

Director General (Safeguards)

NOTIFICATION

(New Delhi, the 2nd February 2009 F.NO. D-22011/07/2009)

Subject: Safeguard investigation concerning imports of Dimethoate technical – Preliminary findings.

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

1. The notice of initiation of safeguards investigation concerning imports of Diamethoate technical into India was issued on 21 January 2009 and was published in the Gazette of India, Extraordinary on the same day. A copy of the notice was also sent to all known interested parties as under:-

Domestic Producers

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

Importers and Users

- 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

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. View of the Domestic Industry

a) The Domestic producer M/s Shivalik Rasayan Ltd, who account for 100% of the domestic production of Dimethoate Technical have made the following major points-

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 overseas 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 India is 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 (P₂S₅) is basic raw material to produce Dimethoate Technical which constitutes about 72% of its raw material cost and roughly 50% of total production Cost. P₂S₅ 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 measures 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.

7. Findings of D.G.

- a) The issue to impose immediate safeguard measures was examined. It has been found that a total of 168 Safeguard Initiations have been reported to the WTO during the period between 29.03.1995 and 12.11.2008. It has been observed that in 15 of these cases provisional safeguard measures have been recommended/ imposed within 30 days of initiation of the safeguard investigation. In some cases the provisional safeguard measures have been recommended on the same day as the date of initiation of the investigation. The Rule 9 of Customs Tariff (Identification And Assessment of Safeguard Duty) Rules, 1997 notified vide Notification No. 35/97-NT-Customs dated 29.07.1997 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury. The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, which is independent to Rule 9. The Rule 15 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules provide for refund of differential Safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and

collected. The harmonious reading of Rules 6,9 and 15 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings and refund of the differential duty in case it is ascertained that the duty imposed after conclusion of investigation following natural justice as enshrined in the Rule 6 is lower than the provisional Safeguard Duty. However, in critical circumstances any delay in imposition of provisional Safeguard duty may cause damage which would be difficult to repair. Accordingly, it was considered prudent to analyze circumstances to assess whether the same falls in the category of critical circumstances.

- b) **The product under investigation** – Dimethoate Technical into India. 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.
- c) **Domestic Industry** - M/s Shivalik Rasayan Ltd. account for 100% of domestic production in India. Accordingly, the applicants constitute domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.
- d) **Unforeseen Developments:** The Article XIX of GATT 1994 which reads as:
“ 1. (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.

- e) **Increased Imports** - 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 (Ist 6 months)	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 (First half)

Imports	8%	7%	24%	51%
Domestic Industry	92%	93%	76%	49%

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

f) **Serious injury and Threat of serious injury –**

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:

	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 (first nine months)	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. In the first half of 2008-09, market share of domestic industry saw significant fall to 51%.The fall of share of domestic producers in market share is despite growing market.

Table

	2005-06	2006-07	2007-08	2008-09 (First half)
Market share of Consumption (Total sales in India)	-	-	-	
Imports	8%	7%	25%	49%
Domestic industry	92%	93%	75%	51%

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.

Table:

Year	2005-06	2006-07	2007-
Domestic production (MT)	829	906	860
Average Monthly Production(MT)	69.08	75.5	71.67

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%.

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

Productivity: The preliminary investigation shows no indication to suggest that the injury is on account of loss of productivity.

Profitability: 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 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.

- g) **Causal link between increased import and serious injury or threat of serious injury** –The period when economic indicators show serious injury coincide with the period of increasing imports in absolute as well as relative terms. The fall in sales and market share during 2008-09 (first half) and 2007-08 compared to 2006-07 coincide with the increase in imports during the same period. Similarly, fall in production and capacity utilization during 2008-09 (first half) and 2007-08 compared to 2006-07 coincide with the increase in imports during the same period. Accordingly, the preliminary determination shows that the serious injury and threat of serious injury is attributable to the increased import.

- h) **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 preliminary determination shows that the plan is viable.
- i) **Critical Circumstances:** The market share of domestic industries has fallen from 93% in 2006-07 to 51% in 2008-09. The capacity utilization reduced to 18% during Oct-Dec, 2008 and the unit is closed rendering employees idle. The domestic industry is making losses incapacitating him to restart the operation and regain market share, if immediate safeguard measures are not taken. Accordingly, The preliminary determination shows that critical circumstances exist in which [delay in](#) imposing provisional safeguard duty would cause damage which it would be difficult to repair.
- j) **Other Issues:** 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 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.

During preliminary investigation 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%).

- k) **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.

- 1) **Conclusion and Recommendation:** On the basis of the above preliminary findings it is seen that increased imports of Dimethoate Technical have caused serious injury to domestic producers of Dimethoate Technical. There exist critical circumstances, where any delay in application for safeguard measures would cause damage which it would be difficult to repair, necessitating immediate application of provisional safeguard duty for a period of 200 days, pending a final determination of serious injury and threat of serious injury. 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 and the average import prices of Dimethoate Technical, safeguard duty at the rate of -28% (Twenty Eight Percent) ad-valorem, 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.

1 **Further Process:**

- (i) A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

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