Director General (Safeguards)

NOTIFICATION

(New Delhi, the 14th May 2009)

Subject: **Safeguard investigation concerning imports of Dimethoate Technical – Final findings.**

GSR - Having regard to the Custom Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 thereof.

A. **Procedure**

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by M/s Shivalik Rasayan Limited seeking imposition of Safeguard Duty on imports of Dimethoate Technical into India alleging that increased import of Dimethoate Technical was causing and/or threatening to cause serious injury to the domestic producers of Dimethoate Technical in India. Having satisfied that the requirements of Rule 5 were met, safeguard investigation against import of Dimethoate technical was initiated on 21.01.2009 and published in the Gazette of India, Extraordinary on the same day. The copy of notice of initiation was sent to the governments of major exporting countries through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

   Domestic Producers

   M/s Shivalik Rasayan Limited, 1506, Chiranjivi Tower, 43, Nehru Place, New Delhi – 110019.

   Importers and Users Industry

   a) M/s Rallis India Ltd., Apeejay House, 7th Floor, 3 Dinsha Vachha Road, Mumbai – 400033.
   b) M/s Anu Products Ltd, Tigoan Road, Faridabad, Haryana.
   c) M/s Hyderabad Chemicals Ltd., A-24/25, APIE, Bala Nagar, Hyderabad – 500037 (A.P.).
   d) M/s Insecticides (India) Ltd., 401-402, Lusa Tower, Azadpur Commercial Complex, Delhi – 110033.

e) M/s Atul Pesticides Pvt. Ltd., M-9,10,11, Gupta Tower, Azadpur Commercial Complex, Delhi – 110033.
f) M/s Jai Shree Rasayan Udyog Ltd., M-4, Aradhana Bhawan, Azadpur Commercial Complex, Delhi – 110033.
g) M/s Isagro (Asia) Agro Chemicals Pvt. Ltd., 101, Solitare Corporate Park, 151, M. Vasanji Road, Chakala, Andheri (East), Mumbai – 400093.
h) M/s Hindustan Pulverising mills, 209-210, Anupam Bhawan, Azadpur Commercial Complex, Delhi – 110033.
i) M/s Boss Agro Chemicals, 108 Chetak Centre, 12/2, RNT Marg, Indore – 452001 (M.P.).

Associations

Pesticide Manufacturers and Formulators Association of India (PMFAI), D-516, Crystal Plaza, Andheri Link Road, Andheri (West), Mumbai – 400053.

Exporters/Foreign Producers

a) Chongqing Min-Feng Agrochem Co.Ltd.
Jingkou, Shapingba,
Chongqing,
China.

b) Jiangsu Tenglong Group
No.1, Chengxiang(N) Road,
Xituan Town, Dafeng City,
Jiangsu 224 124
China.

2. A copy of the notice was also sent to Governments of exporting countries through their Embassies in New Delhi.
3. Questionnaires were also sent, on the same day, to all known domestic producers, exporters and importers and they were asked to submit their response within 30 days.
4. The domestic industry has submitted the response to the questionnaire along with additional submissions.
5. All non confidential versions of the application, response and additional submissions have been kept in the Public Folder.
6. Upon expeditious proceeding with the conduct of the investigation, the Preliminary finding was issued on 2nd February 2009 and the same was published

in the Gazette of India, Extraordinary on the same day. Preliminary finding was also sent to all known interested parties.

7. A safeguard duty of 28% ad valorem was imposed on imports of Dimethoate Technical vide notification no 25/2009-Customs dated 23rd March, 2009.
8. Verification of the information considered necessary for the investigation was done. The outcome of the verification was conveyed to the domestic producer and a copy of the verification report was also placed in the Public file.
9. A public hearing was given to all interested parties on 25th March 2009, notice for which were sent to all interested parties. The Public Hearing was attended by the representatives of M/s Shivalik Rasayan Limited and Rallies India Limited. All parties, who attended the public hearing, were requested to file a written submission of the views presented orally. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity for filing rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.

B Views of the Domestic Producer of Dimethoate Technical

The domestic industry and the applicant m/s Shivalik Rasayan Ltd, has stated as follows:

I. The product is Dimethoate Technical falling under 8 digit code 38081026 of harmonized system of nomenclature and 38089123 of the First Schedule to the Custom Tariff Act, 1975 (CTA).

II. The product comes in various concentrations. The most common concentration ranges between 85 to 98%. The product of various concentrations can be used interchangeably as in insecticide formulations the required concentration of Dimethoate Technical is less than 40%. In India the formulations are being sold in 30% concentration of Dimethoate Technical.

III. Imports into India have increased from 68 MT during 2006-07 to 270 MT during 2007-08. Moreover, during the first six months of 2008-09, 389 MT have already been imported into India. At this rate, total imports during the full year 2008-09 (estimate) would be 780 MT- recording an increase of over 190% in a single year.

IV. Custom duty upon importation of Dimathoate Technical into India has come down from 20% in 2004-05 to 10% in 2008-09 exposing domestic industry to international competition.

V. Market share of imports was 8% during 2005-06. It went down marginally to 7% during 2006-07 but regained back substantially to 25% during 2007-08. In the first half of 2008-09, market share of imports increased to 51% and it is estimated to go upto 60% for complete financial year 2008-09. From a high market share of 92 % in 2006-07, share of domestic production would come down to a mere 40% in 2008-09 – recording a fall of over 52%.

VI. The sudden increase in imports and consequent injury to domestic industry is on account of predatory business practices of exporting country which is definitely an unforeseen development which Indian negotiators could not foresee while negotiating the agreements. The basic raw material for Dimethoate Technical is P2S5 which is manufactured out of yellow phosphorous. China has got huge reserves of yellow phosphorous and in a way controls its trade. To kill all phosphorous based industries in oversees market, and to capture phosphorous based market in overseas countries including India, China started following predatory trade practices where, China in a calculated manner artificially increased the cost of base raw material i.e. yellow phosphorous for overseas player by imposing heavy export duty as high as 120% and at the same time for its domestic producers ensured its availability at a cheaper price. On account of this trade practice, the cost of production of Dimethoate Technical for domestic producer in India is very high compared to cost of production of Chinese manufacturer and thus in this scenario Indian manufacturer cannot compete with Chinese manufacturer. On account of predatory trade practices of PR China, the price of yellow phosphorous has gone up from USD 900 to USD 9000 i.e. ten times in a short span of just 4 years. The applicant as an evidence of imposition of Export duty to the tune of 120% on yellow phosphorous by china and 10 times increase in price of yellow phosphorous on account of predatory trade practices of exporting country submits an article titled “Phosphorous based products to cost more” appearing in Economic Times Mumbai Edition on Jun 12, 2008 at Page: 17 in the Economy Section. The current rate of export duty on yellow phosphorous imposed by PR China is learnt to be 70%.

VII. Normally commodity taxes are destination based consumption taxes and in general there are no taxes levied by the exporting country in respect of most of the commodities. This kind of taxation and that too by 120% by an exporting country was unexpected and unforeseen by Indian negotiators in GATT to perceive a situation where a country will adopting such a predatory trade practice , when member nations are negotiating to ensure free and fair international trade.

VIII. Further the unprecedented and uneven recession has destabilized domestic industries of various nations including the nations who had very high production capacities. With unexpected fall in demand worldwide on account of recession, the situation of producers in India is even graver. The imposition of export duty on basic raw material from which users in exporting country are immune, accompanied with encouragement of export of derivatives of phosphorous at prices lower than the cost of sale by the domestic industry in India is the strategy of exporting nations to capture the domestic market of India, by making the domestic producers completely unviable.

IX. On account of above unforeseen developments, Imports into India have increased from 68 MT during 2006-07 to 270 MT during 2007-08. Moreover, during the first six months of 2008-09, 390 MTs have already been imported into India. At this rate, total imports during the full year 2008-09 would be 780 MT – recording an increase of over 190% in a single year.

X. This unforeseen development has led to increase in imports. The 120% export duty on yellow phosphorous was imposed in the beginning of 2008-2009, as a result the share of imports in first half of 2008-2009 went up to 51 % from its share of 24% in 2007-08. This increase in import has led to serious injury to domestic producer which is evident from parameters mentioned in annexure of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. share of domestic production has gone down to 49% in first half of 2008-2009 compared to 93% in 2006-2007, whereas imports share has gone up from 7% to 51% in the same time span.

a) Share of domestic sales has gone down to 51% in first half of 2008-2009 compared to 93% in 2006-2007, whereas imports sales share has gone up from 7% to 49% in the same time span.

b) The productivity of machines and capacity of plant remained same and the injury is not attributable to production capability of the plant.

c) However on account of idling of capacity, the productivity in relation to number of employees has gone down to 481 kg per employee per month compared to 702 kg per employee per month in 2007-2008.

d) The capacity utilization of the plant has gone down to 59% in first nine months of 2008-2009 compared to 86% of 2007-2008 and 91% of 2006-2007.

e) The applicant was running in profit till 2007-2008, however in 2008-2009 in first nine months the applicant has incurred a loss of Rs 16.27 lakhs. The situation has become worse in third quarter of 2008-2009, in which the losses are to the tune of Rs.30.82 lakhs and thus serious injury has become severe in third quarter of 2008-2009.

f) The SRL employs 102 people who have become idle on account of closure of plant.

XI. The unforeseen development has caused increased in imports and increased in imports has caused serious injury. There is no other factor which has perceptible bearing on the serious injury /threat of serious injury faced by the domestic producer.

XII. The applicant submits that the imposition of safeguard duty on Dimethoate technical will actually serve the public interest and in no way cause the hardship to public at large as apparent from points mentioned below: The unforeseen developments had led to increased imports which have caused serious injury and the share of imported goods have gone to 51% in the first half of 2008-2009 from a mere 7 % in 2006-07. If protection measures are not taken, the sole domestic producer, whose plant is already closed in absence of orders, will not be able to resume production. In this scenario the Indian Dimethoate based insecticides trade will become 100% dependent on foreign supplies. After complete wiping of domestic production facilities, the foreign supplier will charge prices of their choice and thus will exploit Indian market. The 100% control of foreign players on Dimethoate based insecticides trade in Indiais really not in public interest. Therefore it is really in public interest that protection measures are taken to save domestic producer.

XIII. The imposition of safeguard duty shall not affect the ultimate consumers in India at all. At present the public at large is not benefited by cheaper imports. Isagro Agrochemicals Ltd. as well as Rallis India Ltd both produces insecticides with brand name Rogor with 30% Dimethoate as its active ingredient. Isagro produces Rogor with 100 % of their Dimethoate procured from applicant i.e. indigenous sources and with no content of imported Dimethoate Technical and sell in the market at a current MRP of Rs. 280/- per litre. Whereas the Rallis India Ltd with maximum imported Dimethoate content sells Rogor at a current MRP of Rs. 342/- per litre. Therefore for the farmers, Rogor made from domestic Dimethoate Technical is actually cheaper compared to Rogor made from imported Dimethoate Technical. The safeguard duties on imported Dimethoate technical will not have any effect on the price of Rogor made from domestic Dimethoate technical and this will be still available at Rs 280/litre if there are no changes in other factors. The applicant has submitted the price list of these companies along with Rogor samples of these companies showing above MRPs.

XIV. The Phosphorous Pentasulphide (P_2S_5) is basic raw material to produce Dimethoate Technical which constitutes about 72% of its raw material cost and roughly 50% of total production Cost. P_2S_5 is a derivative of yellow phosphorus which is being controlled by China. China has virtually made rest of the world a hostage in Yellow Phosphorus needs by charging export duty as high as 120% to disturb various producers of Organophosphate Chemicals. Under the circumstances the only scope left is in respect of this part of cost. Accordingly SRL proposes to adopt an appropriate strategy to improve upon efficiency in respect of other raw materials which will bring cost effectiveness and enable the company to compete with the international players. SRL plans to execute a number of adjustment plans that would take at least three years to implement. SRL shall be taking following measurers among others.

a) Use of waste heavy oil and organic layer as fuel,
b) Power saving by modernizing electrical equipments,
c) Use of better manufacturing practices,
d) Improvement in management practices,
e) Reduction of administrative expenses,
f) Effective Inventory Management.

C. <u>Views of importers and user industries</u>

i. M/s Atul Pesticides Pvt. Ltd. Has conveyed no objection on imposition of Safeguard duty.

ii. M/s Crop Growth (India) Pvt. Ltd. has submitted that the imposition of duty will help hundreds of local formulators and million of farmers for getting the material at a competitive price. It will protect the interest of small formulators who are not in a position to import. The big companies make huge profits on this account. The action will rationalize the rates and create a level playing field for all formulators of the country.

iii. M/s Hyderabad Chemical Products Limited has conveyed that they had manufactured 121 MT in 2004-05, 66MT in 2005-06, 41 MT in 2006-07 and 4MT in 2007-08.

iv. M/s Insecticides (India) Limited has conveyed that they have no objection to the imposition of safeguard duty.

v. M/s Boss Agro Chemicals (P) Ltd. has conveyed that it is really a good step on the part of Government as this will protect the interest of the manufacturer in short term but in long term it will safeguard the interest of the farmers of this country. China under a strategy is killing Indian Agro Industry and there after China companies will charged 10 times higher prices forever and our farmer will bear the cost of the same without having any remedy. It will also create a level playing ground for India formulators and help in making small formulator a viable unit and ensure jobs to the people.

vi. M/s Isagro (Asia) Agrochemcials Pvt. Ltd. has stated that they are not interested to oppose the imposition of safeguard duty.

vii. M/s Ankur Chemicals India has conveyed that they have no objection in imposition of safeguard duty. M/s Hindustan Pulverising Mills has conveyed that imposing safeguard duty on the imports of Dimethoate technical will deprive the farmers of dry and under developed Agriculture areas of Dimethoate formulations of right quality, right price and at the right time leading to higher crop losses. They further stated that imposition of safeguard duty on imports of Dimethoate Technical will lead to higher injury to Indian

Agriculture in poor, rain fed area of Indian Agriculture effecting economy of farmers.

viii. M/s Rallis India Limited has made the following submission;

A. This exposes us/ marginal farmers to the risk of a single supplier and a monopolistic supplier.
B. Given the dependency of marginal farmers on this molecule consistency of supplies is critical. The applicant is not in a position to assure this, given the location of his plant in a sensitive zone.
C. The safeguard duty is being imposed on an unsustainable argument that cost will not impact the price to the farmer.
D. Even if the above are rejected and safeguard duty is leviable it cannot exceed 8% as the difference between domestic price and imported price varied between 3% to 12%.
E. Continued availability of this product is critical to the small and marginal farmers and their interest is being compromised for the benefit of the applicant, who is a single manufacturer.
F. M/s Shivalik Rasayan is not the sole manufacturer of Dimethoate Technical in India. Rallis was manufacturing the same till 2002. Hyderabad Chemical Products Limited has also been manufacturing and they manufactured 4MT in the year 2007-08.
G. We have highlighted the option being explored by the applicant for import of intermediates from China and that alternate use of the plant is not being considered by the applicant, both of which do not support the levy of this duty.

ix. M/s United Phosphorus Limited has informed that they are not manufacturing Dimethoate Technical. For their own formulation they purchase it from M/s Shivalik Rasayan Limited and market and never imported Dimethoate Technical.

x. M/s Swastic Pesticides Ltd. has welcomed the imposition of safeguard duty on Dimethoate Technical and conveyed it's no objection.

D. <u>Views of the foreign exporters and governments.</u>

i. No reply or representation was received from the foreign exporters or their governments.

E. <u>Examination and Findings of D.G.</u>

a) **<u>The product under investigation</u>** – Dimethoate Technical is classified under sub-heading No. 38089123 of Schedule I of the Customs Tariff Act 1975. It is commonly known as Dimethoate in international literatures as per the guidelines of International Organization for Standardization. The product comes in various concentrations. The most common concentration ranges between 85 to 98%. The product of various concentrations can be used interchangeably. Dimethoate is a widely used organophosphate insecticide used to kill insects on contact. It is an anticholinesterase which disables cholinesterase, an enzyme essential for central nervous system function.

b) **Domestic Industry** - It has been contended by M/s Hyderabad Chemicals Ltd. that they have produced 4MT of Dimethoate Technical in the years 2007-08. M/s Shivalik Rasayan Limited had produced 860 MT of Dimethoate Technical in year 2007-08 and thus M/s Shivalik Rasayan Ltd. has produced majority of Dimethoate Technical. Accordingly, the applicant M/s Shivalik Rasayan Ltd. constitutes domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

c) **Unforeseen Developments and obligations incurred under GATT:** There has been no contention made by the interested party on unforeseen development. Accordingly, the issue of unforeseen development has been examined which is as follows;

The Article XIX of GATT 1994 which reads as:

" (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement,………..." uses the term 'unforeseen developments'. The use of plural term 'developments' implies that there could be more than one development whose combined effect may be considered. Further, in practice all developments may not be independent and in fact such developments may influence each other. It is the effect of resonance of all such developments which impact the business dynamics and tilt the odds from one to another. Therefore, in order to consider unforeseen developments and the result thereof, it is necessary to take holistic view.

The basic raw material for Dimethoate Technical is P2S5 which is manufactured out of yellow phosphorous. The main exporting nation i.e People's Republic of China (China) has significant reserve of yellow phosphorous and has capability to influence the trade of yellow phosphorous based products. China increased the cost of base raw material i.e. yellow phosphorous for users including manufacturer users of countries other than that of China by imposing heavy export duty of 120%. On account of this trade practice, the cost of production of Dimethoate Technical for domestic producer in India is very high compared to cost of production of manufacturer in China On account of this, the price of yellow phosphorous has gone up many times.

The current rate of export duty on yellow phosphorous imposed by PR China is 70%. Normally, commodity taxes are destination based consumption taxes and in general there are no taxes levied by the exporting country in respect of most of the commodities. This kind of taxation and that too by 120% by an exporting country is unexpected. Further the unprecedented and uneven recession has destabilized domestic industries of various nations including the nations who had very high production capacities. With unexpected fall in demand worldwide on account of recession, coupled with the imposition of export duty on basic raw material from which users in exporting country are immune are unexpected, unforeseen developments.

It is well settled principle that *"of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions … ",* simply means that it must be demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions. In the instant case the product under consideration is one of the products in respect of which India has provided tariff concessions pursuant to Article II of GATT 1994. The Customs duty has been progressively reduced to 10% in the year 2008-09 from 20% in 2004-05.

As India has incurred certain obligations under GATT 1994, including tariff concessions on the product under investigation, it is held that imports increased was as a result of unforeseen developments and of the effect of obligations incurred by India under GATT 1994.

d) **Increased Imports** - There has been no contention by the interested party on the issue of increased imports. The import data shows that there has been increasing trend in imports in absolute terms from the year 2005-06 except in 2006-07. Taking base year as 2005-06, the import has decreased by 11% in 2006-07, increased by 255% in 2007-08 and further increased by 412% in 2008-09 (April to Sept. 08). The import figures year wise is mentioned below:

Table-1

Year	Quantity (in MT)	Indexed
2005-06	76	100
2006-07	68	89.47
2007-08	270	355.26

2008-09 (upto December)	389	511.84

Similarly, share of imports in the domestic market has gone up from 8% in 2005-06 to 25% in 2007-08 & 51% in 2008-09 (first half). The detailed statistics is mentioned below:

Table 2

Market share of Consumption	2005-06	2006-07	2007-08	2008-09 (upto December)
Imports	8%	7%	25%	45%
Domestic Industry	92%	93%	75%	55%

The imports of Dimethoate Technical have thus increased in absolute terms as well as compared to total domestic market.

e) **Serious injury and Threat of serious injury** – There has been no contention by the interested parties on the issue of serious injury and threat of serious injury. Accordingly my findings are as follows;

Sales: The sales of the product under investigation has seen sudden and sharp decline during the year 2008-09 compared to the preceding year as well as the base year 2005-06, as apparent from the Table below. The decline in average monthly sale in 2008-09 has been 20.71% compare to the preceding year i.e 2007-08.

Table 3

	Domestic sale by the applicant (MT)	Average Monthly Sale (MT)	Indexed
2005-06	844	70.33	100
2006-07	893	74.42	105.82
2007-08	819	68.25	97.04
2008-09 (upto December)	487	54.11	76.94

Market Share of domestic Industry: Market share of domestic industry was 92% during 2005-06. It improved marginally to 93% during 2006-07 but fell to 75% during 2007-08. During the period 2008-09 (upto December), market share of domestic industry saw significant fall to 55%. The fall of share of domestic producers in market share is despite growing market.

Table 4

	2005-06	2006-07	2007-08	2008-09 (upto December)
Market share of Consumption (Total sales in India)	920	961	1089	876
Imports	8%	7%	25%	45%
Domestic industry	92%	93%	75%	55%

Production: The average monthly production of the product under investigation by the domestic industry has seen decline of 14.65% during the first half of 2008-09 compared to 2007-08. There has been improvement in production in 2006-07 over 2005-06 but it continued to decline thereafter. During the first half of the year 2008-09 the average monthly production has been 61.17 MT, lower than earlier periods which fell to 49.11 MT per month in 2008-09 (up to December 2008)

Table 5

Year	2005-06	2006-07	2007-08	2008-09 (Upto December)
Domestic production (MT)	829	906	860	442
Average Monthly Production(MT)	69.08	75.5	71.67	49.11

Capacity Utilization: The capacity utilization of the domestic industry was mere 18% during the third quarter of the financial year 2008-09. The capacity utilization had improved in 2006-07 compared to 2005-06, but the utilization decreased continuously. The fall in 2008-09 (Apr-Dec) had brought the capacity utilization to 59%. During October-December 2008-09, the capacity utilization was mere 18%.

Table 6

	2005-06	2006-07	2007-08	2008-09 (Apr-Dec)	2008-09 (last three months)
Capacity Utilization (%)	83	91	86	59	18

Productivity: On account of fall of production, the productivity per person shows a similar trend.

Profitability: The applicant was running in profit till 2007-2008; however during first nine months of the year 2008-09, the applicant has incurred a loss of Rs 65.34 (Index) taking profit of Rs. 100 (index) in the year 2007-08.

Employment: The domestic industry has been shut down intermittently from 23.9.2008 for want of demand and it is closed since 13.1.2009. This closure has turned 102 employees idle.

f) **Causal link between increased import and serious injury or threat of serious injury** – There has been no contention by the interested parties on the issue of Causal link between increased import and serious injury or threat of serious injury. The period when economic indicators show serious injury coincides with the period of increasing imports in absolute as well as relative terms. The fall in sales and market share during 2008-09 (up to December, 2008) coincides with the increase in imports during the same period. Similarly, fall in production and capacity utilization during 2008-09 (up to December 2008) coincides with the increase in imports during the same period. Accordingly, I find that there exists causal link between serious injury and threat of serious injury.

The market size of Dimethoate has been 90.75 MT/month during 2007-08, which increased to 97.33MT/month during the period 2008-09(up to December 2008). Even though the market size is growing, the sales of domestic industry has declined, which clearly shows that it is the import, which has caused serious injury. M/s Rallis India Limited, the end user themselves admitted that the import prices are lower than the domestic prices. It is pertinent to point out that the import prices were lower than the domestic prices, even when the domestic producers were selling after incurring losses. It shows that the increased import at lower prices have caused serious injury and threatened to cause serious injury. There has been no contention that there are factors other than increased import which caused serious injury. The fact that the plant is situated in Uttaranchal is irrelevant in determination of injury or causal link as the production has been taking place in past as well as now at the same place. Accordingly, I find that there is no significant factor other than increased import, which is attributing to the serious injury and threat of serious injury.

g) **Adjustment plan** – The domestic producer has submitted detailed adjustment plan to cut cost, which includes use of waste heavy oil and organic layer as fuel, power saving by modernizing electrical equipments, use of better manufacturing practices, improvement in management practices, reduction of administrative expenses, effective inventory management. The analysis of the plan shows that the plan is viable. Further, the domestic industries have also agreed to submit action taken report every six months for effective monitoring.

h) **Public Interest:** M/s Rallis India Ltd. have raised the issue of the location of the plant and contended that their supplies have been erratic and uncommitted. M/s Hindustan Pulverising Mills have contended that there is only one manufacturer and thus imposition of safeguard duty may lead to monopolistic situation.

The issue has been examined. All the user of Dimethoate Technical except Rallis India Ltd. have either shown satisfaction over services by the applicant or not raised the issue. Further, M/s Rallis India Ltd has not produced any evidence or any instance to substantiate their claim. Regarding the contention of possibility of creation of monopolistic situation, it is important to note that the safeguard duty does not prohibit imports but only brings the domestic industry to the level playing field with the imports. The competition between imports and domestic production still remains open and thus the domestic industry cannot create monopolistic situation. Further, other users have welcomed imposition of safeguard duty, which itself defies the fear of monopolistic situation. Accordingly, I find the contention as unsubstantiated.

Further, the applicant submitted that the imposition of safeguard duty on Dimethoate Technical will actually serve the public interest and in no way cause the hardship to public at large as it is the only surviving industry and survival of the domestic industry would help maintain competition to provide Dimethoate Technical to Indian Dimethoate based insecticides manufacturers at competitive and fair prices. It has been further submitted that the manufacturer using domestic Dimethoate Technical is able to sell the insecticide formulations at lower MRP to consumers than the manufacturer using imported Dimethoate Technical at lower landed value.

The submission was examined and the impact of safeguard duty on the ultimate consumer was studied. M/s ISAGRO ASIA who is one of the main buyers of the domestic producer formulates “ROGOR Dimethoate 30% EC” out of solely domestically produced Dimethoate Technical . On the other hand M/s Rallies India Ltd, Mumbai formulates “ROGOR Dimethoate 30% EC” out of imported Dimethoate Technical as well. The samples collected on market survey shows that the MRP of the “ROGOR Dimethoate 30% EC” manufactured by ISAGRO ASIA is lower than the identical product “ROGOR Dimethoate 30% EC” produced by M/s Rallies India Ltd, Mumbai.

The safeguard duty is likely to increase the landed value of the imported product only. The safeguard duty intends to make the competition fair even for those who need adjustment to deal with the injury caused by increased imports. Accordingly, I find that the safeguard duty imposed on Dimethoate Technical alone may not have any bearing on the price paid by the ultimate consumers of insecticide (Dimethoate 30%) and in fact existence of domestic production facility will facilitate competition to imports to neutralize the effect of dependency on imports.

i) **Developing Nations:** The import of the product from China, which is a developing nation, is more than 50%. Imports from other developing nations are insignificant. Accordingly, imports of Dimethoate Technical from all developing nations as notified vide Notification No. 103/98-Cus dated 14.12.1998 (as amended) except China may not attract safeguard duty.

F. Conclusion and Recommendation: On the basis of the above findings it is seen that increased imports of Dimethoate Technical have caused serious injury to domestic producers of Dimethoate Technical. Considering the average cost of production of Dimethoate Technical by the domestic producers (confidential), a reasonable return on capital employed, the present level of import duties, the average import prices of Dimethoate Technical, adjustment plan and need to progressively liberalize the safeguard duty, a safeguard duty at the rate prescribed in the table below, which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of Dimethoate Technical classified under sub-heading No. 38089123 of Schedule I of the Customs Tariff Act 1975 into India.

1st Year	28%
2nd Year	23%
3rd Year	18%

(S. S. RANA)
Director General (Safeguards)

[F.NO. D-22011/07/2009]