

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan

NOTIFICATION

Final Findings

New Delhi, the 25th August 2003

Subject :- Anti-dumping investigation concerning import of Para Cresol originating in or exported from People's Republic of China - Final Findings.

No. 14/29/2002-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:

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

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Atul Ltd., Gujarat, representing the domestic industry, alleging dumping of Para Cresol (hereinafter referred to as subject goods) originating in and exported from Peoples' Republic of China (hereinafter referred to as subject country);
- ii. The preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was thereafter, considered as properly documented;
- iii. The Authority notified the Embassy of People's Republic of China 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 issued a Public Notice dated 27th August 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Para Cresol covered under Chapter heading/subheading 2907.12 of Schedule I of the Customs Tariff Act;

- v. The Authority forwarded copy of the said public notice to the known exporters, importers and to the complainants and gave them an opportunity to make their views known in writing;
- vi. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassy of subject country in India;
- vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods;
- viii. The Embassy of the subject country 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;
- ix. A questionnaire was sent to the known importers/users (as per details in the preliminary findings) of subject goods in India calling for necessary information in accordance with Rule 6(4);
- x. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xi. Some of the interested parties requested for extension in time to file their response to the questionnaire which was granted upon due cause shown;
- xii. The Authority notified preliminary findings vide notification dated 17th January, 2003 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- xiii. The Authority also forwarded a copy of the preliminary findings to the Embassy of subject country in India with a request that the exporters/ producers of subject goods and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated above;
- xiv. The Authority forwarded a copy of the preliminary findings to all the known exporters (whose details were made available by the Petitioner) other exporters who responded to the initiation notification, importers in India and they were requested to furnish their views, if any, on the preliminary findings within forty days from the date of the letter;
- xv. The Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 23rd April, 2003. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- xvi. The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7);
- xvii. Arguments made by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have

not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in the disclosure statement and these findings;

- xviii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 8th August, 2003 vide a disclosure statement and comments received on the same have also been duly considered in these findings;
- xix. Cost investigations including spot verification (as deemed necessary) of the domestic industry were also 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 Petitioner.
- xx. *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xxi. The investigation covered the period from 1st April, 2001 to 31st March, 2002.
- xxii. Copies of the Initiation Notice and Preliminary Findings were also sent to FICCI, CII, ASSOCHAM etc. for wider circulation.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY.

3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below.

4. At the Preliminary Findings stage responses had been received from the following:

Exporters: -

- i. M/s Nanjing Longyan Chemical Co. Ltd., CHINA
- ii. M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA

Importers

- i. M/s Nandolia Organic Chemicals Pvt. Ltd., Mumbai
- ii. Universal Chemicals & Industries Ltd., Mumbai
- iii. Black Rose Exports Pvt. Ltd., Mumbai
- iv. Global Bulk Drugs & Fine Chemicals Pvt. Ltd., Hyderabad
- v. Anant Fragrance Pvt. Ltd.
- vi. Moraya Global Pvt. Ltd., Mumbai
- vii. Zenith Enterprises, Ahmedabad
- viii. Naiknavare Chemicals Ltd., Mumbai

The submissions made by various interested parties had been dealt with in the preliminary findings and these are not being repeated here for the sake of brevity. Subsequent to the public hearing and Disclosures, arguments have been made by the following importers only which have been dealt with appropriately in these findings :

- i. M/s Blackrose Exports Pvt. Ltd.,
- ii. Metrochem Industries Ltd.,
- iii. Nandolia Organic Chemicals Pvt. Ltd.,
- iv. Universal Chemical Industries Ltd., and
- v. Inventaa Chemicals Limited.
- vi. Para Cresol Consumers Association, Mumbai.

5. Product under Consideration :

The product under consideration in this investigation is Para Cresol. The product finds major uses in Dyes and pigments, perfumery and drug intermediates, optical brightener, surfactants, synthetic food flavour, ultra violet light absorbers, anti-oxidants and stabilizers for lubricants.

It has been argued by one of the importers that Para Cresol of 99% plus purity is not offered in the market by the petitioner. Therefore, Para Cresol of 99% purity is required to be excluded from the scope of the present petition. The domestic industry in their written submissions have confirmed that they manufacture all grades of Para Cresol covering purity up to 99%. Further, Para Cresol of 99% plus purity is not offered in the market. In response to the Disclosures, the importers have argued that the petitioner has admitted that they do not offer 99% purity Para Cresol. This does not seem to be the case as the domestic industry in their written submissions subsequent to the public hearing had confirmed that they manufacture all grades of Para Cresol covering the purity up to 99%. Thus the arguments of the importer do not appear to be correct. The Authority is of the view that the arguments made as regards exclusion of Para Cresol of 99% purity from the scope of the investigation are not cogent and supported with sufficient justification. The Authority confirms the preliminary findings on product under consideration.

6. Like Article

The petitioner had claimed that there is no difference between the products manufactured by the domestic industry in India and the imported products. For the preliminary determination the Authority held that Para Cresol being produced by the domestic industry is like article to the product under consideration. There are no significant arguments on the issue of Like Article subsequent to the preliminary findings. The Authority therefore confirms the preliminary findings as regards Like Article.

7. Domestic Industry

The Authority recalls the preliminary findings on the issue of domestic industry. The petition has been filed by M/s Atul Limited (Aromatics Division), Dist. Valsad, Gujarat. The petitioner company is the sole producer of Para Cresol in India. Therefore, they claim to represent the 100% domestic production of the subject goods. The petitioner had informed in the petition regarding imports of 32 MT of Para Cresol made during POI under Advance Licence for fulfilling export obligation. It has been argued by some of the importers that since the petitioner has made imports during the POI they may not be treated as part of the eligible domestic industry. The Authority had noted that the imports of 32 MT made by M/s Atul Limited during POI were meant for export production and these imports were necessitated due to a planned stoppage of their Para Cresol plant. The Authority did not consider these small quantity imports for export production to make the petitioner as ineligible to be treated as 'Domestic Industry' within the meaning of Rule 2(b) supra. The petitioner was, therefore, considered to represent the domestic industry.

Arguments have been made on behalf of importers viz. M/s Blackrose Exports Pvt. Ltd., Metrochem Industries Ltd., Nandolia Organic Chemicals Pvt. Ltd. and Universal Chemical Industries Ltd. stating that the petitioner lacks the standing to file the petition as they have made imports of subject goods. Further, it has been argued that the following three reasons considered by the Authority while treating M/s Atul Limited as domestic industry are not sufficient :

- i. Imports made by the petitioner are insignificant,
- ii. Imports made under advance licence,
- iii. Imports have been made at a time of temporary shut down of production facilities.

It has been argued that imports made by the petitioner constituted more than 5% of imports whereas under WTO rules, 3% volume of imports is a quantity considered as significant. Further, these imports made by the petitioner were more than 1% of

demand of the product. With regard to second reason regarding imports made by the petitioner under advance licence, it has been argued by the importers that it is the practice of the Designated Authority to exclude all such producers from the eligible domestic industry. It has been argued that in the case of imports of Metronidazole from China, three producers were excluded from the purview of domestic industry even though these companies made imports under advance licence. As regards the third reason given by petitioner to have made imports under advance licence in the condition of temporary shut down, it has been argued by the importer that the reasoning defies all logic as at one place, domestic industry claimed that imports were necessitated due to its own requirement for exports and at the same time, it has been stated that imports had to be made due to temporary shut down of the plant. In response to the Disclosures, the importers have reiterated their above stand.

The domestic industry has drawn attention to the legal position on definition of domestic industry as per Rule 2 (b). They have argued that the word 'shall' existing in the said Rule was amended to read as 'may' by virtue of the Amendment No.44/99-CUS dated 15.7.1999. Thus specific discretionary powers were vested in the Designated Authority to decide whether in a particular case, the importing domestic industry may be considered not forming a part of the domestic industry under Rule 2(b). In the instant case, the Designated Authority was satisfied that the petitioner should be considered as the eligible domestic industry despite the fact that they have imported the said product. Imports in the instant case were made by the petitioner against advance licence which are totally exempt from the incidence of custom duty and also the anti dumping duty. This exemption is based on the fact that such imports do not enter in the mainstream commerce of the country. Exclusion of producers who imported the product under consideration has to be decided by the Designated Authority on a case by case basis, on reasonable and equitable ground, and by taking into consideration all the legal and economic aspects involved. The purpose of the provisions on the exclusion of certain producers is to obtain an objective and undistorted view of the effects of the dumped imports. It is pertinent to note that the present petitioner has not in any way participated in dumping practices or shielded from its effects or in any way benefited unduly from them. The contention of the importers that the importing domestic industry is ordinarily to be excluded, is not borne out either from a plain reading of the law or from the jurisprudence on the subject. The petitioner has also cited the excerpts from the book titled "EC Anti Dumping Law, A Commentary on Regulation 384/96 by Nicholas Khan" which contains the practices followed by EC in this regard.

It has been further argued by the petitioner that the preliminary findings on the issue of 'domestic industry' have been misinterpreted and distorted in the submissions made by the importers. The said findings make it amply clear that the imports by the

domestic industry have been ignored for determining the standing of the domestic industry because the imports were necessitated to fulfill the export commitments and not for the reasons cited in the submissions of importers / consumers. The reasons in support of questioning the decision of the Designated Authority are based on an erroneous interpretation of the preliminary findings and hence needs to be rejected ab initio. The criteria of 3% volume of imports mentioned by importers has no connection or linkage with the status of the domestic industry to file a petition. The reliance placed by the importers on the Phenol case is also totally mischievous and misleading.

The Authority has examined the arguments made by the importers on the preliminary findings on the issue of 'domestic industry' and the arguments made by the petitioner. The Authority is of the view that Rule 2(b) gives the discretion to the Authority in determining as to whether a domestic producer who has made imports of subject goods can be considered as part of the domestic industry or to be excluded. In the instant case, the petitioner, who is the sole producer of the subject goods in India, had made imports of 32 MT during the POI. These imports were made for export production and these had been necessitated due to a planned stoppage of their Para Cresol plant. The Authority has not considered these imports as very significant, particularly, when these were meant for export production. The reference to the criteria of 3% volume of imports in the context of the determination of standing of domestic industry has no relevance, as these provisions relate to determination of de minimus volume of imports. The facts and circumstances of other cases cited by the importers in support of their arguments are different from the instant case. The Authority therefore, reiterates and confirms its preliminary findings on the issue of 'domestic industry'.

8. Accuracy and Adequacy of Information based on Secondary Sources

The importers have argued that the petition does not contain any reasoning for not relying on DGCI&S data. At the time of initiation of investigation, the DGCI&S had published its data for the POI. There are imports from other countries which are more than the limits prescribed and the prices are significantly lower.

It has been argued by the petitioner in their rejoinder that as mentioned in the petition, the DGCI&S data for Para Cresol (Code 2907 1201) could not be relied upon as the same is not available transaction-wise with detailed description. The petition has further stated that while scanning the IBIS import data for Para Cresol, it was noticed in several instances that other types of Cresols were classified in the code meant for Para Cresol, which completely distorted the import statistics. Since DGCI&S data did not give transaction-wise details of Cresols imported with appropriate description, it was not feasible for the domestic industry to derive the figures for Para Cresol imports

by relying on DGCI&S data. Hence they relied on IBIS data which is based on the customs daily list of some of the major ports. The DGCI&S data submitted by importers indicates that imports are taking place from many countries of European Union. However, the fact is that there is only one producer of subject goods in the entire European Union as would be obvious from the Initiation Notice issued by the EC (2002/C150/04) against imports from China. Thus the DGCI&S data could not be relied on this ground also.

The importers have reiterated their arguments on this issue in response to the Disclosures.

The Authority has examined the arguments made by the importer as regards the petition being made on the basis of secondary source data instead of DGCI&S data. This aspect had also been looked into by the Authority at the time of initiation. It had been explained by the petitioner that the DGCI&S data under Head 2907 1201 contained other types of Cresols also. It had been stated in the petition that the HS Code under the Customs Tariff Act at the six digit level (sub-heading 2907.12) is for all types of Cresols and there is no dedicated code separately for Para Cresols. However, the ITC HS classification and DGCI&S have a separate code only at the eight digit level (2907 1201). Therefore, Meta Cresol, Para Meta Cresol and Mixed Cresols are also getting classified under ITC HS 2907 1201. While compiling the information, there are several instances where other types of Cresols have also got classified along with the Para Cresols under Code 2907 1201 even under the IBIS data. This has also been verified by the Authority. It has also been stated in the petition that since the DGCI&S data does not give the detailed transaction-wise description of the Cresols imported, it is not feasible for the domestic industry to segregate the different types of Cresols for the purpose of anti dumping investigation from DGCI&S statistics. It has also been stated in the petition that India imports Meta Cresols and Meta Para Cresols from other countries than China. Major exporters of these cresols to India are South Africa, Japan, Germany and USA. These imports of Meta Cresols and Meta Para Cresols are for other end uses / applications and therefore, do not conflict with the interest of the domestic industry. The importers have also not produced any cogent evidence showing imports of Para Cresol from other countries in the form of transaction-wise imports giving description of import products. In the circumstances, the Authority has relied upon the import evidence based on secondary sources as furnished by the petitioner.

9. Grossly Deficient Non-Confidential Petition

It has been argued by the importer that the Non-Confidential Petition does not permit reasonable understanding of the substance of information contained in the Confidential Petition. Almost all data has been claimed confidential which is

unjustified and unsupported with the rules. The importer had sought all information on index basis.

The petitioners have argued that the questionnaire response filed by the importer are highly inadequate, selective and lacking in substance. Specifically, M/s Nandolia and M/s Universal Chemicals & Industries Ltd. have not given any non-confidential version on the pretext that the information is sensitive. These parties may be compelled to submit their proper responses before their submissions are taken cognizance of. As regards petitioner's non-confidential version, they have stated to have given the non-confidential version including the indexed information to the extent the confidential information was amenable to summarization / indexation.

The Authority has examined the arguments. The petitioner had given non-confidential version that contained information regarding imports. Indexed information regarding total demand, market share of petitioner, production and capacity utilization, sales volume, sales value and unit price has also been given. The petitioner had also shared their annual report by placing in the public file. The Authority is of the view that in accordance with Rule 7(1), the information claimed as confidential by the petitioner may be treated as confidential and to the extent feasible, the petitioner has provided non-confidential summary as per Rule 7(2).

C. EXAMINATION OF CLAIMS REGARDING NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.

10. The Authority recalls preliminary findings regarding determination of Normal Value, export price and dumping margin. At the preliminary findings stage, responses were received from the following two exporters:

- i. M/s Nanjing Longyan Chemical Co. Ltd., CHINA
- ii. M/s Nanjing Jingmei Chemical Co. Ltd., CHINA

The Authority had noted that the two exporters had claimed market economy / individual treatment on the ground that they independently operate production and business activities, freely select suppliers and customers and develop sales market in response to the signal of the market. The Authority had, however, found that sufficient evidence and information on the basis of the criteria specified in sub-para (3) in paragraph 8 had not been furnished to rebut the presumption that the exporters are from non-market economy. The Authority was, therefore, unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 of Rules supra and was constrained to proceed as per 'facts available'. In addition, the Authority observed that the information furnished by the exporters relating to cost of production as required

under Appendix 8 & 9 of the questionnaire was incomplete and incorrect. In respect of raw materials, the ratio of each raw material in the final product was not given; the basis of allocation of costs to Para Cresol production was not given. From the available financial statement viz. profit & loss account, balance sheet, the cost of production for the POI was not verifiable. As the furnished information did not enable the Authority to verify the cost of production, the domestic sales transaction could not be treated to be in the ordinary course of trade. The Authority had separately informed in detail through letter dated 17th January, 2003, the shortcomings in the information furnished to the concerned exporters.

Therefore, under the circumstances, Normal value under the Rules was provisionally determined on the basis of 'facts available' as per Rule 6(8). Thus, the information available on the estimated cost of production as per evidence furnished by the petitioner plus selling, administrative and general expenses and a reasonable amount of profit had been taken as the basis for working out the Normal value of subject goods in China PR. While considering the evidence regarding cost of production furnished by the domestic industry, the Authority had referenced the Normal Value with reference to actual cost of production of domestic industry after normating it at optimum efficiency level.

Subsequent to the Preliminary Findings, there has been no response from any exporter either on the preliminary findings or after the holding of public hearing or on the Disclosure Statement. The Authority therefore, confirms preliminary findings as regards Normal Value, export price and dumping margin.

Dumping Margin :

11. The Authority followed the consistent practice of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I to the anti-dumping rules. Dumping margins have been determined on the basis of a fair comparison of Export Price with the Normal Value in pursuance of the principle laid down in Para 6 of Annexure-1 to the Rules. The comparison is at the same level of trade, i.e. Ex-factory level. Based on the Normal Value and export price as determined above, the Authority confirms to adopt the following dumping margins(%):

S. No.	Name of Exporter	Dumping Margin %
1.	M/s Nanjing Jingmei Chemical Co. Ltd. , CHINA	40.74%
2.	M/s Nanjing Longyan Chemical Co. Ltd., CHINA	31.94%
3.	Other Exporters from China P.R.	45.04%

D. INJURY AND THREAT OF INJURY

12. 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."

13. 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.

14. Views of the Importer

- i. As regards imports, the product is classified in dedicated Customs sub-heading, yet the DGCI&S data has been ignored. There is increase in imports. However, the same was largely due to commencement of production of PAA by three companies. Since petitioner does not cater to this requirement, these imports cannot cause injury.

- ii. As per indexed figures of production in the petition, there was an increase whereas elsewhere in the petition, it was stated the production of domestic industry declined.
- iii. The producers of downstream products are the consumers of Para Cresol. To get them out of business, the domestic industry has filed the petition.
- iv. Sales volumes have increased significantly. Thus decline in market share or capacity utilization cannot be linked to imports. Captive consumption of domestic industry has declined and the same cannot be a ground to seek imposition of anti dumping duty on imports. It is admitted in the Annual Report of petitioner that the competition with the user industry is the reason of drop in prices.
- v. Even if selling price has declined in a situation of increase in export price as well as landed value, the same cannot be attributed to alleged dumped imports.
- vi. Selling price (net of excise) of the domestic industry has increased as is evident from the Annual Report of the Company. Cost of production has declined in POI. Increase in selling price should have resulted into increase in profitability of the domestic industry.
- vii. There is contradiction in the figures as production increase, sales increase and stocks have also shown to have increased.
- viii. There is significant gap between demand and supply of the material. Therefore, even after imposition of anti dumping duty, consumers will have no option but to import the material.
- ix. Since landed price of imports from China is higher than the selling price of domestic industry, the imports could not have caused injury or do not threaten material injury to the domestic industry. In this regard, final findings notified recently by the Designated Authority in the matter of NTCF are referred wherein Authority has held that there is no causal link between the dumped imports and material injury to the domestic industry due to the existence of the negative price under cutting.
- x. Price under selling cannot be a reason of alleged injury due to dumping. It is not understood how imports resulted in price under selling in the market.
- xi. There are imports from other countries at comparable or lower prices, hence causal link is not established.
- xii. The increased imports are on account of imports made by producers of PAA, who have come in existence very recently and to whom the domestic industry is not selling its material at all. Therefore, imports made by these consumers cannot cause injury to the domestic industry.

Para Cresol Consumers Association has made following arguments in response to the Disclosures :

- i. Petitioner does not supply material to PAA producers. Petitioner has attempted to create all hurdles in smooth commercial production of PAA with a view to eliminate other producers.
- ii. As per petitioner's own admission, they do not quote for supply of Para Cresol with 99% purity.
- iii. Imports include Para Cresol of 99%. These are required to be removed while examining increase in imports as the petitioner does not supply this material nor are they keen in supplying this material.
- iv. The petitioner intends to expand the capacity to meet the demand. There is fallacy in the argument as the petitioner is (a) claiming unutilized capacity, (b) regretting supply of Para Cresol 99% purity and (c) increase in sales volume and yet claiming expansion of capacity.

15. Views of the Domestic Industry

In response to the comments of the importers, the domestic industry has made following arguments :

a. Domestic Industry's capacity to cater to demand

It has already been clarified that the capacity of the petitioner to manufacture Para Cresol is 5500 MT which is adequate to meet the demand of Para Cresol. The domestic industry is also planning to increase its capacity to 10,000 MT in order to cater to the increasing demand.

b. Misleading and Incorrect Statements by the Importer

Importers have given patently incorrect statement with regard to the non-confidential version of the application and the preliminary findings. It has been mentioned by the importers that the preliminary findings indicate an increase in capacity utilization whereas the fact is that in para 29 of the preliminary findings, the Designated Authority has recorded its findings that the capacity utilization has gone down. It is obvious that all the arguments based on this false premise of increase in capacity utilization during the POI cannot be sustained. The statement of the importer regarding contradiction in the production figures given in page 9 and 14 of the Petition is also incorrect and misleading. The domestic industry has clearly indicated on page 14 that the production has declined during the POI over the preceding year which is in line with the statement made at page 9.

c. Selling Prices

The importers had argued that the selling prices have increased during the POI. This contention is reportedly based on the Balance sheet of the domestic

industry. The non-confidential version of the application clearly shows that the selling prices have drastically declined during the POI over the previous financial year.

d. Price Underselling / Price Undercutting and Injury to Domestic Industry

The importers have submitted that since landed price of imports is higher than the selling price of the domestic industry, the imports could not have caused injury or do not threaten material injury to the domestic industry. In this connection, the importers have drawn reference to the view taken by Designated Authority in the case of NTCF where it was held that there is no causal link between the dumped imports and material injury to the domestic industry due to existence of negative price under cutting. The case of NTCF relates to review and not for a fresh investigation. The reliance placed by the respondent is wholly misplaced as the criteria to be adopted for review under Rule 23 are entirely different from the parameters laid down under Annexure II of the Anti Dumping Rules. The said Rules require that the impact of volume of imports be assessed in terms of price under cutting or price suppression or price depression. Therefore, the contention that in the absence of price under cutting, imports could not have caused injury or do not threaten material injury to the domestic industry is not borne out from the provisions of law.

As decided by the Designated Authority in the preliminary findings, we hold that the most significant cause of injury to the domestic industry has been the price under selling. As a result of lower landed value of imports of subject goods from subject country, the domestic industry has not been able to realize a fair and reasonable price for its products resulting into severe price depression. This has led to negative return on investment. The investment in the Para Cresol manufacturing industry are quite high and the loss on sales realization has resulted in losses and negative return on investment by the industry which reflects the injury suffered. The Designated Authority has given affirmative findings on injury on the basis of price suppression in several cases.

Examination by the Authority

16. The Authority has examined the following injury parameters for making final determination;

Imports, market share of domestic industry, imports from subject country, changes in market share, production, capacity utilization, sales volume and value, net sales realization, inventories, employment, wages, profitability, return on investment, magnitude of margin of dumping etc.

17. The Authority has also examined various arguments made by the petitioner and the importers/exporters on injury. The Authority does not find the contention of the importer as correct regarding any contradiction in the production figures mentioned on pages 9 & 14 of the Petition. Similarly, the Authority finds the claim of the importer regarding increase in capacity utilization as incorrect. The Authority had found the following status of capacity utilization in the preliminary findings under para 29:

"The Authority finds that the capacity utilization of the domestic industry declined during the POI as reflected in the table below:

Year	Capacity Utilization (%)
1999-2000	61.78%
2000-2001	67.71%
2001-2002 (POI)	62.80%

(Indexed)"

18. As regards selling price, the Authority notes from the Annual Report of the Company for the year 2001-2002, the performance of Aromatic Division shows that *"supply being well in excess of demand and aggressive marketing by the competitors affected the price structure significantly. The Division has to drop prices substantially in order to hold on to the market share."* The Authority has also verified the net sales realization of the domestic industry and has found that the same has declined significantly during the POI in comparison to the previous year.

Imports from subject country :

19. As per the petition, the imports from subject country were 267.4 MT in 1999-2000, 724 MT in 2000-01 and 586 MT during POI 2001-02. However, as per the information received from the exporters / importers, the Authority finds that the imports of Para Cresol from subject country during POI were 1217.88 MT. The Authority finds that imports from subject country grew by 68% during POI over the previous year. However the share of imports from subject country in the total imports grew to 100% during POI in comparison to the previous year share of 99.72% and in the year 1999-2000 of 68.82%. The Authority finds that there has been significant increase in the dumped imports from subject country in absolute terms.

Market share:

20. The Authority finds that the market share of the domestic industry and the imports from the subject country in the demand of subject goods has been as under :

	1999-2000	2000-2001	2001-2002(POI)
Share of domestic industry (%)	49.67%	27.68%	30%
Share of imports from subject country	34.54%	72%	70%

Market share of imports from subject country in the total demand for the subject goods has increased from 34.54% in 1999-2000 to 70% during POI. However, the market share has reduced from 72% in the previous year. The market share of the domestic industry in the total demand of subject goods has not declined during POI. It has increased from 27.68% during 2000-01 to 30% during the POI.

Capacity Utilisation:

21. The Authority finds that the capacity utilization of the domestic industry declined during the POI as reflected in the table below:

Year	Capacity Utilization (%)
1999-2000	61.78%
2000-2001	67.71%
2001-2002 (POI)	62.80%

(Indexed)

Sales Volume :

22. Sales volumes of domestic industry increased from ** in 2000-01 to *** in POI and indexed figures are as under :

Year	Sales Volume (MT)
1999-2000	100
2000-2001	69
2001-2002 (POI)	130

Inventory :

23. The Authority finds that the inventory of finished goods held by the domestic industry has increased considerably at the end of financial year in March, 2002 in comparison to the previous year closing on March, 2001. This showed an increase of ***%.

Employment :

24. The employment has marginally decreased in the period of investigation.

Wages :

25. The Authority notes that the wage costs have gone up.

Profitability:

26. The Authority has taken note of the arguments of some of the importers/ users that Aromatic Division of M/s Atul Limited makes huge profits and therefore, domestic industry cannot claim injury. M/s Atul Limited manufactures several products in the Aromatic Division and Para Cresol is one of the products. The Authority finds that dumping of subject goods had a significant impact on the net sales realization of the domestic industry for the subject goods. The petitioner had to compete with the low priced offers / imports of subject goods from subject country. The cost of sales has been higher than the sales realization resulting in losses suffered by the domestic industry in the manufacture and sale of subject goods during POI. Therefore, the Authority finds that the domestic industry has suffered losses in their manufacturing operation relating to Para Cresol.

Return on capital employed:

27. The Authority notes that manufacturing of Para Cresol is highly capital intensive. Instead of earning a reasonable profit, the domestic industry, is in fact incurring a loss of Rs. *** per MT on the sales of Para Cresol. Therefore, the domestic industry is incurring a loss of ***% on effective capital employed on per MT production of Para Cresol.

Price under selling:

28. The Authority has compared the Non-injurious price of the domestic industry with the landed value of imports of subject goods and has found that there is significant price under selling as a result of dumped imports.

NIP	***
Landed value	***
Under selling %	***(+ve)

Actual and potential negative effect on cash flows:

29. The Authority finds that the domestic industry has not been able to earn even nominal returns on the capital employed for manufacture of Para Cresol. The inventory levels are also high. Therefore, there is a considerable impact on the cash flows of the domestic industry.

Growth:

30. The Authority notes that the domestic industry is planning expansion to cater to increasing demand.

31. Conclusion on Injury :

- i. There has been an increase in imports of subject goods from subject country in absolute terms.
- ii. The market share of the dumped imports from the subject country has increased significantly during POI in comparison to the year 1999-2000. However, it has decreased marginally during the POI in comparison to the previous year.
- iii. The selling price of the domestic industry decreased during the POI as compared to year 2000-01 and the same has been below the non-injurious price (NIP) on account of dumped imports.
- iv. The domestic industry has suffered injury due to price suppression. They have not been able to raise their selling price so as to realize a fair return on the investments as the landed value of the dumped imports has considerably depressed the selling price of the domestic industry.
- v. The Authority concludes that the most significant cause of injury to the domestic industry has been the price under selling. As a result of lower landed value of imports of subject goods from subject country, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to negative return on investment. The investments in the Para Cresol Manufacturing Industry are quite heavy and the loss on sales realization has resulted in losses and negative return on the investment by the industry which reflects the injury suffered by the industry.
- vi. The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury.

E. CAUSAL LINK

32. The Authority has examined the impact of the dumped imports on the domestic industry as per principle (v) of Annexure-II of the Anti-Dumping Rules. The relevant indices as set forth in para (iv) of Annexure II of the Rules have been examined by the Authority.

33. The Authority has considered the views expressed by the petitioners and other interested parties as regards the causal link, which have been mentioned, in the preceding paragraphs. The Authority finds that there is significant price under selling as a result of the dumped imports from subject country. As a result of lower landed

value of imports of subject goods from subject country, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to very marginal return on investment. The investments in the Para Cresol production are quite heavy and the low return achieved on the investment by the industry reflects the injury suffered by the industry. The demand of the subject goods has not decreased but has instead increased and therefore, contraction of demand cannot be attributed as a cause of injury. The Authority also notes that the domestic industry is globally competitive and changes in technology or competition amongst the domestic producers do not appear to be the cause of injury. No technological development in the industry or any other such factor which could have resulted in injury to the domestic industry has been noticed.

34. While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation.

F. INDIAN INDUSTRY'S INTEREST

35. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country.

36. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

G. CONCLUSIONS

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

- i. Para Cresol has been exported to India from subject country below the normal value;
- ii. The domestic industry has suffered material injury;
- iii. The material injury has been caused cumulatively by the dumped imports of subject goods from subject country;

38. It is considered necessary to impose definitive anti-dumping duty on the imports of subject goods. Accordingly, the Authority recommends imposition of anti dumping duty on the imports of Para Cresol from subject country.

39. It is decided to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. The landed price of imports was also compared with the non-injurious price of the domestic industry, determined for the period of investigation. Accordingly, it is proposed that definitive anti-dumping duties be imposed on Para Cresol originating in or exported from the subject country being cleared under Heading 2907.12 of the Schedule I of Customs Tariff Act. The anti-dumping duty shall be the difference between the amount mentioned in Col. 9 of the Table below and the landed value of imports of subject goods in US\$ per MT.

S.No	Sub-Heading	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1	2	3	4	5	6	7	8	9	10	11
1.	2907.12	Para Cresol	--	Any country	China	Any producer	Any exporter	2220.95	MT	US\$
2.	2907.12	Para Cresol	--	China	Any country	Any producer	Any exporter	2220.95	MT	US\$

40. Landed value of imports for the purpose shall be the assessable value as determined under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

41. Subject to the above, the Authority confirms the preliminary findings dated 17th January, 2003.

42. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, *supra*.

L. V. SAPTHARISHI
Designated Authority