiated while advancing the argument by M/s ICL-Rotem. In any case, the differences in procurement of raw-material has been duly considered while computing the company's Normal value and consequent dumping margin.
66. As regards the contention with respect to cumulative assessment of effect of imports with respect to food grade phosphoric acid; the Authority notes that it has undertaken cumulative analysis in terms of the AD Rules on the subject. Besides, the AD Rules also permit the Authority to assess the effect of the dumped imports in relation to the

production of the narrowest group or range of products, which includes the like product, if separate identification of that production is not possible.

67. As regards the contention with respect to calculation of price undercutting; the Authority notes that the same has been assessed properly on grade-wise basis.
68. As regards the contention that inflated data / contradictory information has been filed before the Authority; the Authority notes that the injury analysis has been undertaken based on the compilation of the data submitted by M/s GACL and M/s PCCPL, which has also been verified during the on-site verification visits.
69. As regards the contention relating to the production capacity of M/s GACL is restricted and the claim for volume injury is unsustainable because of the rated production of M/s GACL is limited/ controlled in terms of the contract with IMI TAMI; the Authority notes that M/s GACL has licensed/installed capacity of PUC but has been able to utilize the same only to extent of 78%. Hence, the contention made relating to volume injury is devoid of any merit.
70. As regards the contention relating to import of food grade phosphoric acid from M/s Israel Chemicals Limited and/ or M/s Rotem Amfert Negev Limited (Israel) causes no material injury to the domestic industry; the Authority notes that M/s PCCPL does manufacture food grade quality of the PUC and has reputed clientele for supplying the same. Besides, M/s ICL-Rotem in its response has acknowledged that it has exported food grade quality of the PUC as technical grade as well to India during the POI and thus has directly competed with the technical grade of the Like Article manufactured by the domestic industry. Thus, the contention that the domestic industry produces only technical grade phosphoric acid and there cannot be a causal link between the import of food grade phosphoric acid from Israel and the injury, if any, experienced by the domestic industry is devoid of any merit.
71. As regards the contention that M/s GACL has conceded the impact of recession in the year 2008-09 while assessing its performance for the year; it is noted that the POI in the instant matter is a latter period, in respect of which the injury has been analysed. Further, there should not be any grievance if M/s GACL has achieved a high operational efficiency; with respect to sales, the observation again relates to a period prior to the POI in the instant matter.
72. As regards the contention relating to end consumers will be over burdened by the imposition of Anti-dumping duty; 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. Imposition of anti-dumping measures would not restrict fair imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers. Besides, it is recognized that the imposition of anti-dumping duties might affect the price levels of the product 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 the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. As regards the industries/factories in India which require only food grade phosphoric acid for production of their products, while they may continue to import from the subject countries including from M/s ICL-Rotem after paying the anti-dumping duty or choose to procure the same from any other source including M/s PCCPL.

73. As regards the contention that if the imported product is of a different grade from the one produced in India and that the imported product is not substitutable by the product produced in India; the Authority notes that food grade quality of the PUC is indeed being manufactured in India by M/s PCCPL; and hence, the imported product is in commercial competition with the domestically produced product. It thus causes material injury to the domestically produced product on account of dumping practices, as may be seen from relevant sections of these findings.
74. As regards the contention that M/s GACL's export sales have increased from 4 MT in 2008-2009 to 49 MT during the POI; the Authority notes that exports of about 0.2% of the installed capacity does not reflect that M/s GACL is more inclined in exporting the subject product to other countries.
75. As regards the contention that one product segment cannot be protected at the cost of another, the Authority notes that it is a settled principle that an anti-dumping investigation is undertaken for determination of dumping and consequent injury in relation to a specified product imported from specified sources and not in relation to product segments.
76. As regards the contention that food grade phosphoric acid is already subjected to a basic Customs duty of 2.5% and a total duty of 17.98%; the Authority notes that the intent and purposes of the two Customs duty and Anti-dumping duty are distinct and different. The latter seeks to redress the 'injury' caused to the domestic industry on account of dumping practices.
77. As regards the contention that M/s GACL's claim in its annual report (2008-09) that 'during the year 2008-09 the company has achieved a high operational efficiency of all the plants and highest ever sales' with respect to Phosphoric Acid; the Authority notes that the said claim is in respect of a period preceding the POI, whereas the injury analysis has been undertaken in the context of the POI over the injury period.
78. As regards the contention that there is no decrease in market share of M/s GACL's technical grade phosphoric acid due to import of M/s ICL-Rotem's food grade

phosphoric acid; the Authority notes that M/s ICL-Rotem's contention is not tenable as the company in its own response has acknowledged that that in case there is a demand in India for technical grade; the same is met by the company by supplying the food grade as technical grade.

79. As regards the allegation that the Domestic industry is trying to create cartel concerning the product; the Authority notes that M/s ICL-Rotem has not substantiated the allegation while advancing the same. Besides, this Authority is not the right forum raise the issue as practices such as anti-competitive behaviour are addressed by other specialized bodies.
80. As regards the contention that there is no threat of injury to Domestic Industry on account of export of food grade phosphoric acid by ICL-Rotem; the Authority notes that the domestic industry has suffered material injury on account of dumping; therefore, the issue of threat of materials injury has not been further examined.
81. As regards the contention that out of two major producers of the subject goods in India i.e., M/s GACL and M/s Solaris, the other producer of the subject goods has been struggling to maintain the operations of the company and that non-supply and non-availability of subject goods has not only disturbed the delivery schedule of the user industry; the Authority notes that the contention has not been substantiated. M/s Solaris has not furnished the data, despite the fact they were requested to do so. Besides, the Authority had requested M/s Chemetall Rai India to provide evidence substantiating the contention. In response thereto, M/s Chemetall Rai India has enclosed a letter dated 8th October 2010 of M/s Solaris stating that they have suspended their operation for the time being. The Authority, however, notes that a perusal of the letter shows that the operations have been suspended post-POI viz . in October 2010 , whereas the POI for which injury has been examined over the injury period is 1st April 2009 to 30th June 2010; and hence, the contention is not relevant in the context of present injury analysis.
82. As regards the contention that injury to M/s GACL, if any, has been on account of non-availability of Rock Phosphate and that it is importing Rock Phosphate at far higher price as compared to M/s Solaris; the Authority notes that the contention has not been substantiated by M/s Chemetall Rai India. The Authority had requested M/s Chemetall Rai India to provide evidence substantiating the contention but the same has not been received.
83. As regards the contention that the duty, if recommended, should be on reference price basis; the Authority notes that it would recommend the measure on merits considering the facts available on record.
84. As regards the contention that the annualized domestic sales of M/s GACL when compared with the permissible limits in the contract amounts to 82% utilization; the Authority notes that the contention is devoid of any merit as the said figures are for both the domestic producers that had submitted that data viz. M/s GACL and M/s PCCPL. Besides, the capacity utilisation is evaluated on the basis of the production and not *vis a*

vis the sales. Thus, the Authority has examined and evaluated the injury parameters for the domestic industry viz. M/s GACL and M/s PCCPL, as may be seen from the relevant sections of these findings.

85. As regards the contention that the effect of wage increase has not been properly examined the Authority notes that both the Applicant and as well as the supporting company are multi-product companies and hence it would not be appropriate to determine injury or the absence of it on the basis wages alone. In any case, while undertaking injury analysis no one of these factors as stipulated under the law by itself can necessarily give decisive guidance but the injury has to be examined and evaluated on the basis of totality of these factors.
86. As regards the contention that the petitioner is taking into consideration all types of phosphoric acid for the purpose of injury analysis regardless of the fact that it is a producer of technical grade phosphoric acid only and that in the absence of classification of volumes of import and its end user, it cannot be concluded that the imported subject goods are in direct competition with the phosphoric acid manufactured by the petitioner; the Authority notes that contentions are baseless; as the scope of investigation was set out right at the time of the initiation of this investigation to include Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)' originating in or exported from Israel and Taiwan. It is further noted that the applicant along with the supporter produce both technical grade and food grade of phosphoric acid. Besides, M/s ICL-Rotem has admitted that it is also supplying the food grade phosphoric acid to users of technical grade of phosphoric acid in India, thereby injuring even the producers of technical grade. Assuming for the sake of arguments that foods grade phosphoric acid should be excluded from the scope of this investigation; then such an act would nullify the entire process of investigation as the duty even if levied would easily be circumvented through imports of food grade phosphoric acid by users of technical grade as well, which is already happening.
87. As regards the contention that there is no price effect or suppression/depression as the import of subject goods are not directly in competition with the phosphoric acid produced by the petitioner company and that there can be no adverse price effect of the same on the performance of petitioner company: the Authority notes that the contention is baseless as M/s PCCPL has submitted the data and thus the data filed by M/s GACL and M/s PCCPL has been used to undertake the injury analysis. M/s Solaris did not furnish the data, despite the fact they were requested to do so. In the circumstances, the injury analysis has been undertaken as per the AD Rules and regulations on the subject.
88. As regards the contention that the users of the phosphoric acid in general and food grade phosphoric acid in particular have to depend of the import of the subject goods in India; the Authority notes that the AD measures do not seek to thwart imports at all but only seek to redress injury caused to the domestic industry on account of dumping and thereby ensuring a level playing field to it.

Cumulative assessment

89. Annexure II para (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that: -
- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively accounts for more than seven percent of the import of like article and
 - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
90. The Authority notes that:-
- The subject goods are being dumped into India from a number of countries.
 - The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;
 - The volume of imports from each of the subject countries is more than the *de-minimis* limits prescribed;
 - Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market, which is evident from the following:-
- a. The products manufactured by the producers from the subject countries and the products manufactured by the Applicant and the supporter have comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are *inter-se* like articles.
 - b. There are common parties who are resorting to use of the imported subject goods from various sources and the goods produced by the domestic industry. Both, the imported and the domestic subject goods, are being used interchangeably and there is direct competition between the domestic product & imported products and *inter-se* amongst imported products.
 - c. The exporters from the subject countries and domestic industry have sold the product in the same periods to the same set of customers. The sales channels are comparable.
 - d. The volume of imports from each of the subject countries is significant.

91. In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries.

92. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

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

A) Volume Effects of Dumped Imports:

Demand and market share

94. Demand of the product in the Countries has been assessed as the sum of domestic sales of the domestic producers and imports from all sources.

Particulars	Unit	2006-07	2007-08	2008-09	POI (April 2009 to June 2010)	POI (Annualised)
Imports - as per IBIS data						
Volume (MT)						
Israel	MT	Nil	Nil	Nil	9243	7394
Taiwan	MT	Nil	Nil	233	4776	3821
Country Attracting Duty	MT	4150	17877	12935	9797	7838
Other Countries	MT	429	252	842	1177	942
Total Imports	MT	4579	18129	14010	24993	19995
Applicant domestic industry along with	MT	27679	30292	22353		22876

supporting domestic producer					28595	
Other domestic producers	MT	29332	27954	23765	26937	21550
Total	MT	57011	58246	46118	55532	44426
Total Demand	MT	61590	76375	60128	80505	64421

95. It is noted that demand for the product has significantly increased in the 2007-08 period as compared to the base year and then went down in 2008-09 period and has increased again thereafter in the POI. The demand, however, increased in the POI as compared to the base year.

Import volumes and market share

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

97. The Authority requested the office of DGCI&S for the relevant import details as regards the subject goods but the same has not yet been received. The Applicant has provided information with regard to imports of the subject goods into India based on IBIS data for 2006-07, 2007-08, 2008-09 and POI periods. Thus, the volume of imports reported by IBIS has been adopted. Further, a response from one producer/exporter from Israel has been received by the Authority. The data available on record has thus been collated and compiled to determine the total volume of the subject goods imported into India.

a) It is seen that the imports of the subject goods from the subject countries have increased significantly during the POI:

Particulars	Unit	2006-07	2007-08	2008-09	POI(April 2009 to June 2010)	POI (Annualised)
Imports - as per IBIS data						
Volume (MT)						

Israel	MT	Nil	Nil	Nil	9243	7394
Taiwan	MT	Nil	Nil	233	4776	3821
Country Attracting Duty	MT	4150	17877	12935	9797	7838
Other Countries	MT	429	252	842	1177	942
Total Imports	MT	4579	18129	14010	24993	19995

- b) Imports from the subject countries have increased in relation to production and consumption in India as compared to the base year.

	Unit	2006-07	2007-08	2008-09	POI (April 2009 to June 2010)
Dumped imports in relation to Indian production	%	0	0	0.48	25.10
Dumped imports in relation to demand in India	%	0	0	0.38	16.89

- c) While market share of the subject countries has increased; the share of Indian producers has declined.

Market Share in Demand		2006-07	2007-08	2008-09	POI (April 2009 to June 2010)
Petitioners	%	43.78	37.97	36.06	33.88
Supporters	%	1.16	1.69	1.12	1.64
Other Indian producers	%	47.62	36.60	39.52	33.46
Subject countries	%	-	-	0.39	17.41
Countries attracting anti dumping duties	%	6.74	23.41	21.51	12.17
Other Countries		0.70	0.33	1.40	1.44
Total	%	100	100	100	100

98. It is seen from the above table that volume of import of the subject goods from the subject countries has increased significantly; whereas the share of domestic industry has decreased over the injury period. The share of imports from the subject countries, which was Nil in the base year, went up by 17.41% in the POI.

Price effect of imports

99. 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 article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. It is seen that the landed value of imports of the subject goods are significantly below the net selling prices of the domestic industry, resulting in significant price undercutting. The position is as follows.

	Unit	Israel	Taiwan
Net Sales Realization	Rs./MT	***	***
Landed Value	Rs./MT	***	***
Price Undercutting	Rs./MT	***	***
Price Undercutting	(%)	***	***
Price Undercutting	Range (%)	90-100	15-25

100. A perusal of the data in respect of the cost of sales and the net selling price shows that the domestic industry has apparently not suffered from any price suppression/ depression, if the data of the POI is compared vis a vis the base year data. However, if the cost of sales and net selling price are seen vis a vis 2008-09 period, there appears to be a case of significant price depression during the POI, as it is noted that the cost of sales dropped by 23%; whereas the net selling price dropped by about 29%.

	Unit	2006-07	2007-08	2008-09	POI(April 2009 to June 2010)
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	99.72	189	146
Net Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	114	225	159

101. The other injury parameters relating to the domestic industry are as follows:

Sales volumes

102. The sales volumes of the domestic industry were analyzed over the injury period as follows:

Domestic Sales volume (MT)	Unit	2006-07	2007-08	2008-09	POI (April 2009 to June 2010)	POI (Annualised)
Applicant domestic industry	MT	26965	28997	21682	27273	21818
Supporting domestic producer	MT	714	1295	671	1322	1058
Applicant domestic industry along with supporting domestic producer	MT	27679	30292	22353	28595	22876
Other domestic producers	MT	29332	27954	23765	26937	21550
Total	MT	57011	58246	46118	55532	44426

103. The Authority notes that the domestic industry's sales volume have decreased significantly during the POI as compared to the base year; whereas it has marginally improved as compared to the 2008-09 period. The Authority notes that the decline in the sales volume was inspite of increase in the demand for the subject goods in the country over the injury period.

Capacity and Capacity Utilization

	Capacity	Production	Capacity utilization
Unit	MT	MT	%
2006-07	29730	26639	90
2007-08	29730	29564	99
2008-09	29730	24842	84
POI(April 2009 to June 2010)	37163	27371	74
POI (Annualised)	29730	21889	74

104. The Authority notes that while capacity has remained constant throughout the injury period; the production of the Applicant domestic industry increased in the 2007-08 period as compared to the base year; but has subsequently fallen significantly. Capacity utilisation has dropped from 90% in the base year to 74% in the POI. The domestic industry has contended the positive trend in the 2007-08 period was because of the levy of anti-dumping duty concerning imports of the subject goods from China PR.
105. The Authority notes that ordinarily the production and the sales of the domestic industry should have increased with the increase in demand of the subject goods in India; but it has shown a decline instead. It is seen that the production of the applicant domestic industry declined by 18 % during the period of investigation as compared to the base year; whereas its sales have declined by 17 %. Apparently, the domestic industry has not been able to utilize its production capacities, and its utilization is at lowest level during the period of investigation.

Factors affecting prices:

106. The Authority notes that during the POI, imports are undercutting the domestic industry's selling prices.

		2006-07	2007-08	2008-09	POI (April 2009 to June 2010)
Cost to make & sell	Rs\MT	***	***	***	***
Trend	Index	100	99	189	146
Net Selling price	Rs\MT	***	***	***	***
Trend	Index	100	114	225	159
Profit/(loss)	Rs\MT	(***)	(***)	***	(***)
Trend	Index	(100)	(4)	49	(56)
Landed value of dumped import - Israel	Rs\MT				***
Landed value of dumped import - Taiwan	Rs\MT				***

107. It is observed that the landed value of imports of the subject goods is significantly below the net selling price of the domestic industry during the POI, thus causing significantly price undercutting. A perusal of data further shows that in comparison to the base year,

the domestic industry' net selling prices increased more than the increase in its cost of sales. However, the domestic industry has claimed that this positive trend in the 2007-08 and 2008-09 was because of some check on dumping by way of imposing anti dumping duty concerning imports of the subject goods from China PR and Korea RP.

Profit/Loss, return on investment and cash profits

108. The position with regard to Profit/Loss, return on investment and cash profits is as follows:

		2006-07	2007-08	2008-09	POI (April 2009 to June 2010)	POI Annualised
Profit/(loss)	Rs./lakhs	(***)	(***)	***	(***)	(***)
Trend	Index	(100)	(4)	40	(58)	(47)
Return on Investment	%	(***)	***	***	(***)	(***)
Trend	Index	(100)	16	70	(45)	(45)
Cash profit	Rs. Lakhs	(***)	***	***	***	***
Tend	Index	(100)	132	246	37	30

109. It is seen that the domestic industry was incurring huge losses during the base year 2006-07. The situation in this respect improved a little, as the losses reduced significantly during 2007-08 period. Its performance further improved as it earned profits during the year 2008-09 period. But the performance worsened significantly thereafter during the POI, as heavy losses were incurred by it during the POI. However, the losses to domestic industry have reduced substantially from Rs. *** lakhs during the base year to Rs. *** lakh on annualized basis during the period of investigation. Return on investment and cash profits have followed the same trend as that of profitability. This improvement too has been alluded to by the domestic industry to the levy of anti-dumping duty on the subject goods vis a vis countries already attracting duties.

Inventories:

110. The data relating to inventories shows as follows:

	Unit	2006-07	2007-08	2008-09	POI(April 2009 to June 2010)
Average Stock	Mt	***	***	***	***

<i>Trend</i>	Indexed	100	43	97	134
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111. It is noted that inventories have increased in the POI as compared to the base year. Apparently the domestic industry is not able to sell its produce completely resulting in increase in inventories, despite increase in the demand.

Employment, wages and productivity:

112. The data relating to employment, wages and productivity is as follows:

	Unit	2006-07	2007-08	2008-09	POI(April2009-June10)	POI Annualised
Number of employees-	Nos.	***	***	***	***	***
Trend	Indexed	100	106	102	113	113
Wages-	Rs.Lacs	***	***	***	***	***
Trend	Indexed	100	119	127	253	202
Wages per unit of production-	Rs./MT	***	***	***	***	***
Trend	Indexed	100	107	137	246	246
Productivity per employee-	MT	***	***	***	***	***
Trend	Indexed	100	105	90	73	73

113. It is seen that the number of employees marginally increased during the injury period. Wages per unit of production increased significantly during the POI as compared to the base year; whereas the productivity per employee showed a declining trend during the same period. Besides, it is seen that total wages paid showed an increasing trend. It is, however, noted that both M/s GACL and M/s PCCPL are multi-product companies. As employment and wages are not solely dependent on the subject goods performance, they cannot be considered to have caused any significant impact on the performance of the companies so far as the subject goods are concerned.

Dumping Margin:

114. It is observed from the section pertaining to Dumping Margin above that dumping margins in respect of the subject countries are significantly positive.

Growth:

115. It is noted that the growth of the domestic industry shows a declining trend and has become negative in the POI as compared to the preceding year.

Ability to raise funds:

116. The Authority notes that the applicant is a multi-product company; hence its ability to raise funds cannot be fairly evaluated on the basis of its performance of the subject goods.

Conclusion on material injury:

117. The demand of the subject goods has increased from 100 (Index) in base year to 105 (Index) in POI, i.e., increase by 5%. During the same period, the domestic sales have declined by 17%; thus the domestic industry has not been able to take advantage of the increase in demand of the subject goods in the Indian market.
118. It is seen that the imports have increased significantly in absolute terms and in relation to production & consumption in India. The imports are significantly undercutting the prices of the domestic industry. As a result, of the significant increase in imports and price difference between the imported and domestic product, the performance of the domestic industry has deteriorated in terms of parameters such as production, sales volumes, capacity utilization and market share during the POI in comparison to the base year. However, during the same period loss to the domestic industry has come down and cash profit and return on investment also follows the same trend. The improvement on some of the parameters has been alluded to by the domestic industry to the levy of anti-dumping measures concerning imports of the subject goods from countries already attracting the duties.
119. The above analysis shows that the domestic industry has suffered material injury.

I. CAUSAL LINK

120. As per the AD Rules, the Authority is, *inter alia*, obligated to also examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, so that the injury caused by these other factors are not attributed to the dumped imports. Factors which may be relevant in this respect include the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.
121. It was examined whether these other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted that:

- a. Imports from Third Countries: - The Authority notes that imports from third countries other than those already attracting anti-dumping duties are negligible and thus could not have caused injury to the domestic industry.
 - b. Contraction in Demand: - The Authority notes that there is no contraction in the demand over the injury period. On the contrary, overall demand for the subject goods has shown significant positive growth during the POI as compared to the base year.
 - c. Pattern of consumption: - No significant change in the pattern of consumption has come to the knowledge of the Authority, nor any interested party has made any submission in this regard.
 - d. Conditions of competition: - The investigation so far has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.
 - e. Developments in technology: - The investigation so far has not shown that there was any significant change in technology, which could have caused injury to the domestic industry.
 - f. Export performance of the domestic industry: - The price and profitability in the domestic and export market has been segregated by the Authority for the purpose of present injury assessment. Therefore, the analysis on injury is not misrepresentative due to possible inclusion of export performance.
122. The Authority notes that while listed known other factors do not show injury to the domestic industry, the following parameters indicate that injury to the domestic industry has been caused by dumped imports.
- The imports of the subject goods from the subject countries are available at prices lower than domestic industry. Apparently, the consumers are switching over to imports as consequence thereof, thus leading to loss of market share for the Indian producers in general and domestic industry in particular.
 - The domestic industry has lost sales volumes. Its market share has declined, whereas that of imports from the subject countries has increased.
 - As a consequence of decline in the market share of the domestic industry, production & capacity utilization of the domestic industry deteriorated significantly. Deterioration in these parameters is apparently due to the presence of the dumped imports.
 - The dumped imports are undercutting the prices of the domestic industry. There is a case of significant price-depression as well, if its net selling prices are seen *vis a vis* the preceding year. Besides, the domestic industry's performance in terms of profits, return on investment and cash flow is far from satisfactory. In fact its

performance has significantly deteriorated, if analysed *vis a vis* its performance during the preceding period.

123. The Authority is thus of the view that injury to the domestic industry has been caused by dumped imports.

Magnitude of injury and injury margin:

124. The Authority has determined non-injurious prices of different grades of the subject goods for the domestic industry taking into account the respective cost of production of the domestic industry. The non-injurious price of the domestic industry has been compared with the landed values of the subject goods to determine the injury margins. The injury margins have been worked out as follows:

Producer/Exporter	IM US\$ per MT	IM% - Range
ICL	***	55-70
All other exporters/ producers from Israel	***	60-75
All exporters/producers from Taiwan	***	30-45

J. CONCLUSIONS:

125. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:
- The product under consideration has been exported to India from the subject countries below associated normal values, thus resulting in dumping of the subject goods from the subject countries.
 - The domestic industry has suffered material injury in respect of the subject goods.
 - The material injury to the domestic industry has been caused by the dumped imports of the subject goods from the subject countries.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

126. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate 'injury' caused to the domestic industry by the unfair trade practices of 'dumping' so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not

restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the subject goods to the consumers.

127. It is recognized that 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 the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping measures would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

L. RECOMMENDATIONS

128. 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 the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the Act and the AD Rules and having established definitively positive dumping margins concerning imports of the subject goods originating in or exported from the subject countries and as well as material injury thereof to the domestic industry caused by such dumped imports; the Authority is of the view that imposition of definitive duty is required to offset the dumping and 'injury' in the instant matter. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties concerning imports of the subject goods from the subject countries in the form and manner described hereunder.
129. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning all imports of the subject goods originating in or exported from the subject countries.

Duty table

S. No.	Heading/ Subheading	Description of goods	Countries of Origin	Countries of Exports	Producer	Exporter	Duty Amount In US \$ per MT
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	2809-2010	Phosphoric Acid of all grades and	Israel	Israel	M/s Rotem Amfert	M/S Israel Chemicals Limited	174.06

		concentrations (excluding Agriculture/ Fertiliser Grade)			Negev. Ltd.		
2	-do-	-do-	Israel	Israel	Any combination of producer & exporter except at Sr. No.1		194.51
3	-do-	-do-	Any country other than countries attracting Anti- dumping duty	Israel	Any	Any	194.51
4	-do-	-do-	Israel	Any other than Israel	Any	Any	194.51
5	-do-	-do-	Taiwan	Taiwan	Any	Any	116.45
6	-do-	-do-	Any country other than countries attracting Anti- dumping duty	Taiwan	Any	Any	116.45
7	-do-	-do-	Taiwan	Any other than Taiwan	Any	Any	116.45

M. APPELLATE PROCEDURE

130. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Vijaylaxmi Joshi)
Designated Authority