

(To be published in Section 1: Part I of Gazette of India Extraordinary)

No.14/13/2005-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

New Delhi, dated the 25th June, 2007

Final Findings

Subject: Anti-dumping investigation involving imports of Nonyl Phenol exported from or originating in Chinese Taipei.

No.14/13/2005-DGAD. - The Government of India having regard to the Customs Tariff Act 1975 as amended in 1995 (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, (hereinafter referred to as the Rules) thereof:

A. PROCEDURE

2. The procedure described below has been followed with regard to the investigation:

i) The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written application from M/s Schenectady Herdillia Ltd. (hereinafter referred to as the Applicant) on behalf of domestic industry alleging dumping of nonyl phenol (herein after referred to as subject goods) from Chinese Taipei (herein after referred to as subject country) and requested for Anti Dumping investigations and levy of anti dumping duties on the subject goods.

ii) Preliminary scrutiny of the application revealed certain deficiencies, which were rectified by the applicant;

iii) The Authority notified the Taipei Economic and Cultural Centre in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;

iv) The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 29th June 2006 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject country in accordance with the sub-Rule 6(1) of the Rules 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.

v) The Authority forwarded copy of the said public notice to the known exporters, importers/users and to the complainant and gave them an opportunity to make their views known in writing within forty days from the date of the publication of initiation notification in accordance with the Rule 6(2):

vi) According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the application to the following known exporters and the Taipei Economic and Cultural Centre

1. China Man-made Fibre Corporation
2. Formosan Union Chemical Corporation

No response has been received from the exporters.

vii) The Taipei Economic and Cultural Centre in India was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to them;

viii) A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):

- | | |
|--|--|
| 1. M/s Micro Inks Limited | 2. M/s Krishna Antioxidants Pvt. Ltd. |
| 3. M/s Laffans Petrochemicals Ltd. | 4. M/s Esteem Inds. Pvt. Ltd. |
| 5. M/s Dai-Ichi Karkaria Limited | 6. M/s ICI India Ltd. |
| 7. M/s C.J. Shah & Co. | 8. M/s Advance Chemicals |
| 9. M/s Sterling Auxiliaries Pvt. Ltd. | 10. M/s Auchtel Products Ltd. |
| 11. M/s Chemical Corporation. | 12. M/s India Glycols Ltd.. |
| 13. M/s Jubilant Organosys Ltd., | 14. M/s Gujarat Glycols P. Ltd. |
| 15. Unitop Chemicals P. Ltd. | 16. Dorf Ketel Chemicals India P. Ltd. |
| 17. Indian Chemical Manufacturers Association. | |

Response to the questionnaire/notification was initially filed by four importers.

ix) Copies of the initiation notification were sent to FICCI, ASSOCHAM, CII, Excise Law Times, etc., for wider circulation.

x) Investigation was carried out for the period starting from 1st October 2004 to 31st December 2005 (15 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from 2001 - 02, 2002 -03, 2003 -04, 2004-05 and the POI.

xi) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations

xii) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

(xiii) A copy of the non-confidential application was also provided to other interested parties, wherever requested.

xiv) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

xv) The Authority held a public hearing on 10th April 2007 to hear the interested parties orally, which was attended by representatives of the domestic industry, importers of the subject goods from China. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;

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

B. PRODUCT UNDER CONSIDERATION

3. The product under consideration in the present petition is nonyl Phenol, which is also known as para nonyl phenol. It is a clear viscous liquid without sediments. The chemical formula and structure of nonyl phenol is $C_{15}H_{24}O$. It is used in the manufactures of NP-ethylene oxide condensates for application as non-ionic surfactants after subsequent sulphonation, of oil soluble phenolic resin, of derivatives applied as corrosion inhibitors in lubricating oils and of ingredients for agro-chemical formulations. It is also used in flame-retardants and plasticizers. The product is classified under sub-heading no. 2907.13 under Customs Tariff Act and Indian Trade Classification. The customs classification is only indicative and does not have any bearing on the scope of investigation. No interested party has contested the description of the product.

C. LIKE ARTICLE

4. The applicant has claimed that there is no difference in the subject good produced by the domestic industry and the subject product imported from the subject country. The product is being directly imported by the importers and users. The applicant has claimed that the two are technically and commercially substitutable. The Authority noted that no party has disputed this claim that there is no difference between the imported product and the product under consideration manufactured by the petitioner. The imported goods are used by the user industry interchangeably with those produced by the domestic industry. Thus, the products produced by the domestic industry and imported from the subject country are identical in all essential characteristics and therefore, are like articles within the meaning of the terms under the Rules. For the purpose of the present investigation, the product produced by the applicant is being treated as like article to the product imported from the subject country within the meaning of Rules supra.

D. DOMESTIC INDUSTRY

5. The application has been filed by M/s Schenectady Herdillia Ltd., who is the sole producer of the subject product in India. The Authority noted that the production of the aforesaid producer constitutes 100% of the total domestic production of the domestic like article. The Authority therefore determines that aforesaid applicant satisfy the criteria of standing to file the application on behalf of the domestic industry in terms of Rule 5(3)(a) and represent the domestic industry within the meaning of Rule 2 (b) of the Rules supra. The Authority also noted that there are no arguments from any interested party that the applicant does not meet the criteria of standing as laid down under the Rules.

E. DETERMINATION OF DUMPING MARGIN

6. Under Section 9A (1) (c) of the Customs Tariff (Amendment) Act, 1995 normal value in relation to an article means:

"(i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)".

E1. Normal Value, Export Price and Dumping Margin

E.1.1 Views of interested parties

7 The interested parties have argued that under the Antidumping Rules, the proceeding has to be initiated and conducted on products which are dumped and causing material injury to domestic manufacturers, supported by sufficient evidence of dumping and where applicable, injury and causal link, as mandated under Rule 5(3). But the evidence on calculation of normal value in the Non- Confidential version was incomplete, as (a) the methodology and evidence for constructing the normal value for Chinese Taipei, (b) adjustments in the export price, (c) calculation of dumping margin (d) information on crucial parameters have not been disclosed. They have submitted that statements made by the petitioner must be supported by actual record and documentation and failure in this connection was fatal, as it impaired the objective examination by the Authority of the accuracy or adequacy of the case. Hence, the proceeding should be terminated. Besides, a party to an investigation providing confidential information has to also provide meaningful non-confidential summaries or state reasons for non-summarization, as per Rule 7 of the Rules. The petitioner has kept crucial information on calculation of normal value confidential, neither providing meaningful non-confidential summaries nor reasons for the confidential treatment required or why summarization cannot be done. This has significantly hampered the right of industrial users to submit itself in the investigation. Neither criterion for evaluating confidential information - viz., (i) by nature confidential or (ii) provided on a confidential basis conditional on good cause being shown - has been observed, contrary to the principles in the Anti-dumping Agreement and Rules.

E.1.2 Response of the domestic industry:

8. The applicant has given all the relevant details regarding the methodology and evidence for computation of normal value. The construction of normal value involves use of the applicant's costing information, which is confidential by nature, with even the indexed information giving a competitive advantage to others. This information is allowed to be kept as confidential by the Authority. The applicant has given all details regarding the adjustments made to the export price. All information has been given either in actual numbers or indexed.

E.2 Examination by the Authority

9. The Authority has taken cognizance of these submissions to the extent they are relevant and substantiated and the issues raised have been examined in appropriate sections of the findings. The Authority had initiated proceedings only after satisfying itself that *prima facie*, the evidence provided by the applicant was adequate and accurate. It was noted that no exporter from Chinese Taipei has responded to the prescribed questionnaire. The Authority has, thus, determined the Normal Value on the basis of constructed cost of production, taking raw material costs as per the consumption norms of and the duty-free import rates for these incurred by the domestic industry, variable and other costs as per the actuals of the domestic industry towards chemicals, utilities, salaries and wages, stores etc., the selling, general and administrative expenses, depreciation and interest as per the actuals of the domestic industry for exports and profits at 5% of production cost. The Normal Value so constructed is US \$***/MT. The export price has been determined on the basis of CIF import price as per DGCIS data after allowing for adjustments towards freight and insurance etc. based on facts available and port charges and commission at 1% each. Net ex-works export price works out as US \$***/MT. Accordingly, dumping margin for all exporters from Chinese Taipei works out to US\$ ***/ MT (14%).

F. INJURY AND CAUSAL LINK EXAMINATION

F.1 Views of the domestic industry

10. The applicant has claimed that:

- ❖ Volume of imports from Chinese Taipei has increased by 24 times over the injury investigation period.
- ❖ Share of imports from Chinese Taipei as percentage of total imports, total demand and domestic production has increased to 98%, 37% and 24% respectively during the POI.
- ❖ The increase in selling prices has been neutralized by the increase in costs over the injury investigation period. However, the increase in selling prices as compared to the immediately previous year is much lower than in cost over the same period.
- ❖ The dumped imports from Chinese Taipei have significantly undercut and undersold the domestic goods.
- ❖ Volume of domestic sales has declined by 38% over the injury investigation period.
- ❖ Market share of domestic sales has declined to 60% in POI from a level of as high as 98% in the base year.
- ❖ There is negative profitability during the POI. As compared to immediately previous year, the profitability has come down by 12.20%.
- ❖ ROCE and cash profit have come down over the injury investigation period.

- ❖ Average stock (number of days) and also as percentage of sales have increased over the injury investigation period.
- ❖ The margin of dumping in the POI is significant.

F.2 Views of the interested parties

11. The interested parties have argued that the applicant claims to be affected by dumping of all its products during the same or virtually over-lapping periods of investigation – acetone, phenol and the subject product. As phenol is an important input into the product under consideration, the DA should examine the cost of the transfer price of phenol internally and the role the dumped phenol played in the pricing and consequent injury of the subject product.

12. They have submitted that Chinese producers of the subject product initiated anti-dumping investigations against nonyl phenol exported from Taiwan and India during the period 1st July 2004 to 30th June 2005, which period overlaps 9 months of the POI in India. The Chinese Authorities have made a final determination on March 28, 2007 and the dumping margin for the applicant was 12.22%, for Formosa Union Chemical Corporation (Taiwan), it was 6.87% and for China Man Made Fibre Corporation (Taiwan), the margin was 4.08%. All other exporters obtained a margin of 20.38%. They have further argued that since none of the exporters have cooperated from the subject country, the investigating authority can determine the normal value on the basis of “Best Judgement Assessment”, as per the judgement of the Supreme Court in the case of DA vs. Haldor Topsoe in 2000. Information on the landed value of the subject goods exported to China PR from Taiwan was in the public domain and normal value thus worked out would be the best information available, considering that one of the member countries of the WTO investigated the matter on the same product, same subject country and overlapping POI (9 months). The data could be examined for compliance with the Authority’s own standards, and effect can be given to those aspects which will enable an unbiased assessment. Whatever methodology is adopted by the DA, the dumping margin will be lower than claimed by the petitioner.

13. They state that from the balance sheet, it was clear that the applicant was a multi-product company, operating three units in India at Navi Mumbai, Rasal and Lote, but not which plant was for the subject product. As during the POI, the applicant suffered losses due to natural calamities at its locations and claimed loss of profit by way of insurance due to floods in July, 2005, it should prove that it has not benefited from this insurance twice over and are not now claiming compensation for this injury which has already been compensated. Besides, the applicant must demonstrate that the injury being claimed was indeed arising out of the operations of nonyl phenol business and not ancillary operations.

14. They have argued that analysis of the injury data submitted by the applicant show there is no material injury faced by the domestic industry due to dumping as alleged:

- a) Installed capacity has gone up drastically from 21100 MT in 2001-02 to 24000 MT during 2003-04 and thereafter - an overall increase of over 10%.
- b) Production has gone up drastically from 13010 MT in 2001-02 to 19102 MT during the annualized POI - an overall increase of 46%.
- c) While the domestic sales have come down marginally from 7880 MT in 2001-02 to 4929 MT during the annualized POI, the closing stock is also all time low at 204 MT, which means that the domestic industry has higher sales made in the export markets, the details of which has not been disclosed. Thus all the positive indices identified have pushed up the applicant's production.

Accordingly, from the injury analysis carried out, there is sufficient proof that on the crucial and critical parameters of injury, the applicant has not suffered "material injury" as a result of the alleged dumped imports.

15. On the basis of indexed information provided, they have submitted that:

- (i) For 2002-03, the indexed domestic prices fell by more than 15%, while indexed profitability was down by 17% - a case of self-inflicted injury.
- (ii) In 2003-04, while the landed cost of imports increased to 111.6 (indexed), domestic price remained at the same level 86.56 (indexed) as in the previous year 86.46 (indexed), also impacting profitability to increase by 4.25 times (indexed).
- (iii) In 2004-05 (Apr-Sept 04), the landed cost of imports increased to 130.6 (indexed) and domestic price increased to 104 (indexed), and consequently the indexed profitability increased up by 7.31 times (indexed).
- (iv) The price behavior in the POI, wherein the domestic prices dropped to a level of 88.14 (indexed) which was closely above the domestic price of 2003-04 i.e. 86.56 (indexed). Though the CIF price of imports remained the same as in Apr-Sept 04 and Oct 04-Dec 05 (Rs. 58.47/kg and Rs. 58.07/kg respectively), the industry has suddenly reported a negative profitability of (-103%) (indexed). The reduction in landed cost of imports is justified on the grounds of reduction of the import duty for the said period.
- (v) During 2003-04 and POI, the indexed domestic price remained more or less the same while profitability which was 425 (indexed) went down to (-82). Further, as reported even after the raw materials of nonene and phenol have risen during the POI, the cost of sales have gone from the 100 (indexed) during 2001-02 to 88 (indexed) during the POI (annualized)

All these factors point that there are certain external factors or that the losses have been passed off on the subject goods being a multi-product company. There is no causal link between alleged dumped imports and injury to the domestic industry.

F.3 Response of the domestic industry

16. The domestic industry has claimed that the other investigations are independent and not linked to the present investigation as the products under consideration are totally different. Besides, the fact that some part of the POI overlaps with each other has no relevance under the anti-dumping provisions. The argument on cost of transfer price of and role of dumped phenol in pricing of nonyl phenol only makes their case stronger as the impact on pricing and costs would be greater once phenol prices go up.

17. The industry has stated that the issue of the applicant itself facing an anti-dumping case in China was of no consequence as the entire anti-dumping investigation was logically and legally concerned only with the “state of the industry” in the domestic market. The Indian exporters have to compete with the same Taiwanese exporters in the Chinese market. That none of the exporters from Taiwan chose to respond to the exporter’s questionnaire can be construed as a tacit admission on their part of massive dumping into India, particularly when the same exporters from Taiwan have fully cooperated in the Chinese investigations. In addition, the normal value determined by the Chinese authorities is not available in public domain and is kept confidential, as per accepted practice. Besides, the POI in the China case was Jul 04 - Jun 05, while in this case, it was Oct 04 - Dec 05. There was no jurisprudence to suggest that the Authority should (without verification) accept the determination made by Authorities of other countries under their own national laws. The normal value determined by the Chinese Authorities (even if available) cannot be relied upon due to significant difference in the POI and consistent fluctuations in the input prices.

18. The industry has stated that the production facility at Rasal (which was for nonyl phenol) was not affected by floods and therefore, was not a beneficiary of insurance claim. The injury information given was with respect to the subject goods in the domestic market only and not for export activity or other products.

19. On the inferences drawn by the interested parties on injury, the domestic industry has stated that capacity was a common facility for nonyl phenol and do-decyl phenol and the available capacity could interchangeably be used for both products without making any changes to the plant. The production figures were for both products and included export production. Hence, any conclusion based on these figures would be inappropriate. Also, as the capacity was for both products, it could not be said to be over-capacitated. The importer had taken the domestic production for subject goods while making the argument of over-capacity, but capacity utilization was 80% during the POI, considering the total production for both products in both markets. If the applicant had a separate dedicated facility for domestic NP, their injury situation would have been worse. As regards stock, the average stock in terms of number days had more than doubled over the POI.

20. On the other conclusions drawn by interested parties, the domestic industry claimed that the importer has made its analysis with profitability, landed value, CIF

prices and costs incorrectly taking the sales value (Rs. lacs) – indexed as domestic selling prices. Such analysis would be incorrect and conclusions drawn on misstatements are required to be ignored. There is a decline of as much as 37% in the sales volume of the domestic industry, which is significant, clearly showing injury. Besides, when there is a drastic increase in raw material cost in the POI as compared to the immediately preceding period, no change in the CIF prices indicated that the exporter has suppressed its export prices, which have been undercutting the domestic prices, leading to injury to the domestic industry.

F.4 Examination by the Authority

21. Rule 11 of Anti Dumping Rules reads as follows:

“Determination of Injury:

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.”

22. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:

a. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.

b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

23. For the purpose of injury and causal link analysis, the dumped imports from the subject countries have been examined to ascertain volume and price effects of these imports on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any. The points made by the interested parties and the response of the applicant have been taken note of, wherever necessary. For the purpose of this examination, the applicant constitutes the domestic industry. The Authority also examined the copy of the anti-dumping proceedings against the applicant in China PR received from the Indian Embassy in Beijing, but it did not contain any details of the Normal Value determined by the Chinese authority.

F.5 Volume Effect of dumped imports and Impact on domestic Industry

24. The effects of the volume of dumped imports from the subject countries, as well as dumped imports from other countries have been examined as follows:

I) Import Volumes and share of subject countries:

25. For the purpose of injury examination the Authority has examined the DGCI&S import data and data from other secondary sources provided by the domestic industry. The Authority noted that there was a slight variation between the volumes reported in the DGCIS data and the data submitted by the domestic industry for 2004-05 and the POI, as the industry has partly relied on data from IBIS. However, DGCIS import data has been adopted for injury examination. On the basis of this data the import volume of the subject countries are as follows:

Imports of Nonyl Phenol as per DGCIS

<i>Imports</i>	<i>2001-2</i>	<i>2002-3</i>	<i>2003-4</i>	<i>2004-5</i>	<i>POI (annualized)</i>
<i>Total</i>					
Qty (MT)	142.43	93.58	975.22	1613.78	2885.74
Value (Rs lacs)	59.33	38.46	488.64	989.56	1718.84
Price/MT	41658	41099	50106	61319	59563
<i>From Chinese Taipei</i>					
Qty (MT)	135.40	88.63	968.38	1610.74	2878.44
Value (Rs lacs)	54.61	34.60	483.56	987.05	1712.94
Price/MT	40331	39038	49935	61279	59509
<i>From other countries</i>					
Qty (MT)	7.03	4.96	6.84	3.04	7.30
Value (Rs lacs)	4.72	3.86	5.09	2.51	5.90
Price/MT	67208	77962	74389	82458	80854

26. The Authority observed that the volume of imports from the subject country rose phenomenally by over twenty times compared to the base year, while that from other countries, viz., the Netherlands, Germany, United Kingdom, Poland and Japan, is seen to be negligible. As a cross-check, data on exports from the World Trade Atlas, based on figures furnished by the Taiwan Directorate General of Customs was also examined. The Authority noted that Chinese Taipei exports the subject product and its isomers to other countries, prominent among these being China, Hong Kong, South Korea and Malaysia. Exports to Japan, Iran and Australia are in smaller volumes. Total exports to India of merely 30 MT in 2001 grew phenomenally to over 4000 MT in 2005 and 2006, accounting for 11-13% of Chinese Taipei's total exports of the product.

Taiwan's exports of Nonyl phenol and its isomers (Jan- Dec) (In MT)

<i>Country</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
China			2185	5786	4566
% share in total exports			8.60	18.67	14.33
Hong Kong	6068	5995	7467	6811	6126
% share	25.28	26.00	29.39	21.98	19.22
India	30	711	1799	2262	4138
% share	0.13	3.08	7.08	7.30	12.98
Japan	2972	2583	919	1772	3043
% share	12.38	11.20	3.62	5.72	9.55
Korea, South	7805	7954	6735	8295	6093
% share	32.52	34.50	26.51	26.77	19.12
Malaysia	274	397	3163	2590	5166
% share	1.14	1.72	12.45	8.36	16.21

Source: World Trade Atlas

27. The Authority recognizes that the two sets of export figures are not strictly comparable, bearing in mind the differential time periods covered by the data sources, WTA covering on calendar year basis, while DGCIS publishes financial year-wise. Also, there is no explanation of what are the isomers of the product. But the extent of data discrepancy is unmistakable, as seen in the table below.

Product exports as per WTA and imports as per DGCIS

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
WTA*	30.40	710.63	1798.54	2262.08	4138.14
DGCIS	135.40	88.63	968.38	1610.74	2878.44

*: For January to December, and inclusive of the isomers of the subject good.

28. Analyzing price movements, the Authority observed that relative to Chinese Taipei's average world price, prices to India were lower, consistently, from 2004. Export price to other countries in 2005 was \$ 41 per kg or over, while for India, the figure was \$ 37.78. Besides, trend analysis of average prices show that between 2001 and 2005, prices to India increased only by 31% while world prices have gone up by 57% during this period. The Authority noted that price movements have not been so low in any other country.

Average price/kg (in Taiwanese dollars)

<i>Country</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
World prices	26.36	25.66	32.10	41.19	41.44
Indexed	100	97	122	156	157
China			32.43	41.30	40.72
Hong Kong	26.97	26.53	32.60	43.60	40.82
Indexed	100	98	121	162	151
India	28.75	25.71	32.22	38.20	37.78
Indexed	100	89	112	133	131
Japan	25.59	25.28	32.81	44.23	44.17
Indexed	100	99	128	173	173
Korea, South	27.02	25.22	32.05	40.98	41.23
Indexed	100	93	119	152	153
Malaysia	29.53	28.47	31.67	37.96	43.62
Indexed	100	96	107	129	148

Source: World Trade Atlas

29. Notwithstanding the above, in the following analysis, the Authority has relied on data from DGCIS, for the reason that it is available transaction-wise, unlike World Trade Atlas data, which also includes the isomers of the product in total exports.

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI(Annl)</i>
Total imports	142.43	93.58	975.22	1613.78	2885.78
Indexed	100	66	685	1133	2026
Chinese Taipei	135.40	88.63	968.38	1610.74	2878.44
Indexed	100	65	715	1190	2126
Others	7.03	4.96	6.84	3.04	7.34
Indexed	100	70	97	43	104
Domestic demand	***	***	***	***	***

Domestic production	***	***	***	***	***
Percentage share of imports from Chinese Taipei in					
Total imports	95.06	94.71	99.30	99.81	99.75
Dom. Demand(Indexed)	100	72	848	1265	2185
Dom. prodn (Indexed)	100	59	476	610	1415

Source: DGCIS, domestic industry

30. The Authority noted that imports from the subject country constituted 95% of total imports in 2001-02 and was above 99% after 2003-04, while those from other countries, viz., the European Union countries and Japan, have been declining, being merely 0.25% of the total during the POI. Dumped imports have not only increased in absolute terms but also in relation to total imports, domestic demand and domestic production in India. As a percentage of total demand, dumped imports have risen from ***% in 2001-02 to ***% in the POI, thus cutting into the market share of the domestic industry. Dumped imports have also grown in relation to the domestic production from ***% in 2001-02 to ***% in the POI.

F6: Price effect of dumped imports

31. The impact on the prices of the domestic industry on account of the dumped imports from the subject country/territory has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the weighted average (WA) cost of production, weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

a. Price undercutting and underselling effects

32. Price undercutting effect of dumped imports from the subject country has been determined by comparing the WA landed value of dumped imports from the subject country over the entire POI with the WA NSR of the domestic industry for the same period. For this purpose, landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of imports from the subject country.

<i>In Rs/MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI(Annualized)</i>
Landed value	54851	51140	62502	74148	69031
Trend	100	93	114	135	126
Dom. selling price	***	***	***	***	***
Trend	100	95	118	137	141

Price under – cutting	***	***	***	***	***
Under-cutting %	(7-12)%	(5-15)%	(3-8)%	(5-15)%	2-7%

Source: Domestic industry, DGCIS, computations

33. The Authority noted that during the period 2001-02 to 2004-05, there has been negative price under-cutting as the landed price had, all along, been higher than the domestic selling price, even with the progressive reduction in customs duty over the period from 35% to 15%. Besides, the increase in landed price has been 26% compared to the base year price, while the domestic selling price has increased by 41% over the injury period. However, during the POI, there was positive price under-cutting of about 2-7%.

34. Further, it is observed that the cost of sales as well as the selling price (NSR) of the domestic industry shows significant increase compared to the base year. Cost of sales shows an increase of about 38% over the base year and NSR increased by 41%, implying that the increase in costs could be passed on to the consumer over the injury period. The landed value increased by 35% over the base year despite the reduction in customs duty and reduced by 9% during the POI over 2004-05.

<i>In Rs/MT</i>	2001-02	2002-03	2003-04	2004-05	POI(Annualized)
Cost of Sales	***	***	***	***	***
Indexed	100	91	101	118	138
Dom. selling price	***	***	***	***	***
Trend	100	95	118	137	141
Landed value	54851	51140	62502	74148	69031
Trend	100	93	114	135	126

Source: Domestic industry, DGCIS.

35. In determining the NSR of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been excluded. For the purpose of price underselling, the weighted average landed prices of imports from subject country have been compared with the non-injurious selling price of the domestic industry determined for the POI.

<i>In Rs/MT</i>	
Non-Injurious Price	***
Landed value	69031
Price Underselling	***
Price Underselling %	7-12%

Source: DGCIS, computations

Price under-selling in the POI is of a higher magnitude than price under-cutting.

b. Price suppression and depression effects of the dumped imports:

36. The price suppression effects of the dumped imports have also been examined. The Authority noted that the domestic industry could not realize a remunerative price in the POI to recover its full cost, arising perhaps, from a fear of loss of market share, indicating that the domestic industry has been forced to suppress its prices to retain its market. The cost of sales rose by 20 percentage points and selling price by 4 percentage points in the POI compared to 2004-05.

F.7 Impact of dumped imports on domestic industry performance parameters

37. Having examined the effect of dumped imports on the volumes and prices of the domestic industry, other economic parameters which could indicate existence of injury to the domestic industry have been analysed by the Authority as follows:

Decline in Sales

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI(Annualized)</i>
Domestic sales	***	***	***	***	***
Indexed	100	91	73	75	62
Domestic Demand	***	***	***	***	***
Indexed	100	90	84	94	97
Market share of domestic industry	***	***	***	***	***
Indexed	100	100	87	80	64
Exports	***	***	***	***	***
Trend	100	791	2414	4351	3286

Source: Domestic industry, computations

38. The Authority notes that the share of the domestic industry in total demand declined from ***% in 2001-02 to ***% during the POI registering a decline of 35%, while concurrently that of imports from Chinese Taipei rose from ***% to ***% over the same period. The applicant being the only producer and other countries having a very marginal share in the domestic market, the implication is that the domestic industry has been crowded out by imports from the subject country. Demand has shown a decline till the POI relative to 2001-02, but a recovering trend is evident from 2004-05.

Production and Capacity Utilisation

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI(Annualized)</i>
--------------	----------------	----------------	----------------	----------------	------------------------

Capacity*	***	***	***	***	***
Indexed	100	100	114	114	114
Production*	***	***	***	***	***
Indexed	100	98	128	167	147
Capacity Utilization %	***	***	***	***	***
Indexed	100	98	113	147	129

*: Incl nonyl phenol & dodecyl phenol, produced in same plant, with capacity interchangeably used.

Source: Domestic industry

39. Capacity was expanded in 2003-04 by 14%, yet capacity utilization has increased by 29% notwithstanding the increase. Production volumes have increased by 47% since the base year. However as the figures relate to two products produced in the same plant, these parameters are not being considered for injury analysis.

Productivity, employment and wages

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
Production*	***	***	***	***	***
Employees (Nos)	***	***	***	***	***
Indexed	100	101	91	92	97
Unit Productivity	***	***	***	***	***
Indexed	100	97	142	182	151
Wages (Rs. Lakhs)	***	***	***	***	***
Indexed	100	153	37	37	27

*: Including nonyl phenol and dodecyl phenol, both produced in the same plant.

Source: Domestic industry

40. The Authority noted that number of employees have reduced over the injury period compared to base year. However, per employee productivity rose by 51% since 2001-02, after peaking at 82% in the previous period. There is no evidence of injury here. The decline in wages by 73% from the base year is not considered as cause for concern by the domestic industry, while its fall by 116% from 2002-03 was because the subject product was then being produced in two plants and at one plant only in the later years.

Profitability

<i>In Rs. Lakhs</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI(Annualized)</i>
Sales Value	***	***	***	***	***
Indexed	100	86	87	103	88
Cost of Sales	***	***	***	***	***
Indexed	100	82	74	89	86
Profit/ Loss	***	***	***	***	***

Indexed	100	183	526	580	16
Profit/ Loss PMT	***	***	***	***	***
P/L %	-2.47	2.49	14.22	13.32	-0.45

Source: Domestic industry

41. During the base year 2001-02, the domestic industry incurred a loss of Rs *** lakhs. Thereafter, there has been a progressive increase in capacity utilization. Profitability increased five-fold from a loss of Rs. *** lakhs in 2001-02 to a profit of Rs. *** lakhs in 2004-05, then plummeted to a loss of Rs. *** lakhs in POI. This was because cost of production increased significantly during the investigation period by about 17% over 2004-05, but the industry could increase the selling prices only to the extent of 2.7% during this period. However, the Authority notes the margin between the price and cost in 2003-04 and 2004-05, which coupled with reduced availability of the product in the domestic market could have led consumers of the subject good to source more of imports from 2003-04.

Return on investment and cash flow

<i>In Rs. Lakhs</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
Capital employed	***	***	***	***	***
Indexed	100	92	62	75	67
Profit before interest	***	***	***	***	***
Indexed	100	101	139	140	24
Cash Flow	***	***	***	***	***
Indexed	100	1102	3026	3238	139
R.O.C.E.	***	***	***	***	***
Indexed	100	110	225	187	45

Source: Domestic industry

42. Return on capital employed (ROCE) reached a high of ***% in 2003-04 and slumped to *** % in the POI. Cash flow deteriorated very sharply in the POI over 2004-05 but was still higher than in the base year. Profits before interest also declined steeply in the POI relative to 2004-05.

Inventories

<i>In MT</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
Av. Inventory (Indx)	100	110	185	205	141
Sales	***	***	***	***	***
% to Sales (Indexed)	100	122	252	272	226

Source: Domestic industry, computations

43. Average inventories as a percentage of domestic sales have more than doubled over the base year. The average inventory as a percentage of sales have declined during POI over 2004-05 though higher than base year.

Magnitude of Dumping

44. The magnitude of dumping, as an indicator of the extent to which the dumped imports can injure the domestic industry, shows that the dumping margins determined against the subject country during the POI are significant.

Factors affecting prices

45. Change in cost structure, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors that might be affecting the prices in the domestic market. The Authority noted that there was no other domestic producer of the subject goods. Dumped imports from the subject country have been found to be competing with the domestic product and affecting prices in the domestic market.

46. The Authority notes that the level of price undercutting from the subject country is only 2-7%. The selling prices of the domestic industry have increased during the POI as compared to the base year, but this increase is lower than that in costs in the POI indicating that the selling prices of the domestic industry have been suppressed due to dumped imports from the subject country.

47. The Authority observed that the domestic industry produced nonyl phenol at the Rasal plant and phenol at the Navi Mumbai plant. The raw materials for producing the subject goods are phenol and nonene. While the nonene requirement has been imported in full, phenol requirements have been met partly through imports to the extent of about 74% and partly through transfer from the Navi Mumbai plant. This transfer has been priced at the market price, viz., average selling price of the Navi Mumbai plant. Further, for determining non-injurious price for nonyl phenol, the Rasal cost data has been used, while for phenol produced at Navi Mumbai, that plant's cost data would be used. Hence the question of double remedy, as apprehended by the importer, is unfounded.

Growth

48. The Authority finds that the demand in the country has declined by about ***% during the POI as compared to base year 2001-02 whereas the market share of the domestic producers has declined by over ***% over the same period. Thus, the growth with respect to market share of the domestic industry is negative during the POI. It is also noted that the growth with respect to sales volume, capacity utilization and profitability is also negative during period of investigations.

F.8 Conclusion on Injury

49. On the basis of the examination of the conditions of the domestic industry the Authority holds that

- a. the quantum of imports from the subject country has increased in absolute terms as well as relative to total demand and domestic production in India;
- b. the market share of the petitioner has decreased while that of imports has increased;
- c. profitability, return on investment and cash flows have sharply deteriorated in the POI;
- d. ROCE for the domestic industry, though still positive, has plummeted and could adversely affect their ability to raise capital investment.
- e. capacity utilization and production of the domestic industry have declined during POI.
- f. sales volume of the domestic industry has come down;
- g. There is price undercutting and price underselling is significant;
- h. The margin of dumping from the subject country is significant.

The Authority therefore concludes that the domestic industry has suffered material injury as envisaged under the Rules.

G. CAUSAL LINK AND OTHER FACTORS

G1. Views of the interested parties

50. The interested parties have commented that Article 3.5 of the WTO Agreement holds that the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry was a requirement to be fulfilled based upon an examination of all relevant facts before the Authorities. Hence, the Authority should take into account the injury caused by imports from countries other than Chinese Taipei contributing as a significant player of the Indian market to conclude that the injury was not related to these and therefore, could not be deemed to have any causal link to imports from Chinese Taipei.

51. They have argued that the weighted average prices of all the countries were in the same band as compared to the imports from the subject country. Therefore, contrary to what has been alleged by the domestic industry, the prices do not determine consumer's choice for the nonyl phenol supplier.

52. They have claimed that information in the public domain show that the company was marketing phenol and acetone, in spite of which India was a net importer. Further, the company was deliberately increasing its export of nonyl phenol, so that any claims on loss of market share of the same have to be closely scrutinized. Besides, it also consumes huge quantities of phenol captively for producing the subject goods.

53. The interested parties have alleged that the applicant was involved in the amalgamation of Herdillia Investments Limited, a subsidiary company during the POI, the effects of which have to be ascertained and analyzed by the DA prior to fixing the non-injurious price as well as effects on the subject product as regards the non attribution facts.

54. The parties have also debunked the allegation of fall in profitability of the applicant. The indexed profitability was claimed to have fallen to (-) 102.8 from 731.5 all in a span of two years. Although kept confidential by indexing, information in the public domain was adequate to find out the exact profitability of the company. The domestic industry claimed a profit before depreciation at Rs. 3343 lakhs for 2003-04, disclosed in the petition as 425.7 (indexed). If these figures are correct, the profitability of the complainant industry as worked out would be as follows:

<i>Year</i>	<i>Profitability (Indexed)</i>	<i>Profitability (in lakhs)</i>
2001-02	100	785
2002-03	83.1	652
2003-04	425.7	3343
2004-05	731.9	5740
2005-06	(102.8)	(807)

55. The interested parties hold that as the domestic industry was a multi-product company and the balance sheet consolidated, it was necessary to find out how variable and fixed costs have been apportioned among different products (phenol, acetone, nonyl phenol) and captively produced raw materials (phenol).

56. They also state that “other factors” that should be considered affecting the situation of the domestic industry and its price behavior was the situation of the international market and the liberalization process in India. If one considered the export prices of the domestic industry as proxies of price fluctuation in the international market, domestic prices would be expected to show a decrease rather than an increase (as with its export prices) and the decrease should be even more significant in the Indian market, as import duties on nonyl phenol have been reduced over the past years. Even if the domestic industry’s prices have decreased, such fluctuation could not be attributed to the allegedly dumped imports. Hence the causal link requirement was not satisfied in the present case.

57. They claim that the injury to the applicant was self-inflicted:
- ❖ While claiming injury, the applicant was found to be dumping in the export market (China).
 - ❖ That the unit had to increase production to optimize production cost by defraying fixed expenses was a specious argument, since plant size was thrice the domestic demand. The consumer/ industrial user cannot be asked to bear the price of erroneous projections made by the applicant. Part injury to the domestic industry has been caused by their overcapacity.
 - ❖ Even though the domestic industry claims to have a plant three times the capacity of the Indian demand, it has yet apparently drastically receded market share. If there has been actual injury, the petitioner would not have a receding market share; on the contrary, based on the economies of scale, it would not have been able to compete with any alleged dumping.
 - ❖ The applicant claims that the domestic prices are injurious prices and are suppressed on account of dumping. If this was so, the dumping margin in China would have been much higher. The industry was perpetuating their monopolies in the Indian market, claiming on the one hand that they are compelled to export; while on the other, they are dumping in the export market. Consequently, they are injured and seek to have anti-dumping duty imposed on imports in to India.

58. The parties have further held that the applicant was the only manufacturer in the country and wanted to be a net exporter of the subject goods. While being an only manufacturer was not an issue, the conduct of the manufacturer was a cause for concern. Importers have been compelled to pay in advance, supplies are not reliable and are diverted, orders are not confirmed and “gun point” pricing was used whereby the buyer has been asked to accept prices at extremely short notice. Such conduct existed before, during and after the POI.

G.2 Response of the domestic industry

59. The domestic industry has stated that the importer user has made a mere statement and not provided any evidence to suggest that there are factors other than dumping which have affected the performance of the applicant in the domestic market. As the import volumes from the countries other than subject country were de-minimis, their prices are irrelevant.

60. The industry claims that as phenol is freely importable, its deficit, if any, has no effect on the subject goods. Without exports, the fixed component in total cost of the subject goods would have been high and affected the domestic industry more adversely. In a chemical industry, variable costs fall with higher capacity utilization.

61 The industry states that the merger during the POI was merely with the wholly owned investment company of the applicant and has no impact on the subject product. Besides, the analysis of profitability by the interested parties based on the information for the company as whole was incorrect in view of their multi-product nature. Even so, apportionment of variable and fixed costs among different products, which was verified by the Authority, has been as per consistent practice of DGAD and standard principles of costing.

62. Regarding the charge that injury was self-inflicted, the industry holds that:
- ❖ Higher capacity utilization and better process efficiencies in chemical plants arising from consistent production lead to lower per unit fixed and variable costs (due to lower raw material and utility consumption).
 - ❖ Prices in different regions and countries are determined by demand-supply situation in those countries, capacities proximate to these countries, size of the market, currency, supplies of other inputs to downstream industries etc. Export prices are based on duty-free costing of raw material permitted against advance licensing scheme of DGFT. These differ from costs in the domestic market due to the incidence of duties reflected only in domestic market prices, since the WTO Agreement permits neutralization of all taxes at the time of export. Besides, major export destinations are countries having geographical proximity to Taiwan. In the domestic market, the applicant has to match the landed cost of subject imports from Taiwan. The CIF price from Taiwan includes a high freight component. On exports to countries much closer to Taiwan, the freight incidence is high. Survival in export markets necessitates competing with nonyl phenol suppliers in the countries of destination, all of which contribute to the differential for exports and domestic prices.

63. On the allegation that the applicant is a monopoly operator, the domestic industry state that supplies of subject goods from Rasal plant were not affected except for 2-3 days due to floods. As it is an industrial raw material, nonyl phenol is supplied as per the company production plan which depends on several factors including the timely placement of orders and supplies are not diverted. Besides, in a scenario with competition from domestic and foreign producers, no monopoly can exist. A monopolist would have been a price maker, not a price taker. Despite this, no provision of law indicating that the monopoly producers cannot be protected from proven injurious dumped imports has been pointed out. As for advance payments, the applicant has been selling the subject goods in India on credit of up to 120 days, as per buyers' creditworthiness. Advance payments have been required only when chances of delayed or sticky payments are possible from consumers who buy off and on, or offered by importers if they are given a special price. The importer has also bought the subject goods against credit and on occasions, made payment later than the due date. As regards the charge of gunpoint pricing, in commercial transactions especially for chemicals and intermediates, it is the practice to give 'restricted validity' for the price offer, these periods being shorter for products with raw

material prices prone to change. Since the communication between the importer and the applicant has been kept confidential, without any legal or logical basis to claim confidentiality, the Authority has to supply a copy of those e-mails to the applicant or reject record of such mails/other documents without a copy to the applicant.

G.3 Examination by the Authority

i) Effect of other imports

64. Between 2001-02 and the POI, the dumped imports from subject countries increased significantly as a proportion of total imports from 95% to 99%. The market share of the domestic producer fell from *** % in 2001-02 to *** % during the POI while demand in the domestic market also declined but less sharply only by ***% during the same period. It is observed that import from other sources is a negligible proportion of the total imports and demand in the market, constituting 5% in the early years of the injury investigation period and less than 0.5% in the later years. Therefore, such imports do not have any significant impact on the domestic industry.

65. In examining the price effect whether the dumped imports have significantly undercut the price of the like product in India, the Authority found that the landed value of the subject goods from the subject country was lower than the selling price of the domestic industry only in the POI. Price under-cutting is 2-7%. Moreover, domestic prices have not been suppressed, except in the POI, when the domestic industry could not increase the selling price as a result of increase in the cost of production due to dumped imports. As a result, the industry incurred financial losses in the POI, which eroded its profitability and thus, suffered material injury due to dumped imports of subject goods during the POI.

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

66. The importer(s) allegation of compulsion to pay in advance, unreliability of supplies and their diversion, lack of confirmation of orders and use of “gun point” pricing asking buyers to accept prices at extremely short notice have been refuted by the applicant as a ploy to deviate the Authority’s attention from the main issues. However, the importer has submitted evidence that supplies of the subject product have been affected due to reasons such as floods, delayed receipt of raw material imports and interchangeable use of plant capacity.

iii) Contraction of demand or changes in the pattern of consumption

67. It is noted that there has been contraction in the overall demand during the period under consideration, which was particularly pronounced in the early half of the injury

investigation period. Even in the POI, the domestic demand did not recover to attain the level of demand prevailing in the base year, 2001-02.

iv) Technology

68. Difference in technology being adopted by the domestic industry and the exporters in the subject country, if any, has not been demonstrated to have any adverse effect on the performance of the domestic industry.

v) Export performance

69. The domestic industry has exported the subject goods during the POI as well as during previous years. However, the profitability of the domestic and exports sales have been segregated for the purpose of the injury examination and injury caused due to exports has not been attributed to the performance of the domestic industry in the domestic market. But the Authority observed that export sales grew explosively by a factor of over 3000% in the POI *vis-à-vis* 2001-02 and had been even higher in the preceding period. This export surge began in 2003-04 and doubled in 2004-05. Simultaneously, imports increased by over 700% from the base year in 2003-04 and by 1200% in 2004-05. By implication, the two, viz., domestic industry exports and imports into the country - are correlated. Since in 2003-04, only 86% of the domestic demand was met compared to 100% in previous periods, it seems logical to conclude that imports increased due to the unsatisfied domestic demand, and not that exports increased due to imports edging out the domestic industry.

70. The domestic industry has contended that there was huge unutilized capacity available with the applicant and only the presence of dumped imports affected its sales in the domestic market. Further, that both the domestic and the export markets are governed by the prices prevailing in the respective market and increase in volumes in one market would not result in decline in the other market and vice versa. The applicant could have sold more in the domestic market had it got the reasonable price and if it had sold any more than the current sales at current prices or at lower prices to increase its volume in the domestic market, the applicant would have only increased its losses and been affected more adversely. However, the Authority's analysis showed that both production and total sales have grown in the injury period, except in the POI. While domestic sales have registered a declining trend over the injury period except for a brief rise in 2004-05, export sales have depicted a rising trend, except in the POI. The growth in export sales has exceeded that in production (barring in the POI), thereby reducing availability of the subject product for domestic market.

vi) Productivity

71. The Authority noted that the productivity of the domestic industry improved during the POI, so that productivity *per se* could not be the cause of injury to the domestic industry.

H. MAGNITUDE OF INJURY MARGIN

72. The Authority has adopted the import price data from DGCIS for the determination of landed values of the goods from the subject country for the purpose of determination of injury margin. The non-injurious price determined by the Authority has been compared with the landed value so determined. The weighted average injury margin of the exports from the subject country has been worked out as follows:

Injury Margin Calculations		
Name of country	Injury margin (IM)	IM %
Chinese Taipei	***	7-12%

I. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

73. The interested parties have cited the Supreme Court's consideration of public interest in the case of Haridas Exports v/s All Float Glass Manufacturers Association 2002, where it held that "Import of material at prices lower than prevailing in India cannot *per se* be regarded as being prejudicial to the public interest" and has stated that prior to imposing duties, the DA should consider the plight of the user industry by acting equitably and protecting consumer interests. The domestic industry has argued that the particular judgement was delivered in the context of the MRTP Act, not anti-dumping laws, which were framed specifically to protect the domestic industry from the injurious effect of dumping. Further, the importer has been unable to demonstrate how public interest would be adversely affected by the imposition of anti-dumping duties and was attempting to confuse the issues and the Authority.

74. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition. Though duty imposition might affect price levels of products manufactured using the subject goods and influence their relative competitiveness, fair competition in the market would not be reduced by these measures. Imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices and help maintain availability of wider choice of the subject goods to the consumers.

J. CONCLUSIONS

75. The Authority has, after considering the foregoing, come to the conclusion that:

- a. Subject goods originating in or exported from subject countries have been exported to India below their normal values.
- b. The domestic industry has suffered material injury.
- c. The injury has been caused to the domestic industry by dumped imports of subject goods originating in or exported from the subject countries.

K. RECOMMENDATIONS

76. 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 aspect of dumping, injury and causal links. Having initiated and conducted an investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having established positive dumping margin against the subject country, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of duty is required to offset dumping and injury.

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

78. Having regard to the lesser duty rule, the Authority recommends imposition of 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 Authority recommends that the anti dumping duties be imposed from the date of issue of notification by the Central Government, on all imports of nonyl phenol falling under chapter 29 of Custom Tariff Classification Act 1975, originating in or exported from Chinese Taipei. The anti-dumping duty shall be the amount mentioned in Column No. 8 of the following table.

S.No:	Sub-Head -ing/ Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amt	Unit of Measurement	Currency
1	2907.13	Nonyl phenol	Chinese Taipei	Any country other than Chinese Taipei	Any	Any	163.62	MT	USD
2	-do-	-do-	Any country other than Chinese Taipei	Chinese Taipei	Any	Any	163.62	MT	USD

L. FURTHER PROCEDURE

79. Any appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

80. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

(R. Gopalan)
Designated Authority

To be Published in Part 1 Section 1 of the Gazette of India, Extraordinary

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

AMENDMENT

New Delhi, the 26th July, 2007

Sub: Final Findings in respect of anti dumping investigations concerning imports of Nonylphenol originating in/ exported from Chinese Taipei.

No. 14/13/2005-DGAD: Whereas, having regard to the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff (Identification, Assessment and Collection of Antidumping duty on dumped Articles and for Determination of Injury) Rules, 1995, thereof, the Designated Authority has notified the final findings vide notification dated 25th June, 2007 in the subject anti-dumping investigation.

In the said notification, the duty table after paragraph 78 shall be amended to read as follows:

S.No	Sub- Head -ing/ Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amt	Unit of Measurement	Currency
------	-----------------------------------	-------------------------	----------------------	-------------------	----------	----------	-----	------------------------	----------

1	2907.13.00	Nonylphenol	Chinese Taipei	Any country	Any	Any	163.62	MT	USD
2	-do-	-do-	Any country	Chinese Taipei	Any	Any	163.62	MT	USD

(R. Gopalan)
Designated Authority