

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)**

**DIRECTORATE-GENERAL OF ANTI DUMPING & ALLIED DUTIES
NOTIFICATION**

New Delhi, the 26th December 2007

FINAL FINDINGS

Subject: Sunset Review of the definitive anti-dumping duty on imports of Flexible Slabstock Polyol originating in/exported from the European Union, Japan, Singapore and United States of America.

No. 15/25/2006-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 (hereinafter also referred as Rules), 1995, thereof;

A. BACKGROUND

2. WHEREAS, having regard to above Rules, the Designated Authority (hereinafter referred to as the Authority) initiated anti-dumping investigation on 21st September 2001 into alleged dumping of Flexible Slabstock Polyol (hereinafter referred to as subject product/goods) originating in/exported from European Union (EU), Japan, Singapore and United States of America (USA) (hereinafter referred to as subject countries). Provisional antidumping duties were imposed on imports of the subject goods from the subject countries vide customs notification No: 17/2002-Customs dated 11th February 2002, based on the preliminary findings of the Authority dated 14th December 2001. The final findings of the Authority were published vide notification of 19th September 2002 and definitive anti dumping duties were imposed on the subject goods from the subject countries vide notification No: 120/2002-Customs dated 31st October 2002.

3. WHEREAS on the basis of a duly substantiated application filed by M/s. Manali Petrochemicals Ltd, Chennai representing a major proportion of the domestic production of the subject product, the Authority initiated sunset review of the anti dumping duty on imports of the subject product originating from the subject countries vide notification dated 27th December 2006 under section 9A (5) of the Act, to examine whether the expiry of the duty would lead to continuation or recurrence of dumping and injury.

4. AND WHEREAS, vide Notification No: 12/2007- Customs dated 6th February 2007, the definitive duties were extended by the Central Government under Section 9A (5) for a period of one year up to 10th February 2008.

B. PROCEDURE:

5. The procedure described below has been followed:-

(i) As per sub-rule (5) of Rule 5 supra, the Authority notified the Embassies of subject countries in India about the receipt of fully documented application from the applicant before proceeding to initiate the review investigation;

(ii) In accordance with sub rule (2) of the rule 6 supra, the Authority forwarded copy of the said public notice to the known exporting producers, importers, industry associations, the Embassies of the country concerned and to the applicants and gave them an opportunity to make their views known in writing.

(iii) According to sub-rule (4) of Rule 6 supra, the Authority provided a copy of the relevant questionnaire to all the known exporters and the Embassies of subject countries in India and other interested parties.

(iv) The Embassies of subject countries in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time.

(v) The Authority sent questionnaires, to elicit relevant information, to the following known exporters from the subject countries.

❖•Shell Eastern Petroleum (Pte) Ltd., Singapore.

❖•Bayer Polyurethane Asia (Pte) Ltd., Singapore.

❖•Sanyo Chemicals, Japan.

❖•Bayer Polyurethane Asia (Pte) Ltd, Germany.

❖•Repsol Quimica, S.A., Madrid, Spain.

❖•Dow Chemicals Co., Texas, United States of America

Only two exporters from Singapore, viz., Shell Eastern Petroleum Pte Ltd and BASF South-East Asia Pte Ltd responded to the exporter's questionnaire.

(vi) A copy of initiation notification along with the importers' questionnaire was also sent to the various importers listed in the application.

- ❖ Feather Foam Enterprises Pvt. Ltd, Silvassa, Dadra & Nagar Haveli
- ❖ Natson Foam Mfg. P Ltd, Ahmedabad, Gujarat.
- ❖ Dura Foam Industries Pvt. Ltd, Silvassa, Dadra-Nagar Haveli
- ❖ Surya Foam, Pondicherry.
- ❖ DP Foam Private Ltd, Pondicherry/ Puducherry
- ❖ Kurlon Ltd, Bangalore, Karnataka.
- ❖ Aparna Polyproducts Ltd, Jaipur, Rajasthan.
- ❖ Tirupati Foams Ltd, Ahmedabad, Gujarat.
- ❖ Soft Foam Industries Pvt. Ltd, R.R District, Andhra Pradesh.
- ❖ Madras Polymoulds, Chennai, Tamil Nadu.
- ❖ Sheela Foam Private Ltd, Ghaziabad, Uttar Pradesh
- ❖ J.J. Foams Pvt. Ltd, Ghaziabad, U P
- ❖ M H Polymers Pvt, Ghaziabad, U P

However, complete response to the importers' questionnaire was received only from M/s DP Foam, Puducherry, after initial deficiencies were rectified. M/s Sheela Foam had provided a partial response without supporting documents despite request and therefore the submissions were disregarded.

(vii) Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM, Excise Law Times etc., for wider circulation.

(viii) 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 investigation.

(ix) The investigation of dumping and injury covered the period from 1st April 2005 to 30th June 2006 (Also called the period of investigation or POI). The examination of

trends in the context of injury analysis covered the period from 1st April 2002 to the end of POI (also called Injury period).

(x) The Authority sought and verified all the information it deemed necessary for the purpose of determination of dumping and resulting injury. The Authority conducted on-the-spot investigation of the domestic industry to the extent considered necessary. The cost of the production of the domestic industry was also analysed to work out the cost to produce and the cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the applicants to ascertain if anti dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

(xi) The Authority held a public hearing on 13th August 2007 to hear the interested parties orally, which was attended by representatives of the domestic industry, exporters and importers. The parties attending the public hearing were requested to file written submissions of the views expressed orally. The written submissions received have been considered by the Authority in this finding.

(xii) The essential facts of the case were disclosed to all interested parties in the form of confidential and general disclosures. Comments of the interested parties on the disclosure statement, to the extent they are relevant and supported by evidence, have been considered by the Authority.

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

C. PRODUCT UNDER CONSIDERATION AND “LIKE” ARTICLE..

6. The product under consideration in the present investigation, as defined in the original investigation, is Flexible slabstock polyol, a polymer, originating in or exported from the subject countries. The subject product is a clear viscous liquid of molecular weight 3000-4000, manufactured by polymerization of propylene oxide and ethylene oxide with a triol chain starter. It is a polyether and on reaction with catalysts and additives yields polyurethane foams used in upholstery, mattresses, pillows, bolsters, transport seating and packaging. Flexible slabstock polyol is transported in tankers or stored in steel drums. It is classified under the category “Plastics and articles thereof” in Chapter 39 of the Customs Tariff Act, 1975 and further under 3907.20 as per International Trade Classification. The classification, however, is only indicative and in no way binding on the scope of the present investigation.

7. This being a sunset review investigation, the scope of the investigation is limited to the product already identified in the original investigation. No interested party has extended any argument on the issue of the product under consideration and like article. The subject goods produced by domestic industry are used interchangeably with those imported from the subject countries, Therefore, the Authority holds that the two are “like articles” within the meaning of the Rules.

D. STANDING OF THE DOMESTIC INDUSTRY

8. The sunset review has been initiated on the basis of a duly substantiated request submitted by M/s. Manali Petrochemicals, Chennai, the sole domestic producer, on behalf of the domestic industry. Therefore, the Authority holds that M/s Manali Petrochemicals constitute the domestic industry for the purpose of the current investigation.

E. VIEWS OF THE INTERESTED PARTIES

a) On initiation

9. The European Commission had urged the termination of the investigation without extending the measures to exports from the EU, stating that the measures under review were part of 27 measures subject to DSU consultations as being in breach of WTO Rules, and a dispute settlement panel had not been requested owing to a subsequent mutual understanding with India. While most measures were no longer in place, the EC had expected the others to lapse and was disappointed at the initiation, which implied that measures not legally warranted in the first place were now being reviewed and could possibly be extended. The EC has further stated that the initiation notice confirmed removal of injury to the domestic industry and the request for review did not contain convincing evidence of likely recurrence of injury, being prompted by an assumption of surge in imports if measures were repealed. However, the Authority had noted that the domestic industry had approached it within the prescribed legal framework and regions other than the EU were involved and therefore, allowed the investigations to proceed.

10. In its submissions at the public hearing, M/s Shell Eastern Petroleum Pte Ltd (hereinafter referred to as SEPL) from Singapore objected to the initiation of the review on the ground that the domestic industry has not been able to establish a case for review and had enjoyed the protection of safeguard and anti-dumping duties for long. That the present review was discriminatory, unlawfully initiated, beyond the scope of the Customs Tariff Act (hereinafter referred to as CT Act) and should be terminated *in limine*. In response, the domestic industry held that no interested party had filed comments to initiation within the stipulated period and therefore, could not

be allowed to raise objections later to impede the investigation. This technical objection was contested by the importer, M/s DP Foam (hereinafter referred to as DPF), as neither the CT Act nor the AD Rules impose any limitation on submissions by interested parties. Besides, no provision of the AD law prevents a co-operating party from objecting or making submissions to the petition filed. In addition, SEPL has submitted that if it had been intended that legal submissions in an AD investigation should be made by a particular date, the Authority would have provided a record closing date, which was not the procedure or practise followed in India. The Authority noted that the responses by all parties had been made within the stipulated time frame.

b) On claim of excessive confidentiality by the exporters:

11. The domestic industry has submitted that the exporters from the subject countries have failed to provide meaningful summary of the response to exporter's questionnaire, the non-confidential version being incomplete & deficient and have claimed excessive confidentiality without justification. Hence, they may be considered non-cooperative by denial of individual treatment. Further, if the request for confidentiality was unwarranted and the supplier unwilling to make the information public or authorize its disclosure in generalized or summary form, such information could be disregarded. SEPL has averred that they had fully co-operated with the Authority in the said investigation and that it was the domestic industry that turned the investigation into a fishing expedition by not furnishing the requisite information at the initiation stage itself. Besides, there would be no means for the domestic industry to be privy to the contents of the confidential version of the responses as the data furnished was fiscal in nature and there was a distinction between transparency in investigation procedure and confidentiality of sensitive data.

12. The Authority however, noted that BASF South-East Asia Pte Ltd (hereinafter referred to as BSEA) subsequently provided the non-confidential versions of the lacunae in the questionnaire response indicated by the domestic industry in their written submissions which SEPL did not do, claiming that they had submitted all the required responses.

c) On production process

13. SEPL has stated that there are broadly three processes – (i) SMPO, (ii) chlorohydrin and (iii) MTBE- of producing PO and FSP, each with a different set of production and economic dynamics. Its manufacturing cost centre, Shell Chemicals Seraya Pte Ltd (hereinafter referred to as SCSL) with a nameplate capacity of 160 KT of PO, among others, uses the SMPO process which is the proprietary process of SEPL, while the domestic industry with a total installed capacity of only 24 KT PO,

uses the chlorohydrin route process, the advantages of the SMPO process over the chlorohydrin process are a more efficient conversion process, higher yields and less waste products requiring less stringent treatment. Moreover, SMPO investments are often integrated with crackers to optimize product logistics. The domestic industry has argued that SEPL was trying to mislead the Authority by stating that the SMPO process was used for manufacturing PO and FSP whereas the SMPO process was only for producing PO, not FSP, the manufacturing process for which was the same all over the world. SEPL has refuted the charge of attempting to mislead the Authority in its post-disclosure comments.

d) On relative advantages

14. SEPL has stated that their feedstock was petrochemicals and petrochemical plants in Singapore were concentrated on Jurong Island, which collectively represent an integrated, pipeline connected series of plants, assets and utilities. SEPL shared common facilities with various units on a time and effort or actual use basis, which reduced the unit cost of production and has its own jetties capable of directly loading the subject goods into ships from the island itself. Therefore, SEPL enjoyed considerable economies of scale, procurement, and logistics, pipeline integration, process infrastructure, and technology and also uses different feedstock/ raw material. The domestic industry has charged SEPL with knowingly and deliberately using SEPL and SCSL interchangeably to confuse the Authority to detract attention from the main issues, viz., that there was no response of SCSL on record as on date and they cannot state the advantages enjoyed, if any, by SCSL as of SEPL. In any case, these advantages would be duly reflected in their cost of production. SEPL has refuted these charges post-disclosure.

e) On questionnaire response

15. The domestic industry has held that in the response to the exporter's questionnaire,

(i) SEPL has indicated that the raw material - propylene oxide (PO) - used in FSP production was sourced from SCSL & Shell Seraya Pioneer Pte Ltd (SSPL), both 100% subsidiaries; further, though a separate legal entity, SCSL was treated as a fully integrated cost centre. The domestic industry has argued that it implied that the PO purchased from SCSL was taken at cost for determining cost of the subject good, instead of the arm's length or market price; similarly for ethylene oxide purchased from a related company. AD laws do not provide for considering costs of another legal entity for the "ordinary course of trade" test.

(ii) SEPL has evaded the question on the basis of pricing of inputs purchased from related supplier and evidence of (a) such price being representative of fair market price; (b) purchase prices from independent parties for identical or comparable input,

(iii) SEPL has kept confidential without reason details of financial/ contractual links and joint ventures with other companies for the product, trading arrangements on goods affecting purchase price, investments, financial accounting system and change in accounting methods over the last three financial years, useful life for production equipment, depreciation, cost centres., etc. Further, SEPL has not provided details on product coding system, inclusion of any other consideration/ relationship/ reimbursement, or compensation etc. in prices, interest costs charged to the product, accounting for by-products sold, difference in factory cost for the domestic and export markets.

(iv) Regarding captive or purchased inputs, SEPL referred to PO produced in-house by SCSL and sourced from SSPL, instead of details of its own inputs, to mislead the Authority.

(v) SEPL and BSEA have not answered the query on change in the structure of the company in the last three years including the POI or provided details of related companies engaged in the production and sales of subject goods.

(vi) BSEA has kept confidential the tolling agreement between the exporter and Seraya, names of contact persons, details of and nature of relationship with related companies supplying inputs, catalogue and brochures, flow diagram, chart, financial and cost accounting systems and change in accounting methods in last three years, useful life of production equipment, depreciation, stock valuation, etc.

(vii) In the exporter questionnaire, BSEA has often referred to SCSL's response, which has not been filed and hence, normal value should be constructed.

(viii) BSEA has not clarified paying taxes / duties on inputs purchased, transportation cost incurred on inputs, basis of pricing of captive raw material and purchased from related parties, citing inability as a tolling customer, nor has provided copies of trading, profit & loss account, balance sheet for POI & previous years.

(ix) Appendix 3 of BSEA' questionnaire response shows FSP price higher in the domestic market and to other countries compared to prices to India, clearly depicting that the goods have been dumped in India during POI and dumping would continue in case the duties are discontinued.

16. The Authority has taken note of these submissions and examined them at appropriate places in this finding, taking cognizance also of BSEA's replies to the queries pertaining to them.

f) On R&D expenses

17. SEPL has charged that the domestic industry's total expenditure on Research and Development as percentage of total turnover was merely 0.18% as evident from their Annual Report, 2005-06 and they were not even attempting to increase competitiveness by investing in better technology, infrastructure etc., instead relying upon the protection of AD duty being levied on foreign competitors. The domestic industry has stated that the level of expenses on R & D was an irrelevant factor in an AD investigation and a bare statement had been made without providing any material on record on its relevance factor. Besides, the technology adopted by the domestic industry for the manufacture of FSP was comparable with any other producer in the world.

F. CONTINUATION OF DUMPING.

18. Under Section 9A (1) (c) of the Customs Tariff Act 1975,

“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);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.”

19. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only two exporters from Singapore responded.

F.1 Normal value determination for EU, Japan, Singapore and USA

F1.1 Views of the interested parties

20. The domestic industry has constructed the normal value based on the cost of production in India, including selling, general and administrative expenses (SGA) and reasonable profit, citing inability to obtain documentary evidence or reliable information on home market prices of the product in the subject countries and the non-availability of such information in the public domain. They have claimed that dumping has not ceased from the sources on which anti-dumping duties were imposed initially and if the duties were revoked, the impact of dumping would be more serious. That the exporters from the subject countries had indulged in dumping in the years prior to the POI, without any change in their pricing behaviour and would continue to do so in future also.

21. SEPL has denied the allegation of dumping, stating that it exported significant quantities of the subject product in the Asia-Pacific and other regions including India and also sold in the domestic market; that imports at lower prices did not per se indicate dumping; that their questionnaire response substantiated that FSP production cost was significantly lower than the constructed value alleged of US \$ 2174 PMT due to SCSL's world class plant which has superior technology and higher scale economies with seven times higher nameplate capacity compared to the domestic industry; that the Authority must take cognizance of their data; and calculate normal value based on the domestic sales price and the manufacturing costs, not constructed normal value.

22. Like-wise, BSEA has claimed that their average CIF price to India was above the average ICIS price during the POI and the average CIF price reported in the petition filed by the domestic industry. The domestic industry has discounted this claim, stating that BSEA has not provided any supporting evidence that its prices were above the average ICIS price and that the export price was to be compared with the domestic prices of the exporter to arrive at the dumping margin, not prices reported elsewhere.

Besides, for the determination of normal value, the response of the manufacturer producing the subject goods ought to have been filed with the Authority but there is no response of SCSL (reported to be the producer of FSP for BSEA). In such a case, normal value of the exporter cannot be determined, but has to be constructed.

23. BSEA has further stated that the landed value for the subject goods was above the reference price fixed and there was no reason why exporters would apply lower prices if the existing measures were withdrawn considering they have managed to sustain much higher prices before, enclosing an EC case to support their contention. The domestic industry has argued that the landed value for the subject goods has increased due to the direct increase in the raw material prices and even so, was still lower than the increase in the total cost and the imports are still coming at dumped prices. Further, the facts of the EC case were different and the comparison did not hold good

24. DPF has submitted that there was no basis to assume that the pricing behaviour of the exporters have not changed when there was a significant difference between the landed value of imports and the reference price during the POI. If the allegation of the domestic industry were true, the exporters would be exporting at the reference price or below to ensure that domestic industry was forced to lower their prices, which was clearly not the case. DPF has further submitted that if exporters from the subject countries failed to cooperate in the sunset review investigation and the Authority records its findings on best judgment assessment, the Authority ought to adopt the lower of the sale price of the subject goods in the exporting country, the export price of the subject goods to third countries, and the constructed normal value in determining the normal value, because of the monopolistic nature of the domestic industry. The domestic industry has debunked this submission, stating that the legal justification for taking such an approach for the determination of normal value has not been given.

25. The importer has further said that the demand for the subject goods during the POI was about 30,000 MT, increasing at approximately 15% per annum. Even though the domestic industry licensed capacity was 37,000 MT, its installed capacity was 14,000 MT, of which it also produced other polyols. Hence, it did not have the capacity to meet the demand and even at 100% capacity utilization, would not be able to meet even 50% of the demand. Besides, the domestic industry has failed to increase its capacity proportionate to increase in demand, seeking to use its monopolistic status and safeguard & AD duties to earn undue profits at the expense of the small-scale industries (SSI) in the country, which are the end-users of the subject goods. Thus, the shortfall in demand has to be met by imports. If AD duties are very high due to a high dumping margin, the SSIs that use the subject goods as raw material would suffer grave injury.

26. The domestic industry has responded that the current annual capacity of their polyol plant of 15500 MT could be enhanced to 23000 MT per annum by process modifications if assured of a reasonable selling price for their products. Presently they could not even fully utilize current capacity. Besides, there was no legal reason to suggest that AD duties could not be imposed if the domestic industry cannot fulfill the entire demand in the country. FSP imports from subject countries have increased because of severe dumping, not due to increase in domestic demand. If the imports had been at non-dumped prices, the industry also would have realized fair prices for the subject goods.

F.2 Examination by the Authority

27. The Authority has taken note of the arguments and counter-arguments of the interested parties and the issues have been addressed in appropriate places in the findings.

Section 9A (5) of the CT Act provides that the Authority, in a sunset review, is required to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. Hence, the issues before the Authority are to examine

- ❖ Whether dumping is likely to continue or recur, if definitive duties are removed or allowed to expire;
- ❖ Whether injury to the domestic industry is likely to continue or recur, if definitive duties are allowed to expire or are removed.

The issues have been examined in the ensuing paragraphs.

F.2.1 Normal Value & Export Price

28. The Authority noted that no exporter from the subject countries except SEPL and BSEA from Singapore provided information or co-operated in the investigation to enable the determination of normal value and export price of the subject goods from the subject countries. Therefore, the Authority has determined that the dumping margin for the non-co-operating exporters from the subject countries on the basis of facts available in terms of Rule 6 (8) of AD Rules read with Article 6.8 of the Agreement. The average exchange rate adopted for the purpose of this investigation for the POI was Rs 44.62 per \$.

F.2.1.1 Normal value for USA

29. The Authority has constructed the normal value based on the cost of production, conversion costs and selling, general & administrative expenses of the domestic industry in India together with a reasonable margin of profit. The normal value so constructed is Rs. *** or \$ *** per MT.

F.2.1.2 Normal value for Japan

30. The Authority notes that as per the transaction-wise data from DGCIS, there were no imports from Japan in the POI and in the base year, while in the interim years, the imports were de-minimis. Therefore, no dumping margin has been computed for Japan.

F.2.1.3 Normal value for European Union

31. The Authority has constructed the normal value based on the cost of production, conversion costs and selling, general & administrative expenses of the domestic industry in India together with a reasonable margin of profit. The constructed normal value is Rs. *** or \$ *** per MT.

F.2.1.4 Normal value for Singapore

32. The data submitted by co-operating exporters to this investigation were verified in accordance with the Rules and reports of such verification carried out by the Authority were made available to the exporters for their comments. The dumping margins in respect of these exporters have been worked out based on the verified data taking into account the comments of the exporters to the verification reports to the extent they are relevant and valid.

33. The Authority notes that the Hon'ble Supreme Court of India, in the Civil Appeal No. 1294 of 2001, M/s RIL Vs Designated Authority & Others, has held that normal value is not exporter-specific but exporting country-specific.

34. In its post disclosure comments, the domestic industry has submitted that the computation of a single weighted average normal value is not for cooperating exporters and that individual normal value is required to be determined for each such exporter, which is contrary to the Supreme Court order in the case. The Authority notes that due to different conditions of sales in the domestic market by the cooperating exporters, the weighted average normal value in the country of exports gives a significantly distorted result. However, in pursuance of the Supreme Court Judgment in the afore mentioned case, the normal value of the subject goods for the subject countries have been determined, first for the individual co-operating exporters and then a single weighted average normal value has been worked out for the product

under consideration for the exporting country as a whole based on the normal values determined for the co-operating exporters

Salient features of the exporter verification

A. SEPL

35. SEPL is a private limited company incorporated and registered in Singapore and a manufacturer of the subject product and other products. SEPL's FSP plants are located in Singapore and operated by SCSL, SEPL's production facility, which was originally established as a joint venture between Shell & Mitsubishi and later transformed into a 100% subsidiary. Although a separate legal entity, SCSL is treated as a fully integrated cost centre within the statutory accounts and as a single tax entity with SEPL. It is a manufacturing cost centre that produces among others, PO, the whole of which, sold at cost to SEPL, is used in the production of FSP and other products. The name plate capacities for PO are ***, and for FSP *** per annum.

36. SSPL is another 100% subsidiary of SEPL established in 2002, which is principally involved in sale of PO. It is also a separate legal entity and sells PO to other customers. In addition, in a 50% partnership with BASF, SSPL has constituted another separate legal entity named ELLBA, having annual production of *** of PO. ELLBA is treated as a cost centre, the principal activity consisting of production and sale of PO to its shareholders at cost.

37. SEPL purchases and imports propylene feed-stock from different sources, converting it into propylene oxide, the purchase price in the POI ranging between US\$ *** - \$ *** PMT. The PO consumed is from SCSL, SSPL and BSEA, the main supplies being from SCSL and SSPL and the top-up supplies from BSEA. SEPL has a tolling arrangement with BSEA, whereby PO received from the latter is converted into polyols and supplied back to BSEA from its ELLBA plant. Hence, the weighted average price of PO has been charged to cost of production. In its various submissions, the domestic industry has reiterated that the PO should be taken at the market price and not at cost. As SCSL is a fully integrated cost centre of SEPL, there is no rationale to charge PO at market price

38. FSP is produced by SEPL by reaction of PO and depending on the grade, EO with Glycerin as an initiator. The main raw material, PO, represents about 90% by weight of the subject product, EO and glycerine, jointly constituting about 10% of weight. EO is supplied via pipeline by Ethylene Glycol Singapore (EGS), a joint venture of SEPL, while glycerine is supplied in bulk shipments from Malaysia, with minimal logistics costs. SEPL also produces three other grades of polyols, though primary

production is of the subject product, which, among others, is sold in domestic and export markets including India. The cost of production was verified as US\$ ***.

39. Transaction wise details of sales of Polyol SC 56-02 in the domestic market showed that these sales were *** MT. Sales to BSEA, kept outside the ambit of domestic transactions, being under a tolling agreement, were *** MT during the POI. The sales have been at varying prices. Sales to Bayer, which was neither a subsidiary nor a related company, are at comparatively lower rates as a comparatively larger buyer. For other customers, prices charged depended on the market. All domestic sales of the company were above cost of production and average selling price of these transactions comes to US\$ *** PMT. The adjustments on domestic sales claimed towards inland freight, storage, notional credit cost, surveyor and mooring fees have been allowed after verification. Net of adjustments, the weighted average ex factory normal value comes to US\$ *** PMT.

Domestic sales	Unit Sale price	Adjustments	Ex-factory NV
In MT	\$ PMT	\$ PMT	\$ PMT
***	***	***	***

B. BSEA

40. BSEA is a part of the BASF group of companies, with the global headquarters at Brussels coordinating regional business units, a global R & D centre at Ludwigshafen, Asian region marketing & technology headquarters at Hong Kong and local sales offices in each country. The cost-sharing arrangements are handled by the global entities. BSEA as a manufacturing company covers the finance and supply chain management functions.

41. BSEA did not have its own FSP manufacturing facility. Propylene is purchased by ELLBA which is a 50-50 joint venture of Shell & BASF and converted into PO. The suppliers bore no legal relation to BASF and propylene is purchased from local as well as overseas suppliers at prevailing market conditions partly on spot basis. BSEA had signed a tolling arrangement with SCSL effective from 2002, whereby BSEA would supply PO to SCSL, which would produce FSP and invoice back the same to BSEA. BSEA could source an increasing amount of FSP, till a final plateau of annual volume was reached, subject to a tolling fee, covering all actual cost and an appropriate rate of return. The arrangement could be terminated 7 years after commencement of the first FSP supply. BSEA sells this finished product as per its own marketing arrangements and under a different brand name. Both SEPL and BSEA are two separate legal entities and have nothing in common except this arrangement.

42. Analysis of domestic sales showed that BSEA has sold *** MT in Singapore at profit and exported *** MT to India during the POI, exports to India commencing from Feb 2004 in drums. The domestic sales represent approximately ***% of their exports to India. BSEA utilised the services of a warehousing company, and paid a fee for their services.

43. Thus, BSEA's cost of production reflects the cost of PO, tolling fees for converting PO to FSP, cost of variable and fixed manufacturing overheads, return on investment, and the cost of shipping. SGA expenses which included the percentage share of their marketing offices at Hong Kong and administrative office at Brussels, were added. The ex-factory normal value, after adjusting for inland freight, packing cost and lifting fees, is as below.

Domestic sales	Unit Sale price	Adjustments	Ex-factory NV
In MT	\$ PMT	\$ PMT	\$ PMT
***	***	***	***

44. In pursuance of the apex court’s ruling in CA No. 1294/2001 that normal value is exporting country-specific, a single weighted average normal value for the subject product for Singapore as a whole was worked out, based on the normal values of the cooperating exporters. This normal value has been compared with the export price for the individual exporters to determine individual dumping margins of the exporters. The normal value so determined is \$ *** or Rs. *** per MT.

	SEPL	BSEA	Weighted average
Normal Value	***	***	***

F.3 Export Price

45. For the non-cooperating exporters from the subject countries, the Authority has taken the official price for calculation of dumping margin and price undercutting. A weighted average export price to India has been determined for the subject product. Adjustments like freight, insurance, commission and handling expenses have been conservatively allowed. In its post-disclosure comments, the domestic industry has submitted that for non-cooperating exporters, the lowest export price and not the weighted average export price ought to be taken by the Authority. However, for non-co-operating countries, the Authority has adopted as a consistent practice, the weighted average export price, to avoid zeroing of transactions.

F.3.1 Export Price for USA

46. The weighted average export price has been taken as US *** per MT and after adjustments, the ex-factory export price comes to \$ *** per MT.

F.3.2 Export Price for European Union

47. The weighted average export price has been taken as US \$ *** per MT and after adjustments, the ex-factory export price comes to \$ *** per MT.

F.3.3 Export Price for Singapore

48. The Authority had verified the data on exports sales of the co-operating exporters from Singapore and has determined the export price as below:

A. SEPL

49. SEPL had exported FSP to several countries in the POI. Third country exports (excluding India) constituted *** MT in the POI, while those to India were *** MT, or 3.3% of total exports. *** MT were exported by bulk containers through road/sea, *** MT by bulk tankers and *** MT by packed containers through road & sea. The adjustments as per the different modes of transportation, rebate/ commission, notional credit cost, inland cross harbour, outbound and overseas freight, charges towards shipping, insurance, port, storage and nitrogen inerting, surveyor and

mooring fees and packing costs were checked. The per unit ex-factory export price was calculated for different modes and the weighted average export price after adjustment works out to US\$ *** per MT at the ex-factory level.

Particulars	\$ PMT
Export Price	***
Less adjustments	***
Ex-factory Export Price	***

B. BSEA

50. BSEA, being a trader in the subject goods, the unit export price was adjusted for packing charges, lifting fees, freight and inland transport the per unit ex-factory price calculation is given as below:

	\$ PMT
Export Price	***
Less adjustments	***
Ex-factory Price	***

C. Other exporters from Singapore

51. For the other exporters, the lowest export price of SEPL, duly adjusted was taken as the ex-factory export price.

F.4 Dumping margin

F.4.1 Dumping margin for USA

52. The Authority has worked out the dumping margin by making a comparison between the normal value and export prices at ex-factory level, based on the constructed normal value and the lowest export price determined for the product. The dumping margin is \$ *** per MT or 18,96 %, which is significant.

F.4.2 Dumping margin for European Union

53. The Authority has worked out the dumping margin by making a comparison between the normal value and export prices at ex-factory level, based on the constructed normal value and the lowest export price determined for the product. The dumping margin is \$ *** per MT or 0,40 %.

F.4.3 Dumping margin for Singapore

54. The Authority has worked out the dumping margin by making a comparison between the weighted average normal value and export prices at ex-factory level. For the co-operating exporters, the dumping margin is negative. The Authority noted that the negative dumping margin of BSEA resulted from the Court's ruling that normal value should be exporting country-specific, not exporter-specific. For others, the dumping margin has

been determined as the difference between the weighted average normal value and the lowest export price of the co-operating exporter after adjustments. The dumping margin is thus \$ *** per MT or 0.45%.

F.5 Dumping margin : Summary

Product	Country	Exporter	Dumping margin	Dumping margin %	
			\$ PMT		
Flexible slabstock polyol of MW 3000-4000	USA	All	***	18.96%	
	Japan		No exports in the POI		
		SEPL	***	-5.39%	
		Singapore	BSEA	***	-6.19%
			Others	***	0.45%
		EU	All	***	0.40%

55. The dumping margin from USA is significant. Dumping margins during the POI for Singapore and the EU were found to be either negative or marginal. There is no export from Japan in the POI and therefore, current dumping margin from this country could not be determined. However, the Authority notes that in a sunset review, current dumping margin is not a material fact and what is required to be examined is the likelihood of recurrence in the event of no dumping during the investigation period.

G. INJURY AND CAUSAL LINK: CONTINUATION OF INJURY

56. 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.....”

57. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of both (a) the volume of the 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. Annexure-II (ii) of the Rules provides as under:-

(ii). “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 ...the designated authority shall consider whether there has been significant price undercutting by the dumped imports as compared with

the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree.

Annexure II to the Rules further provide that

“(iv). The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

G.1 Views of interested parties

58. The domestic industry has argued in a sunset review, injury analysis is required to be made by analysing the likely impact on the domestic industry if anti dumping duties are not extended. The situation of the domestic industry had improved after imposition of AD duty indicating that the duties have been effective but the effect was not to the desired effect as the exporters have continued to indulge in injurious dumping and the injury to the industry would continue if duties are not extended.

59. The other interested parties have argued that the domestic industry had improved its performance and suffered no injury at the moment and injury, if any, was due to their own inefficiencies and cannot be attributed to the imports from these sources. According to the petition itself, many of the injury indices indicated improvement or had a marginal decline, leading *a priori* to the conclusion that it was not dumping that caused injury to the domestic industry. The domestic industry has argued that the focus in a sunset review was on the likelihood of dumping and injury and hence even if there is no dumping, it was of no consequence for the ‘likelihood’ test.

G.2 Examination by the Authority

60. The Authority has taken note of the arguments raised by the various parties in their submissions and the issue of likelihood of recurrence of dumping and injury to the domestic industry has been examined in the light of these arguments made before the Authority.

61. The Authority noted that this was a sunset review of the measure already in force and examined the issue of cumulative assessment of injury to the domestic industry on account of simultaneous dumping from the subject countries, in terms of Annexure II (iii) of the AD Rules and holds that the conditions specified in the said Rules are satisfied in this case for cumulative assessment, except for imports from Japan.

62 For the purpose of injury analysis, the Authority has examined the volume and price effects of dumped imports on the subject goods on the domestic industry and its effect on the prices and profitability. To examine the existence of injury and causal links between dumping and injury, if any, since a positive dumping margin has been established for the exports from the subject countries, the entire exports has been treated as dumped imports for the purpose of injury analysis and causal link examination.

A. Volume effect of dumped imports and impact on domestic industry

Import statistics

63. Transaction-wise data from DGCI&S show that the subject product imports has been reported under customs classifications 39072000, 39072010 and 39072090. Since the product description is only indicative, all imports of subject goods irrespective of their classification have been included for the purpose of determination of volume, value and average import price. As the exporters from Singapore have provided data on their exports to India, which are higher in volume and value as compared to DGCIS data for the POI, this data has been adopted for the POI and shown in the column POI.2. The bulk of the product imports are from the subject countries at present, as below:-

<i>FSP Imports</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI 1</i>	<i>POI 2</i>
Total product imports					
Qty (MT)	9531.36	10491.80	12992.14	13795.06	15249.18
Value (Rs lacs)	4190.60	5514.14	9086.87	11377.88	12262.62
Price/MT	43966	52557	69941	(82478)	80415
Imports from subject countries					
Qty (MT)	586.62	3258.96	6101.00	9622.13	11076.25
Value (Rs lacs)	346.38	1845.03	4163.56	7945.08	8829.83
Price/MT	59048	56614	68244	82571	79719
Share in total imports	6.15	31.06	46.96	(69.75)	72.64
Imports from other countries					
Qty (MT)	8946.01	7232.84	6891.14	4172.93	
Value (Rs lacs)	3844.78	3669.11	4923.31	3432.80	
Price/MT	42978	50729	71444	82264	

Note: POI 1: DGCIS data; POI 2 : exporters data.

64. The Authority noted that from a mere 6% of total product imports in 2002-03, the subject countries' imports increased to 31%, 47% and 73% respectively in the years thereafter, registering an extremely rapid growth. Anti-dumping duty is in place on imports from countries not included in the scope of the current investigation, viz., Brazil, Korea, China PR and Chinese Taipei. The share of these countries including those not dumping was 94% of total imports in 2002-03 and declined to 27% in the POI. As per DGCIS data, the average CIF price of imports from other countries was lower than those from the subject countries by a considerable margin in the first two years of the injury period and was higher only in 2004-05. In the POI, though the rate of imports from other countries were lower compared to subject countries, the margin of difference was insignificant. On the other hand, the data based on exporters' information showed that in the POI, the unit rate was lower in the case of subject country imports.

65. Subject country imports have been de-segregated and individual country details are as below:

<i>Imports</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI 1</i>	<i>POI 2</i>
Imports from EU					
Qty (MT)	390.36	420.00	332.43	1418.17	No response
Value (Rs lacs)	256.70	267.12	267.79	1175.23	

Price/MT	65759	63600	80556	82870	
Share in dumped imports	66.54	12.89	5.45		12.80
Share in total imports	4.10	4.00	2.56		9.30
Imports from Japan					
Qty (MT)		5.82	32.00		
Value (Rs lacs)		3.31	20.53		No response
Price/MT		56816	64161		
Share in dumped imports		0.18	0.52		
Share in total imports		0.06	0.25		
Imports from Singapore					
Qty (MT)	196.26	2781.14	2159.47	4434.00	5888.12
Value (Rs lacs)	89.69	1542.96	1441.38	3696.34	4581.08
Price/MT	45699	55479	66747	83364	77802
Share in dumped imports	33.46	85.34	35.40		53.16
Share in total imports	2.06	26.51	16.62		38.61
Imports from USA					
Qty (MT)		52.00	3577.10	3769.96	
Value (Rs lacs)		31.64	2433.85	3073.51	No response
Price/MT		60848	68040	81526	
Share in dumped imports		1.60	58.63		34.04
Share in total imports		0.50	27.53		24.72

Note: POI 1: DGCIS data; POI 2 : exporters data.

66. The Authority noted the following:

❖ The share of EU which was the highest in the base year at 66.5% of total subject country imports fell to 6% in 2004-05 but rose to about 13% in the POI. As percentage of total imports, EU imports which were 4.1% in 2002-03, dropped to 2.56% in 2004-05 and grew again to 9.30% in the POI.

❖ Imports from Japan were nil in 2002-03 and the POI and insignificant in the interim.

❖ Imports from Singapore had constituted a high percentage of 85% in 2003-04, but in the POI was 53%. Its share in total imports increased 10-fold from the base year in 2003-04, fell to 16% in 2004-05 and increased to 39% in the POI.

❖ Imports from USA - merely 1.6% in 2003-04 - registered an increase to 59% in 2004-05 and in the POI, was 34% of dumped imports. As percentage of total imports, USA constituted about 25% in the POI.

67. In the following analysis, DGCI&S transaction data is utilised to assess volume of imports and domestic demand except for the POI, where exporters' data has been used. However, imports from Japan are excluded.

a) Import volumes

68. With regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

69. For the calculation of the domestic consumption/demand of the subject goods, the Authority added the sales volume of the domestic industry to the total imports into India.

<i>Parameter (in MT)</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
Total Imports	9531	10492	12992	12199
Indexed	100	110	136	128
Imports from subject countries	587	3253	6069	8861
Indexed	100	555	1039	1510
Sales of Domestic industry	***	***	***	***
Indexed	100	124	114	125
Domestic demand	***	***	***	***
Indexed	100	116	126	126
Domestic production	***	***	***	***

Note: 1: Annualised on pro rata basis

Source: Domestic industry, DGCIS.

70. The Authority noted that domestic demand (indexed) grew by 126 over the injury period, compared to 125 in the domestic sales and of 128 in total imports, while subject countries imports recorded a 14-fold rise over the same period. Further, while total imports dipped in the POI compared to 2004-05, domestic demand remained stable in the last two years of the injury period and subject country imports maintained a consistent uptrend all along. Domestic sales fell in 2004-05, but recaptured the lost momentum in the POI, even though demand remained at the same level in the two years.

b) Actual and potential effect on sales and market share of the domestic industry:

<i>Percentage share</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI1</i>
In domestic demand				
a) Subject countries imports	***	***	***	***
Indexed	100	476	822	1194
b) other imports	***	***	***	***
Indexed	100	69	62	30
c) total imports	***	***	***	***
Indexed	100	95	108	101
d) domestic industry	***	***	***	***
Indexed	100	106	90	99
Dumped imports/DI production (%)	7.44	32.34	59.32	89.13

Note: 1 : Annualised on pro rata basis

Source: Domestic industry, DGCI&S.

71. The Authority noted that the share of domestic industry in demand fell marginally by 0.6% from 46.7% in 2002-03 to about 46.1% in the POI, while total imports increased correspondingly. The market share of other country imports declined from 50% to 14.8% over the injury period, which decline was absorbed by imports from the subject countries in total. Consequently, though the volume of the subject country imports increased manifold from the base year, as a percentage of domestic demand, the increase in “dumped imports” crowded out other country imports and not so much the domestic industry.

c) Actual and potential effects on capacity, output and capacity utilization of the domestic industry

72. The performance of the domestic industry has been examined with reference to its capacity, output, capacity utilization and impact of dumped imports on these parameters, if any.

<i>Parameter</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI1</i>
Capacity	11250	11250	11250	11250
Production	***	***	***	***
Indexed	100	128	130	126
Capacity Utilization (%)	***	***	***	***
Indexed	100	128	130	126
Domestic Demand (MT)	***	***	***	***
Indexed	100	116	126	126

Note: 1 : Annualised on pro rata basis

Source: Domestic industry.

73. The Authority noted that though the demand increased over the injury period, the domestic industry's installed capacity remained unaltered. Capacity utilisation (indexed) declined in the POI marginally by 4 after increasing to 130 in 2004-05, reflecting the trend in production. Despite the decline, capacity utilisation during the injury period rose by 18% from the base year. The Authority noted the domestic production was about half the domestic demand so that imports are necessary to meet the shortfall in supply.

B. Price effect of dumped imports

74. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

75. For the purpose of this analysis, the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed price of imports from the subject countries to examine whether there has been significant price under-cutting or under-selling by the dumped imports compared with the price of the like product in India or whether such imports have depressed the prices or prevented price increases that otherwise would have occurred to a significant degree.

76. Price under-cutting has been determined by comparing the landed value of dumped imports, with the weighted average ex-factory NSR of the domestic industry, where the rebates, discounts, commissions offered and the excise duties paid have been excluded. For price under-selling analysis, the landed value of dumped imports was compared with the NIP of the subject goods, determined by taking into account verified cost and SGA expenses of the industry, together with a reasonable profit margin. To examine the price suppression and depression effects, the trend of NSR of the domestic industry has been compared with the cost of sales.

<i>Parameter (Rs. /MT)</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05</i>	<i>POI</i>
Landed Price	77530	68616	82738	92191
Indexed	100	89	107	119
Net Sales Realization of Domestic industry	***	***	***	***
Indexed	100	103	125	136
Cost of sales	***	***	***	***
Indexed	100	94	102	112
Price undercutting ¹	***	***	***	***
Price undercutting %	(15-20)%	(0-5)%	(0-5)%	(0-5)%
Non-Injurious Price				***
Price Underselling ²				***
Price Underselling %				15-20%

Note: 1. NSR minus landed price of imports; 2 NIP minus landed value

Source: Domestic industry, DGCIS.

77. The Authority noted that on a cumulative basis, the indexed landed value of the subject country imports increased by 119 since 2002-03, and of NSR increased by 136. In each year of the investigation period, the landed value was higher than the NSR so that there is no price undercutting. Post disclosure, the domestic industry has submitted that cumulative price undercutting analysis would be misleading and individual

transactions were to be compared to the domestic price to judge price undercutting. However, the Authority noted that where imports from a number of countries are being simultaneously investigated, injury and causal link analyses are cumulatively assessed. Further, the Authority observed that except in 2003-04, the landed value has remained above the cost of sales, too and the trends in landed price and cost of sales of the domestic industry moved in the same direction. The NIP for the domestic industry has been determined at Rs *** per MT in the POI following the Supreme Court orders in CA No: 1294/ 2001 against a landed value of Rs. 92191, so that price under-selling is about 15-20%. The domestic industry's own figure of desirable selling price is Rs. **. At this price, total price underselling would be only 0-3%. Further, the NSR (indexed) increased by 136 compared to 112 in the cost of sales, so that there is no price depression. Moreover though NSR was below cost of sales in the first two years of the injury period, there was a turn around in the next two years so that there is no price suppression either.

G.3 Examination of other injury factors

78. Some of the injury factors i.e. actual and potential decline capacity, production, capacity utilization, sales and market shares; were examined in the previous section along with actual and potential increase in volume of imports and it was noted that

❖ Production of the domestic industry decreased marginally in the POI after showing significant increase upto 2004-05.

❖ Capacity utilization fell by 3% in the POI.

❖ Sales of the domestic industry increased substantially in the POI, after a fall in 2004-05, though demand remained at the same level.

a) Actual and potential effects on profits

79. Profitability position of the domestic industry has been as under:

Parameter (in Rs. Lakhs)	2002-03	2003-04	2004-05	POI
Cost of Sales of the DI	***	***	***	***
Sales realization of the DI	***	***	***	***
Profit/Loss (Rs./MT),2	***	***	***	***
Indexed	(100)	(31)	49	44
Profit/Loss on Domestic sales	***	***	***	***
Indexed	(100)	(39)	56	55
Interest	***	***	***	***
Indexed	100	94	62	10
PBIT	***	***	***	***
Indexed	(100)	(70)	175	182

Note: 1: Annualised on pro rata basis

2. Sales Realization – Cost of Sales

Source: Domestic industry.

80. Though the cost of sales had been higher than the sales realization in the first two years of the injury period, 2004-05 saw a total turnaround in the performance of the domestic industry as reflected in rising profits.

b) Actual and potential effects on employment and wages

81. Employment level of the domestic industry has been as under:

Parameter	2002-03	2003-04	2004-05	POI
Employees (No.)	***	***	***	***
Wages (Rs. Lakhs)	***	***	***	***
Indexed	100	102	106	110

Note: 1 : Annualised on pro rata basis

Source: Domestic industry.

The Authority noted that employment levels for the production of the subject product remained stable from 2002-03, but as the domestic industry was multi-product, employment levels per se may not be a conclusive indicator of injury. Wages, too, had increased in absolute terms. Therefore, this parameter is not a cause of injury to the domestic industry.

c) Actual and potential effects on productivity

82. The Authority noted that per employee productivity and sales increased till 2004-05. There was a marginal drop in productivity in the POI due to fall in production.

Parameter	2002-03	2003-04	2004-05	POI
Productivity per Employee	***	***	***	***
Indexed	100	128	130	126
Sales per Employee (in Rs)	***	***	***	***
Indexed	100	120	142	170

Note: 1 : Annualised on pro rata basis

Source: Domestic industry.

d) Actual and potential effects on cash flow, profits and return on investment

83. As the domestic industry was a multi product company, examination of cash flow of the entire company may not be appropriate for the injury purposes. The Authority therefore, has examined cash profit situation of the domestic industry, capital employed and return on investments.

Parameter (in Rs. Lakhs)	2002-03	2003-04	2004-05	POI
PBT	***	***	***	***

Indexed	(100)	(39)	56	55
Depreciation	***	***	***	***
Cash profit	***	***	***	***
Indexed	(100)	(27.9)	79	79
PBIT	***	***	***	***
Indexed	(100)	(70)	75	82
Capital Employed.	***	***	***	***
Indexed	100	96	92	79
Return on capital employed.(%)	***	***	***	***
Indexed	(100)	(31)	82	66

Note: 1 : Annualised on pro rata basis

Source: Domestic industry.

84. PBT, PBIT and cash profit improved from a position of loss to a situation of profits in 2004-05, which continued in the POI on a lesser scale. Likewise, return on capital employed (% , indexed) increased to 182 in 2004-05 and fell to 166 in the POI.

e) Inventories

85. Inventories position with the domestic industry has been as under:

Parameter (in MT)	2002-03	2003-04	2004-05	POI
Average stock of inventory	***	***	***	***
Indexed	100	53	76	69
As % of sales	9.98	4.25	6.63	4.42

Note: 1 : Annualised on pro rata basis

Source: Domestic industry.

The Authority noted that average inventories have declined in the POI from the base year, both in absolute terms and as a percentage of sales.

f) Ability to raise capital

86. No evidence has been placed before the Authority to substantiate that the domestic industry has been facing problems with regards to the ability to raise capital.

g) Growth

87. The Authority notes that the growth in demand and the improvement in the performance of the domestic industry in terms of parameters, such as production, sales, profits, cash flow and return on investments from the base year to the POI.

h) Degree of dumping margin

88. The Authority notes that dumping margins from the subject countries, as an indicator of injury, are found to be significant in the case of USA only.

G.4 Overall assessment

89. The above analysis of the factors shows that despite the large volume of imports, the domestic industry has been able to maintain its share in the market and has not suffered injury over the relevant period since a majority of the parameters have shown improvement over the base year. There is no price undercutting, price suppression or price depression caused by subject country imports, but price underselling of 19% is seen.

G.5 Conclusions on injury

90. The Authority noted that the volume effect of subject country imports has been relatively insignificant despite their increase in absolute terms and the price effect is restricted to price under-selling. Most parameters of the domestic industry do not reflect injury. Therefore, the Authority concludes that the domestic industry has not continued to suffer material injury.

H. CAUSAL LINK

H.1 Views of interested parties

91. The interested parties have claimed that a causal link had to exist between the material injury suffered by the Indian industry and dumped imports, which was completely absent from an analysis of the annual reports. The domestic industry has brushed aside this submission, stating that the annual reports of the company contained details for all the products as a whole, including the subject goods, so that any analysis based thereon would not be appropriate. Moreover, the causal link analysis was inconsequential in a sunset review as it had been established in the original investigation and was not required to be revisited.

92. On issues of non-attribution, the mandatory factors have been examined as follows:

❖ **Contraction in Demand:** - Demand for the subject goods has increased during the injury period and was stable in the POI.

❖ **Pattern of consumption:** - No significant change in the pattern of consumption has been alleged by any interested party.

❖ **Imports from other countries:** - Total subject product imports originating in countries other than the subject countries are declining, and they have been replaced by increasing imports from the subject country.

❖ **Conditions of competition:** - The goods are freely importable. The petitioner is the only producer of the subject goods.

❖ **Developments in technology:** - Interested parties have argued that the technology used by the domestic industry is old and inefficient, but the industry has refuted this, stating that the manufacturing technology was the same world over.

❖ **Others:** It has been alleged that the domestic industry suffers from location disadvantage, situated in a water-scarce region, whereas the subject product was water intensive.

H.2 Factors establishing causal link

93. Examination of the performance of the domestic industry over the injury period shows that the performance has not been affected due to dumped imports from the subject countries. Despite the increase in the volume of dumped imports by over 35% from the base year, the market share of the domestic industry has declined only by 0.6% over the injury period. The increase in demand has been met by imports, but subject country imports have crowded out imports from other countries. There is no price under-cutting, but price under-selling is about 19%. Domestic sales have increased. Production and therefore, capacity utilization has declined marginally. Resultantly, profits, cash flow and return on investment of the domestic industry deteriorated fractionally in the POI after showing consistent improvement.

94. The above non-attribution analysis shows that the dumped imports from the subject countries, through their volume and price effects, have not caused significant injury to the domestic industry. The Authority, therefore, concludes that the injury caused to the domestic industry on account of imports from the subject countries is insignificant and immaterial.

I. MAGNITUDE OF INJURY AND INJURY MARGIN

I.1 Views of the interested parties

95. The domestic industry has requested the Authority to keep in mind the decision of the Supreme Court in M/s RIL. Vs. DA {2006 (202) E.L.T. 23 (S.C.)}, to determine the non-injurious price based on the transfer price (market value) of the captive inputs. DPF has held that on the contrary, the Authority ought to take into account the actual cost of the captive inputs, as reflected in the accounts of the domestic industry and verified by the Authority, in determining the NIP. That the reliance placed on the judgment was misplaced, as in holding that the market price of the inputs ought to be taken, the reasoning of the Court had been based on there being only one NIP determined for the domestic industry as a whole, and more than one constituent of the domestic industry, so that the others would be discriminated if transfer price was taken in the case of one constituent and cost of inputs for the other constituents producing the input captive. But as the petitioner was the sole manufacturer of the subject product, there could not be a case of discrimination among domestic industry constituents. Hence, the NIP had to be determined for the petitioner alone.

96. However, the Authority has determined the NIP taking into account the cost of production and other associated costs of the domestic industry during the POI as per the principles laid down in the aforesaid judgment, which works out to Rs *** per MT. The injury margin from the subject countries work out as below:

Injury margin (Rs. / MT)

Non-Injurious price		Landed value	Injury Margin	IM %
	USA	94281	***	15-20%
	EU	95834	***	15-20%
	Singapore			
	SEPL	***	***	27-33%
***	BSEA	***	***	27-33%
	Others	***	***	30-35%

Japan	No exports in the POI		
Total	92191	***	18-23%

J. LIKELIHOOD OF CONTINUATION OF DUMPING AND INJURY

97. Section 9A of the Act requires the Designated Authority, in an expiry review, to examine whether cessation of the duty would lead to continuation or recurrence of dumping and injury.

J.1 Views of the interested parties

98. The domestic industry has claimed that the exporters have continued dumping even after the imposition of AD duty and in increasing volumes, which would accelerate if duties are revoked. They have claimed that the imports of the raw material, PO have been made at higher prices than the prices of the subject product, though PO requirement is about 90% of total FSP weight. FSP prices have been less by as much as 35% of the PO price, indicating severe dumping by the subject countries during the POI, which would continue and increase in future and injure the industry if duties are not extended. DGCI&S import data showed that the landed value to India for PO was higher than that of subject product, posing greater threat of continuance and recurrence of injury to the domestic industry.

99. In response, SEPL has submitted that the imports of raw materials are not a relevant consideration and even if so, there was no ready market in India as evident from the ICIS publication, which showed no price available for PO sales in India; that the PO price mentioned in the DGCIS data was not indicative of the PO price in Singapore as it showed (a) an extremely small volume being imported over a year, (b) wide discrepancy in unit PO prices from each country and (c) are not representative of the Asian market for PO. Refuting that import of subject goods from SEPL has adversely affected prices of the domestic industry, SEPL has charged that any alleged price under-cutting/ suppression could be due to the domestic industry's effort to retain its monopolistic position in the market and offer low prices to drive out competitors. They had exported FSP to India higher than its domestic prices in Singapore and for profit.

100. DPF has pointed out that the subject matter of the sunset review was imports of polyol, not PO. The volume and imports of PO could not form the basis of a determination whether AD duties should continue on polyol, the more so when there are imports of polyol during the POI and some exporters were cooperating with the Authority in the determination of normal value of polyol. Even if the normal value is constructed, the raw material price would be those in the exporting country, not the import price into India.

J.2 Examination by the Authority

101. The domestic industry has not substantiated its claim of likelihood of dumping and injury, apart from data on imports of raw material prices. Post disclosure, the domestic industry has put the onus for this on the interested parties and the Authority. In addition, the domestic industry has claimed that in a sunset review, the Authority has to make a proper assessment and reach a conclusion that there is no possibility of any injury to the domestic industry from the dumped imports if duties are revoked and that significant price underselling was good reason for extension of duty.

102. The Authority observed that in the current scenario, the volume of the imports from the subject countries recorded a very significant jump in the POI, crowding out imports from other countries. However, despite the significant increase in imports, the domestic industry has maintained its market share in the POI, so that there is no current injury. Besides, the domestic industry's capacity is just about half the domestic demand, so that imports are inevitably required to meet the shortfall. The Authority also took cognizance of the fact that no increase in capacity has been effected during the injury period. As regards the effect of subject country imports on prices, there is no price under-cutting, price suppression or

price depression. There is price under selling of 19% in the POI, based on the Supreme Court orders for computing NIP, which is much higher than the industry's own assessment.

103. In assessing the likely scenario, country-wise analysis of import data and prices shows the following highlights:

❖ The Authority notes that the imports from USA are entering at dumped prices even after imposition of duty as the dumping margin during the POI has been found to be significant. The trend in import prices show that CIF price of US imports has shown a rising trend, from 100 in 2003-04 (nil imports in 2002-03) to 134 in the POI, but as the customs duty over the injury period declined from 30% in 2002-03 to 14.5% in the POI, the trend in the landed value has registered a lower increase to 128 in the POI. Yet the landed value was progressively higher than the reference price of \$ 1597.49 per MT in 2004-05 and the POI. Though the landed price of the subject product in the POI is much higher than the reference price determined in the original investigation, the imports of the basic raw material from USA viz., propylene oxide which constitutes about 80% of the total cost of the subject goods, are at a higher CIF price in the POI than subject product imports. This implies existence of current dumping and likelihood of continued dumping. Besides, the trend in the quantity of imports from USA shows a tremendous increase from 100 in 2003-04 to 7250 in the POI. Therefore, the Authority is of the view that the dumped imports would likely to continue from USA in the event of withdrawal of duty.

❖ In the case of EU, the current dumping margin is negligible. But the dumped imports have continued and the quantity has increased. The indexed CIF price over the injury period moved from 100 to 126, while the landed value (indexed) moved from 100 to 111. However, the landed value has remained above the reference price by a considerable margin in every year of the injury period. As regards the rate of the raw material imports from the EU, the data shows abnormally high rates, compared to other countries. The analysis shows that while the average CIF rate of imports of PO were substantially below the subject product prices in the early three years of the injury period, the situation is reversed in the POI. However, the isolated trend for one year does not give a clear indication of the price trend of PO and the subject goods from the EU. Therefore, considering the fact that the price from the EU has remained significantly above the reference price fixed for that country for the entire injury investigation period there is less likelihood of the trend getting reversed if the duty is removed. Therefore, the Authority is of the view that there is less likelihood of an imminent intensification or recurrence of dumping from EU if the duty is removed.

❖ In the case of Singapore, the Authority notes that the current dumping margin of the cooperating exporters have been determined to be negative on the basis of a single country specific normal value determined in pursuance to Supreme Court Judgment. The residual dumping margins determined on the above basis also works out to be negligible. However, the price of imports from Singapore indicates that the CIF price moved from 100 to 170 and the landed value from 100 to 150 during the injury period. But the landed value was below the reference price in the first two years of the injury period, and the prices have moved up above the reference price in 2004-05 and the POI only. As far as the raw material rates are concerned, in the POI, the PO imports from Singapore shows abnormal trend. The price trends of the subject goods during the POI and the basic raw material export price from the same country indicates that the price trend during the POI may not be sustainable or is not of permanent nature. The Authority further notes that the growth of imports from Singapore has been from 100 in 2002-03 to 3000 in the POI. Also the production capacities of the subject product of the co-operating producer/exporter are huge and should a shift in the direction of trade in the subject product occur in the exporting country, the growing domestic demand would attract a greater share of imports. Therefore, the Authority is of the view that there is a likelihood of recurrence of dumping, from this country once the duties are removed.

❖ As for Japan, in the absence of adequate data, no assessment could be made. For the two years for which data was available, in one year, the landed value was below, and in the other year, it was above, the reference price. The trend in propylene prices moved from 100 to 154. The rate of subject product imports in 2003-04 was higher than the raw material

import rate by Rs 4000, but this difference narrowed to Rs 800 in 2004-05. The trend in the quantity of imports increased from 100 in 2003-04 to 550 in the next year. The export price of 2004-05 was extrapolated into the POI, using average growth in export price of the subject countries. The extrapolated data indicates the likely export price from Japan going by their price trend in the previous years and that likely export price when compared with the constructed normal value shows significant dumping margin and injury margin. Therefore, the Authority is of the view that there is an imminent likelihood of recurrence of dumping from Japan in the event of withdrawal of duty.

104. In sum, the country-wise current and prospective scenarios are thus:

❖USA: There exists current dumping and likelihood of continuation of dumping and consequential injury to the domestic industry;

❖EU: There exists negligible current dumping and less likelihood of intensified dumping and consequential injury to the domestic industry;

❖Singapore: There is negligible current dumping, but likelihood of intensification of dumping and consequential injury to the domestic industry;

❖Japan: There is inadequate data to make an exact assessment, but likelihood of recurrence of dumping seems indicated, based on extrapolation of export price.

K. INDIAN INDUSTRY'S INTERESTS

105. The purpose of anti dumping duties in general is to eliminate injury to the domestic industry caused by the unfair trade practice of dumping so as to re-establish a situation of open and fair competition in the Indian market in the interests of the country. Though anti dumping duties might affect the price levels of the products manufactured using subject goods and thereby have some impact on their relative competitiveness, their imposition would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.

L. CONCLUSIONS:

106. After examining the issues raised and based on the analysis of current dumping and injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

i) The subject goods have entered from USA at less than its normal value and the dumping margin of the subject goods imported are significant; while current dumping margins of subject goods imports from the European Union and Singapore are negligible.

ii) There is a likelihood of dumping to continue from USA and of intensification or recurrence of dumping from Singapore and Japan if the duties are revoked; there is less likelihood of intensification of imports from the EU if duties are withdrawn.

iii) The domestic industry suffers insignificant material injury at present due to the dumped imports; but there is a likelihood of recurrence of injury if duties are withdrawn.

iv) Therefore, continued imposition of anti dumping duty is warranted against subject goods originating in or exported from USA, to offset dumping and against Singapore and Japan to prevent recurrence of dumping.

M. RECOMMENDATIONS

107. Having conducted the review and concluded that there is a likelihood of continuance and/or recurrence of dumping from the subject countries and consequent injury to the domestic industry, the Authority is of the opinion that continuation of the measure is required against imports from three of the four subject countries. However, considering the current level of dumping from the subject countries and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, the Authority considers it necessary to recommend continued imposition of the anti-dumping duty on imports of subject goods from the subject country, in terms of Section 9A(5) of the Act, in the form and manner described hereunder.

108. Having regard to the lesser duty rule, the Authority recommends continued imposition of definitive anti-dumping duty equal to the margin of injury or dumping, which is lesser to remove the likelihood of injury to the domestic industry. Considering that the duty in the original investigation was imposed on reference price basis the Authority recommends continuation of definitive antidumping duty, on all imports of subject goods originating in or exported from USA, Singapore and Japan, as the difference between the landed value and the reference price as indicated in Col 9 of the table below, if the landed value at the time of importation is below the value indicated at Col.9. For the purpose of this landed value of imports will be determined as the value of the goods as assessed by Customs plus applicable basic Customs duty.

S.No.	Sub- Head -ing/ Tariff Item	Description of Goods	Specifications	Country of Origin	Country of Export	Producer	Exporter	Reference price	Unit of Measurement	Currency
1	3907.20	Flexible slabstock polyol	Molecular weight 3000-4000	United States of America	Any	Any	Any	2420.36	MT	US D
2	-do-	-do-	-do-	Any except Japan and Singapore	United States of America	Any	Any	2420.36	MT	US D
3.	-do-	-do-	-do-	Japan	Any	Any	Any	2391.98	MT	US D
4	-do-	-do-	-do-	Any except USA and Singapore	Japan	Any	Any	2391.98	MT	US D
5	-do-	-do-	-do-	Singapore	Any	M/s Shell Eastern Petroleum	Any other than M/s Shell Eastern Petroleum and M/s BASF South East Asia	1921.15	MT	US D
6	-do-	-do-	-do-	Singapore	Any	Any other than M/s Shell Eastern Petroleum	M/s BASF South East Asia	1942.29	MT	US D
7	-do-	-do-	-do-	Singapore	Any	Any other than M/s Shell Eastern	Any other than M/s Shell Eastern	2023.10	MT	US D

						Petroleum	Petroleum and M/s BASF South East Asia			
8	-do-	-do-	-do-	Any except USA, EU and Japan	Singapore	Any	Any other than M/s Shell Eastern Petroleum and M/s BASF South East Asia	2023.10	MT	US D

N. FURTHER PROCEDURE:

109. 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.

110. 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 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.