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GOVERNMENT OF INDIA

MINISTRY OF COMMERCE & INDUSTRY

DEPARTMENT OF COMMERCE

DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES

UDYOG BHAVAN

NOTIFICATION

**Final Findings**  
**(Sunset Review)**

New Delhi, 22<sup>nd</sup> July, 2009

Subject: Anti-Dumping (Sunset Review) investigations concerning imports of Flexible Slabstock Polyol from China PR, Korea RP, Chinese Taipei and Brazil.

No. 15/19/2008-DGAD - Having regard to the Customs Tariff Act, 1975, (hereinafter referred to as Act.) 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 (hereinafter referred to as Rules.);

## A.BACKGROUND and PROCEDURE

1. Whereas, having regard to the Act and rules, the Designated Authority (herein after referred to as Authority) recommended imposition of Anti Dumping Duty on imports of Flexible Slabstock Polyol (hereinafter referred to as subject goods) originating in or exported from China PR, Korea RP, Chinese Taipei and Brazil (hereinafter referred to as subject countries). The preliminary findings and final findings of the Authority were published vide notifications dated 11.12.2003 and dated 11.11.2004 respectively. On the basis of findings, provisional duty and definitive anti dumping duties on the subject goods imported from subject countries were imposed by the Department of Revenue vide notifications. dated 20<sup>th</sup> January 2004 and notification dated 24<sup>th</sup> January 2005 respectively.
2. The Authority, in pursuance of the judgment of the Hon'ble Delhi High Court in WC No.16893 of 2006 initiated on 23rd July, 2008,the sunset review of anti-dumping duty imposed on subject goods from subject countries in accordance with section 9A(5) of the Act and Rule 23 of the Rules to review the need for continued imposition of duties in force and whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The Authority received a response from M/s. Manali Petrochemical Ltd, Chennai requesting for review and continuation of the anti-dumping duties levied on the subject goods, for another five years on the grounds that due to continued dumping, the domestic industry has not been able to realize even the normal desired profits in the period of investigation due to the low level of prices from the subject countries. The continuation of anti-dumping duties would be in the interest of domestic industry and the discontinuance of anti-dumping duties would certainly lead to recurrence and continuance of dumping and injury to the domestic industry.

3. In the proceedings the procedure described below has been followed:

- I. After initiation of the review investigation, the Authority notified the domestic industry and called for the information within 40 days of the issue of the notification. On receipt of the information from the domestic industry, other interested parties were provided opportunity to submit information in the prescribed formats within 40 days of the letters issued to them.
- II. All known exporters/producers in the subject countries were given opportunity to submit information within 40 days of issue of the letters on prescribed proforma (questionnaire) and necessary information in accordance with Rule 6(4);
- III. No exporter from any subject countries responded and provided any information. Therefore all exporters from subject countries have been treated as non cooperating exporters.
- IV. The Embassies of subject countries in New Delhi were also informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their countries to respond to the questionnaire within the prescribed time.
- V. A copy of initiation notification along with the importers questionnaire was also sent to the known importers and users of the subject goods in India calling for necessary information within 40 days of issue of the letters in accordance with Rule 6(4).
- VI. In response to the above notification, M/s D.P. Foam Pvt. Ltd, an importer has filed the response. However, other importers or users has

not filed response to the questionnaire in the permitted time. Therefore, they have been treated as non-cooperating importers/users.

- VII. The Authority kept available the 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 accordance with Rule 6 (7).
  
- VIII. Manali Petrochemical Ltd, Chennai, only producer of the domestic industry, submitted the information/data. The Authority examined the information furnished by the domestic industry to the extent considered relevant on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
  
- IX. Transaction-wise data of imports for the period of investigation and preceding three years were called from Directorate General of Commercial Intelligence and Statistics (DGCI&S) and has also been used in this investigation;
  
- X. Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.
  
- XI. The Authority held a public hearing on 23.1.2009 to hear the interested parties orally, which was attended by representatives of interested parties including Government of Brazil. The written submissions and rejoinders received from interested parties to the extent considered relevant have been considered by the authority;

- XII. The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing have been discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the case.
- XIII. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for the findings have been disclosed to known interested parties and comments received on the same have been considered in Final Findings.
- XIV. Investigations were carried out for the period of investigation (POI) from 1st April 07 to 31st March 2008. The injury investigation period however covered the periods April,2004-March,05, April,2005–March,2006, April,2006-March,2007 and the POI.

**B PRODUCT UNDER CONSIDERATION**

4. The product under consideration in the present review and in the original investigation was Flexible Slabstock Polyol of molecular weight 3000 to 4000. The Flexible Slabstock Polyol is generally known as "FSP" in the commercial and market parlance and has also been referred to as FSP in this review. This being sunset review of original investigation, therefore there is no change in scope of product under consideration.
5. FSP is classified under Chapter Heading 3907.20 but are also cleared under Chapter Headings 3907.99 and 3907.91 of the Customs Tariff Act, 1975. The classification is however indicative only and in no way binding on the scope of the present review.

**C. Domestic industry**

6. The applicant account for 100% of Indian production and constitute domestic industry within the meaning of the Rules.

D. Views of the Interested Parties

D.1 Submissions of the Domestic Industry on injury and likelihood of continuation or recurrence of dumping and injury

7. The domestic industry has made the following submissions:-

**Recurrence and continuation of Dumping**

- a) China, Korea and Taiwan:- It is clear that the dumping has not ceased to exist from any of these sources on which anti dumping duties were imposed initially. Therefore, there is every likelihood that the dumping would continue and recur in case the duties are discontinued.
- b) Brazil: As far as Brazil is concerned, it appears that the exports by Brazil have strategically ceased during the POI to avoid continuation of anti dumping duties. However, the Authority is required to examine whether the cessation of existing anti dumping duties is likely to lead to continuance or recurrence of dumping and injury in the event the anti dumping duties are removed. In the absence of actual imports from Brazil, the domestic industry submits that the dumping margin for Brazil may be determined based on the export made to other countries. The domestic industry would submit the information relating to exports to other countries by Brazil and their dumping margin in due course which would indicate that the dumping is still continuing from Brazil.

**Likelihood of continuance or recurrence of injury**

- c) The principles for the determination of injury under the Indian Anti-dumping Rules have been prescribed under Annexure II. As per the Annexure, the determination of injury shall involve an objective examination of the volume of dumped imports and its effect both on the domestic prices and as well as the domestic producers of the subject goods. It has been submitted that in case of sunset review investigation, dumping as well as injury analysis is required to be

made by analyzing the likely impact on the domestic industry in the event the anti-dumping duties are not extended. It has been pointed out that the situation of the domestic industry has improved after the imposition of the anti-dumping duties, clearly indicating that the anti-dumping duties have been effective and there has been a positive impact on the domestic industry. However, the effect has not been to the desired extent as the exporters have continued to indulge in injurious dumping. Thus, it is imminent and clear that the dumping and injury to the domestic industry would continue if the anti-dumping duties are not extended. It is the case of the domestic industry that the anti-dumping duties against the subject countries may be continued for another term of 5 years in the interest of the domestic industry

- d) The share of subject countries in total imports has declined during the period of investigation. However, it has been pointed out that the dumping margin from each of the subject countries during the period of investigation is also significant except in case of Brazil for which no imports of the subject goods have been reported during the period of investigation. However, in a sunset review case, the Authority is required to examine the need for continued imposition of anti-dumping duties in force and whether the cessation/ discontinuance of anti-dumping duties in force is likely to lead to continuance or recurrence of dumping and injury. It has been pointed out that the anti-dumping duties were in existence against the four subject countries including Brazil during the last four and a half years. The analysis of dumping and injury to the domestic industry is required to be made keeping in view the level of anti-dumping duty in existence and the likely future behaviour of the exporters as to whether they have permanently changed / abstained from the behaviour of dumping. Thus, absence of imports from a subject country does not indicate absence of dumping.
- e) Though there has been a decline in terms of percentage, there has been a phenomenal increase in absolute terms i.e., an increase of 549 MT during the POI as compared to the base year. In terms of

percentage there has been an increase of about 65%. This definitely goes to prove that the subject countries still hold a substantial slice of the domestic market through their aggressive dumping methods

- f) The percentage share in demand of imports from subject countries has declined marginally from 5.17% in 2004-2005 to 4.55% during the period of investigation. Imports from subject countries in comparison to domestic production have increased from 8.30% in the 2004-2005 to 14.14% during the period of investigation. It is undoubtedly clear that the imports from subject countries will increase further in case the duty is withdrawn.
- g) The landed value from the subject countries is less than the domestic selling prices and the same are undercutting the domestic prices. It clearly indicates that the prices from the subject countries will further be reduced in case the anti-dumping duties are discontinued.
- h) The landed value of the product under consideration from the subject countries is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods and the net sales realization of the domestic industry.
- i) The price underselling from the subject countries is significant during the period of investigation. The level of significant price underselling and undercutting during the period of investigation clearly indicates the likely future behaviour of the exporters from the subject countries regarding the pricing of the subject goods. The domestic industry has demonstrated that the exports from the subject countries are being made at such prices that removal of anti-dumping duties would certainly lead to price undercutting and price underselling. Correspondingly, the domestic industry would be forced to reduce the domestic prices, which would affect their profitability and the resultant injury.
- j) The share of the domestic industry has declined during the period of investigation as compared to the base year. The percentage share has come down sizably from 57.80% in 2004-2005 to 33.44% during

the period of investigation. This is a clear reflection of the penetration of dumped imports in the Indian market from the subject countries. It is clearly evident that the injury to the domestic industry would recur in case the duties are discontinued. Despite a huge increase of demand in the country, the domestic industry has not been able to achieve higher share in the market.

- k) Due to the continuance of the dumped imports from the subject countries during the period of investigation, the capacity utilization has declined from 91% in the year April 04-March 05 to 88% during the period of investigation, a decline of 3%. The decline in capacity during the period of investigation is much more as compared to the immediately previous year.
- l) There is a minimal decline in the productivity per employee during the period of investigation as compared to the base year April 04-March 05. However, this is mainly because the domestic industry has not been able to utilize its optimum capacity due to presence of dumped imports from the subject countries.
- m) The domestic industry's profitability position showed some improvement due to the imposition of anti-dumping duties. It has been submitted that the domestic industry is suffering huge losses due to the continuation of dumped imports. From a profit-making scenario in the preceding years, the domestic industry is incurring huge amount of losses during the period of investigation.
- n) It has been submitted that the domestic industry is still not able to realize the desirable selling price due to the presence of dumped imports. It has also been submitted that dumped imports from the subject countries have also increased coupled with significant price underselling, clearly indicating that the imports from subject countries would increase further and deteriorate the situation of the domestic industry in terms of its profitability and return.
- o) The dumping margin from each of the subject countries except Brazil is significant and ranges between 27% to 45% clearly indicate the

difficulties being faced by the domestic industry to sell the subject goods in the domestic market. The significant dumping margin from the subject countries clearly indicates their likely future behaviour and the same would further increase in all probability to increase their market share in India in case of discontinuation of anti-dumping duties. The fact that Brazil has reported no imports during the POI has no relevance in a sunset review as in such cases, the HDesignated Authority is required to examine the need for continued imposition of anti-dumping duties in force and whether the cessation / discontinuance of anti-dumping duties in force is likely to lead to continuance or recurrence of dumping and injury.

- p) The sales volume of the domestic industry has increased during the period of investigation. However, the growth in sales volume of the domestic industry over the injury investigation period is less than the growth in the total demand. Moreover, the market share of the domestic industry has come down during the period of investigation as compared to the base year. This clearly shows that the domestic industry is injured with respect to growth. There is every likelihood in view of the dumped imports from the subject countries that these factors would further deteriorate and the injury to the domestic industry would continue or recur.
- q) The imports from the subject countries have increased in absolute terms as well as in relation to the domestic production, despite the existence of anti dumping duties. The increase in imports from the subject countries during the injury investigation period gives a clear and strong indication about the likely future behaviour of the exporters from subject countries.
- r) Although the profitability of the domestic industry has shown some improvement initially, there has been a huge dip in the profitability during the POI as compared to the preceding years. Moreover, the domestic industry has not been able to realize the desirable selling price which has not allowed it to earn reasonable returns due to the presence of dumped imports. It has been submitted that there is every possibility that the severe dumping from the subject countries

would continue and recur and further deteriorate the position of the domestic industry in terms of its profitability and injury.

- s) It is imminent and clear that severe dumping and increase in imports would continue and further increase. It would then consequently lead to continuation and imminent increase of injury in case the duties are not continued /enhanced. Moreover, there is no indication that the exporters have changed or abstained from their behaviour of exporting the subject goods at dumped prices on a sustainable basis. In light of the above, it is desirable that the anti-dumping duties should continue to be imposed and their level enhanced against the dumped imports from the subject countries.

## **D.2 Submissions by Brazilian Government**

8. The Brazilian Government has made the following submissions:-

(i) Brazil notices that neither the public notification nor application, bring on their content any evidence or comment regarding the likelihood of continuation or recurrence dumping from Brazilian exporters. On the contrary, the application states that it does not bring any documentary evidence or reliable information with regard to domestic prices in Brazil, Taiwan and Korea. Since 2004, after the application of the duties, Brazilian exports have almost ceased, with a negligible volume being exported in 2006-07. Nonetheless, the application unsustainably affirms that the export by Brazil have 'strategically' ceased to avoid the continuation of anti dumping duties.

(ii) It has been submitted that Article 12.3 of the Antidumping Agreement states that the provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11. Article 12.1.1, on its turn, states that a public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the basis on which dumping is alleged in the application. Although the application states that "the domestic industry would submit the information in due course which would indicate that dumping is still continuing from Brazil", no data on the likelihood of continuation or recurrence of dumping was disclosed to the Brazilian Government neither in the public notification, nor in the application, in evidence breach of the public notice obligations of the Indian investigating authorities.

(iii) Furthermore, Article 11.3 of the Antidumping Agreement provides that notwithstanding the provisions of paragraphs 1 and 2, any definitive anti dumping duty shall be terminate on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on

behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

(iv) In this regard, it should be noticed that the burden to determine the likelihood of continuation or recurrence of dumping must be borne by the investigating authorities, not by the exporters or the government of the exporting country. This determination shall be based on strong evidence, not on presumptions. Furthermore, the US-DRAMS Panel interpreted the term “likely” in Article 11.2 with reference to Article 11.3. The Panel reinforced the necessity to demonstrate the need for the continued imposition of an anti-dumping duty should be demonstrable on the basis of evidence, and not on presumptions.

(v) Although the antidumping Agreement does not bring specific rules regarding the evidence that should be presented for the initiation of reviews, in its Article 5 it provides that an application to the initiation of an antidumping investigation shall include evidence of (a) dumping (b) injury (c) a causal link between the dumped imports and the alleged injury. Article 5.3 also states that authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

(vi) In this context, with due respect, the Government of Brazil would like to bring attention upon the fact that Indian domestic industry’s application does not comply with the rule mentioned above.

### **D.3 Submissions by M/s D.P. Foam Pvt. Ltd.(Importer)**

9. M/s D.P. Foam Pvt. Ltd. have made the following submissions:-

(i) In view of the non-cooperation by the exporters, it is possible for the Authority to arrive at more than one normal value for each of the subject countries, the Authority should take the lower of the values so arrived at. The Rule 6(8) provides discretion to the Authority in case of non-cooperation by the exporters. However, this discretion ought to be exercised in a fair and reasonable manner. It ought not to be exercised to benefit a single large monopolistic industrial/business house as the domestic industry.

(ii) The domestic industry is a monopolistic industry. For the last more than 10 years, it is having protection of safeguard duties in the year 1998 and anti dumping duties in respect of European Union, Japan, Singapore and United State of America. These

countries account for more than 93% of total imports of FSP into India during the POI. As per the domestic industry, the remaining countries exports constitute a mere 0.02% to 1.79% of the total imports between 2004-05 and the Period of Investigation. Despite the protection of first the safeguard duties and thereafter, the anti dumping duties for the last more than ten years, the domestic industry's competitiveness and efficiency has not improved. The domestic industry with installed capacity of 12500 MT is able to satisfy around 50% of the total demand only. As per the domestic industry, the demand is growing at the rate of more than 12% per annum. However, there is not a single proposal of the domestic industry to expand its capacity to meet the growing demand.

- (iii) Volume of imports from subject countries has been very low and constitute a mere 6.83% of the total imports in the POI. Such small volume of imports from subject countries would not cause injury to the domestic industry. Any argument by the domestic industry that a low volume of imports from subject countries was attributable to anti dumping duties is liable to be rejected for the reason that average landed value of these imports during the period between 2004-05 and the POI were generally much higher than the reference price of US\$1472/MT. The only exception being the landed value of imports from Korea during the POI. Clearly, the anti dumping duties were completely ineffective, and yet, the volume of imports did not substantially rise after 2004-05 to meet the growing Indian demand.
- (iv) It has been submitted that the domestic industry has claimed excessive confidentiality even on capacity, production and sales volume whereas the Annual Report gives the detailed information.
- (v) Any increase in the volume or market share of imports from the subject countries must be viewed in light of limited installed capacity of the domestic industry and their inability to meet the total demand of the subject goods. The share of imports from the

subject countries as a percentage of the total imports has come down from 12.24% in 2004-05 to 6.83% during the POI. This decline in market share of imports from the subject countries cannot be attributed to anti dumping duties in force since the anti dumping duties were not at all effective in view of the high landed value of the imports.

- (vi) The imports from subject countries are not having any effect on the domestic price. The domestic industry was able to sell their products and was enjoying profits during 2004-05 to 2006-07. The alleged losses suffered by the domestic industry during the POI are on account of factors other than the imports from subject countries as duties were completely ineffective.
- (vii) The domestic industry has alleged that it has suffered losses during the POI. Assuming that it did suffer losses, the domestic industry has given reasons in its Annual Report for the increase in turnover of polyol by a mere Rs.5 crores as follows:-

“Selling price is a function of the customs duty and the dollar to rupee parity, which determine the landed cost of competing imported products. The customs duty was reduced during March 2007 by 5% and the rupee also appreciated sharply by 11% around the beginning of the financial year and thus these factors had a significant effect on the selling prices of the product, which reduced the turnover, even though the quantum of production and sales have gone up.”

There is not even an allegation in the Annual Report that the imports of the subject goods from the subject countries had any effect on the domestic prices.

- (viii) Unless the domestic industry increases its capacity to meet the growing demand, it cannot complain of suffering any injury on the ground of its inability of achieving higher market share.

- (ix) The reasons for a lower capacity utilization by 3% over 2004-05 is clear on page 5 of the 22<sup>nd</sup> Annual Report of the Domestic Industry (2007-08) under the heading “Market Scenario” as “the polyol sales however encountered difficulties due to continued supply restrictions of Toluene Di-Isocyanate (TDI), the complimenting raw material required in the production of PU foam”. Clearly, the reduction in capacity utilization by 3% appears to be a conscious decision of the Domestic industry in view of the supply restrictions of TDI, and cannot be attributable to any alleged dumped imports.
- (x) The decrease in sales cannot be attributed to the alleged dumped imports. The domestic industry also admits that the restrictions posed by the limited availability of TDI, the complementary raw material along with FSP in the production of PU Foam, is a growing concern and can be improved only with increased production of TDI from the indigenous manufacturers.
- (xi) The domestically produced FSP was openly competing with the subject goods from the subject countries because of the landed price of the imports being higher than the reference price fixed in the original investigation. The domestic industry has booked actual profits during 2004-05, 2005-06 and 2006-07. These profits cannot be attributed to the protection of the anti dumping duties in force since the duties were completely ineffective. Therefore, injury is not likely to continue or recur if the duties are removed.
- (xii) Injury is not likely to recur if the anti dumping duties are removed because domestic industry has been openly competing with the imports from subject countries during the injury period and has enjoyed actual profits.
- (xiii) Even as per the statement of the domestic industry in paragraph 4 of its Annual Report 2005-06 under the “Opportunities and Threats”, the domestic industry does not see any threat from large

foreign plants producing similar products. The absence of threat, according to the Domestic Industry, is for the reason that the increase in consumption matches the increase in capacity. According to the domestic industry, such threats will not affect the operations of the company significantly. Clearly, therefore, the production capacities in the subject countries would not cause any continuation or recurrence of injury if the anti dumping duties were removed.

#### **D.4 Submissions by the domestic industry on the issues raised by other interested parties**

10. The domestic industry have made the following submissions:-

- (i) There is no provision under the Act or Rules which limits the applicability of the anti dumping duty for a maximum period. Further, there is no provision under the present law which lays down that duties can be imposed only when the domestic industry is in a position to meet entire demand of the country.
- (ii) The quantum of import is not a fact that can be a basis of termination as Rule 14 has been made inapplicable to the Sunset Review. Even in a situation of nil imports, the Designated Authority has recommended duties as it determined likelihood of dumping and injury. Merely because, the imports have taken place above reference price, does not *ipso facto* mean that imports are non-dumped.
- ((iii) Concerning issue of confidentiality, it has been submitted that domestic industry has claimed confidentiality only on cost and price data and not on the other information.
- (iv) The reduction of imports are required to be examined keeping in view that all exporters know exactly when the Sunset Review is due and is likely to be initiated. Clearly the behavior of the exporters during this period is strategic.

- ((v) The importer has not disputed that there was loss suffered by the domestic industry during POI. It has been stated by the importer that this loss is on account of other factors. Interestingly, no such other factors have been specified or referred to while making such submissions.
  
- (vi) The importer has admitted that duties were ineffective for the domestic industry. This situation had necessitated filing of a mid-term review as the NIP was required to be re-determined in view of the changed circumstances. The Authority in view of the impending Sunset Review had not initiated the mid-term review and had indicated to the domestic industry that such changed circumstances would be addressed in Sunset Review investigations.
  
- (vii) While making submissions, the importers had failed to appreciate that causal link is not required to be examined in Sunset Review. The importer has relied upon profit figures from the Annual Report of the domestic industry which is for the company as a whole and not for the product under consideration.
  
- (viii) It has been pointed out that Dow Chemical has number of manufacturing plants and all pricing and supply decisions are taken by the Dow based on market dynamics and review of regulatory aspects as a single economic entity. The Authority would recall that Dow Chemical's was initially exporting from USA. When duties were notified by the Designated Authority under FSP-1 investigation, they immediately started exporting from their plant in Brazil and replenish demand in Brazil from USA. Removal of duties from Brazil would certainly result in resumption of dumped supplies from Brazil (keeping in view that Dow is a single economic entity) and would result in recurrence of a situation that was sought to be addressed by imposition of duties against Brazil. The exports from Brazil have required to be

examined keeping in view the nature of operations and past behavior of such multinational companies.

- (ix) Referring to the Annual Report, it has been submitted that in the perception of the directors of the company there existed no threat from foreign plants in the year 2005-06. This perception is in fact reflected through the performance of the company during that year. However, it is pertinent to note that such perceptions mentioned in the Annual Reports are based on a premise that there would be fair competition. If exporters resort to unfair competition and resort to dumping to destroy the Indian producer, the reference to such perception is hence misleading and mischievously made.
- (x) While referring to the submissions made by Brazilian Government, it has been submitted that the Embassy of Brazil has not respected its obligation to file a response within 40 days of initiation. In view thereof, in terms of WTO decision of Appellate Body in the case of Oil Country Tubular Goods from Argentina (WT/DS268/AB/R 29 November 2004) they have no due process rights available to them in the present proceedings.
- (xi) The Designated Authority is bound with the Indian anti-dumping provisions(municipal law). Reference to WTO Agreement on Anti-dumping is hence misplaced while making submissions before the Designated authority. It has been pointed out that while referring to Article 12.3, Embassy of Brazil failed to give any meaning to the term “mutatis mutandis”. Hence the conditions of Article 5 or Article 12 cannot ipso facto be applied to Article 11.3. This issue has been finally confirmed by both the recent AB reports (OCTG Case WT/DS268/AB/R and Corrosion Resistant Carbon Steel Flat Products case WT/DS244/AB/R) and rendered in the context of sunset review cases. The reference by Embassy of Brazil to US Drums case is misplaced as the decision was rendered in the context of mid-term review and not sunset review case. The object and scope of investigations being different the ratio of the

same cannot be borrowed in sunset review investigations. Further in the OCTG case it has been held that positive evidence must be seen in the context that the determinations to be made under Article 11.3 are prospective in nature and that they involve a “forwarding looking analysis”. It has been settled law that such an analysis may inevitably entail assumptions about or projections into the future. It has been concluded and confirmed by the Appellate Body that in view of the nature of enquiry, unavoidably, there would be certain extent of speculation and in such a scenario it cannot be said that such inferences are not based on “positive evidence”. Further in Corrosion Resistant Carbon Steel Flat Products case it has been held that investigating authorities are not required to calculate or rely on dumping margins in making a likelihood determination in sunset review under Article 11.3. It has also been laid down that there may arise a situation when there is no dumping either because imports cease or because dumping was eliminated after the duty was imposed but that scenario could have been caused or reinforced by changes in the competitive conditions of the market place or strategies of the exporters, rather than by the imposition of duty alone. This is precisely the reason that there may be a situation when there is no import during POI and hence the application may not contain evidence of dumping in POI. In the present case our above submissions on strategy of Dow Chemical’s makes it clear that imports are likely to surge if the duties are not extended. Clearly, the submissions made by the Embassy of Brazil are without taking into account settled law on the subject.

- (xii) It is evident from the facts and circumstances of the present case that the exporters have consciously not cooperated in the investigation with a view to withhold information about their export price to third countries, addition of capacities by producers, their inventory position etc. Such behavior has resulted in impeding the investigation as material information required for likelihood analysis has been withheld from the authority. In such a scenario,

and the fact that dumping continues, the duties are required to be continued as these countries consciously failed to provide material information to reach determinations required to be made under Section 9A(5).

- (xiii) In view of aforementioned submissions of domestic industry, it is amply clear that removal of duties from Brazil would for certain result in resumption of dumped supplies from Brazil and would result in recurrence of a situation that was sought to be addressed by imposition of duties against Brazil.

## **D.5 EXAMINATION BY THE AUTHORITY**

11. It has been stated that domestic industry wanted to add mid-term review, however, the Designated Authority did not initiate MTR in view of impending SSR. In this regard, it has been noted that the application for MTR was filed on 3<sup>rd</sup> March 2008, the anti dumping duty was going to expire on 19.1.2009 on completion of five years term. The applicant was therefore advised to file SSR. It has further been noted that the applicant did not file any application for SSR. The Authority in view of the Judgment of Delhi High Court initiated SSR on 23<sup>rd</sup> July 2008 advising domestic industry to file information within 40 days of initiation. The domestic industry however chose to file the information on 25.9.2008. The Authority notes that the domestic industry did not show any urgency in seeking revision of duty if the duty had become ineffective instead it choose to delay the process of initiation of sunset review.

12. It has been contended by the importer that share of imports from subject countries have come down less than 7%. Imports from USA and Singapore account for 93% of imports. It has been contended that such small volume of imports from subject countries would not cause injury to the domestic industry. It has also been pointed out that reasons for lower capacity utilization has been stated in the Annual Report of the applicant where it has been stated that the Polyol sales however encountered difficulties due to continued supply restrictions of TDI, the complementing raw

material required in production of PU foam. It has been contended by the interested parties that the reduction in capacity utilization by the domestic industry appears to be a conscious decision in view of the supply restriction of the TDI and cannot be attributable to any alleged dumped imports. The Authority, in this regard notes that 22<sup>nd</sup> Annual Report of the applicant point out about the difficulties faced by the company in Polyol sales and reason assigned to such difficulty is supply restriction of TDI. The Authority therefore intends to agree with the contention of the interested parties that lower capacity utilization can be attributed to lower sales because of market conditions and not necessarily because of the competition faced by domestic industry from the alleged dumped imports.

13. The contention of Brazilian Government that applicant should provide all evidence on likelihood, is devoid of merit as information which is available with the exporters cannot be expected to be provided by the domestic industry. It has also been argued that the burden to determine the likelihood of continuance or reoccurrence of dumping must be borne by the investigating authority. It is correct that the Authority is under obligation to conduct investigation to ascertain likelihood of dumping, however, if the party holding information refuses to cooperate, it cannot be concluded that there is no likelihood of dumping. The Authority is however required to take into account available information and persuasive arguments forwarded by all interested parties and take objective view of the available information. It is a fact that domestic industry has not been able to provide any information about actual dumping from Brazil, however, it has forwarded argument about the likelihood of dumping from the Brazilian exporters. On the other hand, no exporters from Brazil has cooperated and provided any useful information for arriving at decisions. The Authority however notes that as no information has been made available as to why Brazilian exporters discontinued dumping in the preceding years. therefore, the Authority in absence of evidence cannot accept the argument of the domestic industry and conclude that Brazilian exporters discontinued dumped exports to India for strategic reasons

14. The other arguments raised by various interested parties have been dealt in the findings at appropriate places.

## **E METHODOLOGY FOR CALCULATION OF DUMPING MARGIN**

### **E.1 Submissions by the domestic industry**

15. The Domestic Industry has made the following submissions-

- a) It has been submitted that China is a non-market economy country under the Indian Anti-dumping Rules. Therefore, the normal value for China is required to be determined as per the procedure described in Para 7 of the Annexure I to the Anti-dumping Rules.
  
- b) For the purpose of determination of normal value in case of a non-market economy country, an appropriate third market economy country is required to be selected as the first alternative. It was proposed that Korea be taken as an appropriate market economy third country. It has been submitted that the domestic industry understands that the capacity in Korea for manufacturing the subject goods is close to the manufacturing facility in China. It has also been submitted that Korea is proposed as a surrogate country in view of the fact that the industry structure, the average capacity of plants, the cost structure, the production process and the technology are reasonably and fairly close to that found in China. The domestic industry also has no links or relationship with any of the producers in Korea. This proposition is also guided by the fact that Korea is a market economy country with considerable competition within the local producers as well as from imported goods. Such conditions are a good indicator of market determined prices. It has been stated that the Korea is also a country under the present investigation and the relevant details for normal value from Korea can be obtained during the course of investigation.
  
- c) The applicant has neither been able to get any documentary evidence or reliable information with regard to domestic prices in respect of

Korea, Taiwan & Brazil nor are the same available in the public domain.

## **E.2 Examination by the Authority**

16. The Authority sent a copy of exporter's questionnaire and market economy questionnaire to known exporters in China PR. No exporter from china PR has responded and provided any information concerning market economy treatment and about the normal value in the proposed surrogate country.

## **E.3 Normal Value for China PR**

17. Therefore, the normal value for the China-PR has been determined in accordance to para 7 of Annexure-1 of the Rules.

18. Para 7 of the Annexure-1 with regard to determination of normal value provides as follows—

*7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner [keeping in view the level of development of the country concerned and the product in question] and due account shall be taken of any reliable information*

*made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

19. The domestic industry suggested consideration of Korea RP as appropriate market economy third country. The applicant however has failed to submit any further information about producers in Korea RP. The authority, therefore, has determined normal value on the basis of method 'on any other reasonable basis'.

#### **E.4 Constructed Normal value for China PR**

20. The normal value has been constructed on the basis of raw material at international prices to India, consumption norm and conversion cost of the domestic industry. To this, profit @ 5% has been added to determine normal value. By this methodology the normal value has been constructed as US\$ \*\*\*/MT.

#### **E.5 Export price for non-cooperating exporters from China PR**

21. Export price for non cooperative exporters has been determined on the basis of transactions of imports during the POI based on the information made available by DGCI&S. The CIF export price has been adjusted for expenses on account of overseas freight, overseas insurance, inland freight

and handling charges to arrive at ex factory export price. The ex-factory price determined comes to US\$ \*\*\*/MT.

#### **E.6 Normal value for Korea RP**

22. In view of non-cooperation by exporter, the normal value has been constructed on the basis of facts available as per Rule 6(8). The normal value has been constructed on the basis of raw material at international prices, consumption norm and conversion cost of the domestic industry. To this, profit @ 5% has been added to determine normal value. By this methodology the normal value has been constructed as US\$ \*\*\*/MT.

#### **E.7 Export price for non-cooperating exporters from Korea RP**

23. Export price for non cooperative exporters has been determined on the basis of transactions of imports during the POI based on the information made available by DGCI&S. The CIF export price has been adjusted for expenses on account of overseas freight, overseas insurance, inland freight and handling charges to arrive at ex factory export price. The ex-factory price determined comes to US\$ \*\*\*/MT.

#### **E.8 Normal value for Chinese Taipei**

24. In view of non-cooperation by exporter, the normal value has been constructed on the basis of facts available as per Rule 6(8). The normal value has been constructed on the basis of raw material at international prices, consumption norm and conversion cost of the domestic industry. To this, profit @ 5% has been added to determine normal value. By this methodology the normal value has been constructed as US\$ \*\*\*/MT.

## E.9 Export price for non-cooperating exporters from Chinese Taipei

25. Export price for non cooperative exporters has been determined on the basis of transactions of imports during the POI based on the information made available by DGCI&S. The CIF export price has been adjusted for expenses on account of overseas freight, overseas insurance, inland freight and handling charges to arrive at ex factory export price. The ex-factory price determined comes to US\$ \*\*\*/MT.

## E.10 Dumping Margin

26. Based on the normal value and export price as determined above, the Authority has determined the dumping margin as under:

Exporter/Producer	Normal Value US\$/KG	Export Price US\$/KG	Dumping Margin US\$/KG	Dumping Margin %
China PR	***	***	***	41.73
Korea ROK	***	***	***	65.31
Chinese Taipei	***	***	***	50.70
Brazil	No dumping margin has been estimated as no import was reported during POI.			

27. It is noted that the dumping margins are significant.

## **F Methodology for Injury Determination and Examination of Causal Link**

### **F.1 Examination by the Authority**

28. The Authority has taken note that for the sunset review, the relevant provisions of Section 9(A)(5) of the Customs Tariff Act read as under:

*“The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.”*

29. Rule 23 of the Anti-dumping Rules provide for procedure for conducting sunset review. For conducting the review, the provisions of Rule 6,7,8,9, 10, 11, 16,17,18,19 and 20 have been made applicable. The Authority notes that as per Rules, present state of injury is to be assessed in the sunset review.

30. For the purpose of assessing present state of injury, Annexure II to the Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual 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.

31. The Authority has examined the volume and price effects of dumped imports of 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 the dumping and injury, if any.

**(A) Volume Effect:** Volume effect of dumped imports and impact on domestic industry:

32. The transaction-wise import data from DGCI&S has been relied upon for analyzing the imports from all sources. The data shows that the imports from subject countries has declined significantly from 30% in the base year to 2% in the POI. During the same period, the imports from countries attracting anti dumping duty has increased significantly from 35% to 96%. The imports from other countries has declined sharply from 35.22% to 1.84%. It has also been noted that the import prices from subject countries were higher as compared to countries attracting anti dumping duty in 2004-05, 2005-06 and 2006-07. The imports prices during POI from subject countries were slightly lower than the imports from countries attracting anti dumping duties.

	2004-05	2005-06	2006-07	POI
Imports (in MT)				
China PR	2437	569	311	127
Korea RP	750	1283	645	167
Chinese Taipei	79	155	34	103

Brazil	0	0	17	0
Subject countries	3266	2007	1007	398
Countries attracting anti dumping duty	3856	7910	12869	16156
Other countries	3871	3425	122	206
Total imports	10993	13342	13998	16760
Share in imports	%			
Subject countries	29.71	15.04	7.19	2.37
Countries attracting anti dumping duty	35.08	59.29	91.93	96.40
Total imports	35.21	25.67	0.88	1.23

### **Assessment of demand, Import volume and market share**

33. The demand has been calculated as sum of domestic sales of the domestic industry and imports from all the sources. It has been noted that demand of the product has increased by approximately 32% in POI as compared to base year. The share of the domestic industry shows the declining trend and its share has declined from 46% in the base year to 38% in the POI. The share of imports from subject countries has declined steeply from 16% to 1% during the same period. The imports from other countries including countries attracting anti dumping duty the share has increased from 38% to 61%.

<b>Demand in MT</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>POI</b>
Sales of Domestic industry	9508	10433	10612	10284
Imports - Subject Countries	3266	2007	1007	398
Imports - Other Countries	7727	11335	12992	16362
Demand	20501	23775	24611	27044
Market Share %				

Domestic Industry	46%	44%	43%	38%
Imports - Subject Countries	16%	8%	4%	1%
Imports - Other Countries	38%	48%	53%	61%

### **Capacity, production & capacity utilization**

34. Capacity, Production and Capacity Utilization of the domestic industry is given in the following table:

	2004-05	2005-06	2006-07	2007-08 (POI)
<b>Capacity (MT)</b>	14000	14000	14000	14000
<b>Trend</b>	100	100	100	100
<b>Production (MT)</b>	10231	9712	11697	9894
<b>Trend</b>	100	95	114	97
<b>Production-others-MT</b>	3827	4013	2364	4357
<b>Total production (MT)</b>	14058	13725	14061	14251
<b>Capacity Utilization%</b>	100.41%	98.04%	100.44%	101.79%

35. Regarding capacity, it has been clarified by the domestic industry that the actual capacity for the PUC was determined on the basis of actual capacity available reduced by quantity determined for other grades of polyols, i.e. non-PUC. After taking into account the production of the other grade of polyol, it has been noted that the capacity utilization was more than 100% in 2004-05, 2006-07 and 2007-08. It has been argued that the capacity utilization would not indicate the clear position, the actual production has shown clear decline despite an increase in the demand. In this regard, the Authority has noted that when the capacity has been used both for production of PUC and non-PUC and available capacity for PUC depend upon the production of non-PUC, the production of PUC is bound to decline if available

capacity is diverted for production of non-PUC. The position is clearly reflected in the capacity utilization of the domestic industry which remain fully utilized during the injury period.

36. It has been noted that the domestic industry has not changed its capacity from the base year to POI. The production of the goods has shown declining trend and declined by 337 MT in POI as compared to base year. The production as compared to immediate preceding year declined by 1803 MT. The decline in production when capacity is fully utilized cannot be considered as sign of injury.

### **Sales**

37. Sales Volume of the domestic industry is given in the following table:

	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>
Sales of domestic Industry- MT	9508	10433	10612	10284
Trend	<b>100</b>	<b>110</b>	<b>112</b>	<b>108</b>
Sales Value (Rs Lacs)	***	***	***	***
Trend	<b>100</b>	<b>122</b>	<b>122</b>	<b>100</b>

38. The sale of the domestic industry has increased by 8% in POI as compared to base year. In quantitative term, it increased by 776 MT as compared to base year. As compared to immediate preceding year, the sale has declined by 328 MT.

## **(B) Price effect of imports**

39. For calculating the undercutting of selling price of the domestic industry by the imports from subject countries, a comparison for subject goods during the period of investigation was made between the weighted average landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, the rebates, discounts and commission offered by the domestic industry have been adjusted. It has been noted that the price undercutting by imports from subject country continued throughout the injury period.

40. It has been noted that the price undercutting from the subject countries were negative from 2004-05 to 2007-08 except in case of Korea. The undercutting was in the range of approximately 3% during the POI. The imports from subject countries on weighted average basis did not show any undercutting during the injury period.

	2004-05	2005-06	2006-07	2007-08
Net Sales Realization Rs/MT	***	***	***	***
<b>Landed Price— Subject Countries</b>				
China PR	88595.19	97912.11	96303.5	80817.81
Price undercutting	***	***	***	***
Price undercutting %	***	***	***	***
Chinese Taipei	104923.4	95449.36	97696.05	76901.52
Price undercutting	***	***	***	***
Price undercutting %	***	***	***	***
Korea ROK	83968.77	93167.02	90567.54	70512.54
Price undercutting	***	***	***	***

Price undercutting %	***	***	***	***
Subject countries	87925	94689	92654	74462
Price undercutting	***	***	***	***
Price undercutting %	***	***	***	***

### **Price Underselling**

41. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. For the purpose of this analysis, weighted average Non-Injurious Price(NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject countries. The analysis shows that the landed values of subject goods from subject countries were much below the non-injurious price determined for the domestic industry during the period of investigation. The underselling margin was within a range of 25-35% for subject goods from subject country during the POI.

<b>Price Underselling (Rs./MT)</b>	
<b>Subject Countries</b>	
Brazil	*
China	***
Korea	***

Taiwan	***
<b>Total</b>	***
<b>Price Underselling (%)</b>	
<b>Subject Countries</b>	
Brazil	*
China	***
Korea	***
Taiwan	***
<b>Total</b>	***
<b>Price Undercutting (%) - Ranges</b>	***
<b>Subject Countries</b>	
Brazil	*
China	***
Korea	***
Taiwan	***
<b>Total</b>	***

\* There was no imports from Brazil during POI.

## **F.2 Examination of other Injury Parameters**

42. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analysed hereunder:-

43. The profitability, profits and cash flow of the domestic industry are given in the following table:-

	2004-05	2005-06	2006-07	2007-08
Sales Value (Rs Lacs)	***	***	***	***
Trend	100	122	122	100
Selling Price/Unit	***	***	***	***
Trend	100	111	109	93
Cost (Rs. Lacs)	***	***	***	***
Cost /Unit	***	***	***	***
Trend	100	111	114	114
Profit (Rs. Lacs)	***	***	***	***
Trend	100	127	53	-237
Profit/MT	***	***	***	***
Trend	100	116	48	-219
Profit/ Loss (Rs. Lacs)	***	***	***	***
Add: Depreciation (Rs. Lacs)	***	***	***	***
Cash Flow (In Rs. Lacs)	***	***	***	***
Trend	100	119	62	-172
Cash Flow/Unit	***	***	***	***
Trend	100	108	56	-159

44. The data of the domestic industry shows that the cost of sale per unit has increased to 114 (indexed) in POI as compared to 100 of base year. In terms of value, the cost of sale increased by Rs.\*\*\* PMT. During the same

period the net sales realization of the domestic industry declined to 93 (indexed) in POI as compared to 100 of the base year. In terms of value the sale price declined by Rs.\*\*\* PMT. The profit per MT from 100 (indexed) in the base year turned to loss of Rs.\*\*\* in the POI.

### Cash Flow

45. The domestic industry is multi products company. Therefore, cash profit situation of the domestic industry has been determined. Cash profit declined from base year to POI and in indexed form decreased from 100 in base year to become -159 in POI.

### Return on capital employed

46. The Information regarding return on capital employed is given in the table below:

	2004-05	2005-06	2006-07	2007-08
Net Fixed Assets Rs. Lacs	***	***	***	***
Working Capital Rs. Lacs	***	***	***	***
Capital Employed	***	***	***	***
Profit before Interest	***	***	***	***
ROCE	***	***	***	***
Indexed	100	112	58	-249

47. The data shows that the capital employed has declined by 20% in POI as compared to base year. The return on capital employed ( NFA basis) was positive in base year, turned negative in POI.

### **Employment and Wages**

48. Employment & Wages levels of the domestic industry is given in the following table:

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI
No of Employees	***	***	***	***
Trend	<b>100</b>	<b>90</b>	<b>100</b>	<b>100</b>
Wages Total (Rs. Lacs)	***	***	***	***
Trend	<b>100</b>	<b>93</b>	<b>120</b>	<b>113</b>

49. The data shows that number of employees remained same in POI as compared to base year. The wages to employees increased by 13% during the same period.

### **Productivity**

50. Productivity of the domestic industry, as reflected in terms of production per employee, is given in the following table

	April 04 to March 05	April 05 to March 06	April 06 to March 07	POI-
Production (MT)	***	***	***	***
Employees	***	***	***	***
Production per Employee (MT)	***	***	***	***
Trend	<b>100</b>	<b>105</b>	<b>114</b>	<b>97</b>

51. The productivity of the domestic industry i.e. production per employee declined during the POI as compared to base year on account of reduction in the production.

### **Growth**

52. The demand, sale and cost of sales show positive growth. The production, selling price, profitability, PBIT and return on capital employed shows negative growth.

### **Inventory**

53. The inventories of the domestic industry have increased from base year to POI. It was equal to 24 days of sale in base year and increased to 31 days of sales in POI.

	<b>April 04 to March 05</b>	<b>April 05 to March 06</b>	<b>April 06 to March 07</b>	<b>POI</b>
Opening Stock (MT)	***	***	***	***
Closing Stock (MT)	***	***	***	***
Average Stock (MT)	***	***	***	***
Trend	<b>100</b>	<b>92</b>	<b>104</b>	<b>139</b>
As a % of Sales Volume	***	***	***	***
Indexed	<b>100</b>	<b>84</b>	<b>93</b>	<b>128</b>
No. of days of stock held	***	***	***	***
Indexed	<b>100</b>	<b>84</b>	<b>93</b>	<b>128</b>

**Factors affecting domestic prices: -**

54. In order to ascertain the factors affecting the domestic prices, the Authority considered various available information. It has been noted that cost of production has increased by 14% in POI as compared to base year. It has also been noted that the imports were not undercutting the prices of the domestic industry in the market. Basic customs duties declined from 20% in 2004-05 to 10% in POI, the landed value however continue to increase till 2006-07 however, it declined significantly in POI.

**The magnitude of the margin of dumping: -**

55. Authority notes that dumping margin from subject countries were significant during POI.

### **Ability to raise capital investments: -**

56. No investment plan has been intimated by the domestic industry.

### **F.3 Overall assessment of Current Injury**

57. The demand of goods show growth of 32% in POI as compared to base year. The production has declined during the same period. The sales, however, registered growth of 8%. It has been noted that production facility is common for PUC and non-PUC goods. The production of PUC goods depend on available capacity after production of non-PUC goods. As capacity remains fully utilized, therefore, decline in production cannot be treated as sign of injury. It has been noted that there is significant gap in demand and supply in the market. Therefore, decline in market share of domestic industry cannot be considered as sign of injury.

58. The cost of sales increased by 14% in POI as compared to base year. The selling price however declined to 93 (indexed) in POI as compared to base year. The profit per unit in base year turn to loss in POI. Consequently profit (PBIT) turned to loss in POI as compared to profit in base year. The Return on Capital Employed also turned negative in POI from profits in base year. The financial performance indicates injury to the domestic industry.

### **F.4 OTHERS KNOWN FACTORS**

59. The authority has also examined following known factors other than dumped imports which may have been causing or contributing injury to the domestic industry:

### **Volume and prices of imports from other sources**

60. It has been seen that significant imports have been reported from other countries attracting anti dumping duties (USA, Singapore and Japan). The imports from these countries constitute 35.08%, 59.29%, 91.93% and 96.40% in 2004-05, 2005-06, 2006-07 and 2007-08 respectively. It has further been noted that import prices from these countries in year 2004-05, 2005-06 and 2006-07 were lower than the import prices from subject countries under review. In 2007-08, the prices from subject countries were slightly lower than the prices from the other countries.

61. The imports from other sources (other than countries attracting anti dumping duty including the subject countries under this review) were 35.22%, 25.67%, 0.88% and 1.84% in year 2004-05, 2005-06, 2006-07 and 2007-08 respectively. The prices from these countries were higher than other countries except in year 2004-05 when the prices were lower than the subject countries under review. However, the trend of imports indicate that imports from countries attracting anti dumping duties (except countries under review) captured the imports market as its share constituted 91.97% in 2006-07 and 96.40% in POI. This is despite the fact that import prices from these countries were slightly higher, in POI than the import prices from subject countries under review.

### **Contraction in demand and / or change in pattern of consumption**

62. Demand of the product under consideration has not registered positive growth. However, it has been noted that the domestic industry was encountering difficulties in sales of Polyol on account of restricted supply of TDI, a complementing raw material for manufacture of PU foam. Also, the domestic industry does not have extra capacity to meet the demand in the market. Contraction in demand is not a possible reason which could have contributed to injury to the domestic industry.

## **Trade restrictive practices of and competition between the foreign and domestic producers**

63. The subject goods are freely importable and there is no evidence of trade restrictive practices prevailing in the domestic market. This factor could not have been the reason to cause injury to the domestic industry. The subject goods from other countries appeared to have dominated the imports in the market.

## **Development of technology and export performance**

64. Technology for production of the product has not undergone any significant change. Development in technology is not a factor of injury.

## **Productivity of the Domestic Industry**

65. Productivity of the domestic industry measured as production per employee has shown that productivity has declined on account of decline in production.

## **F.5 Causal link & Likelihood of continuance or recurrence of dumping and**

**injury**

## **F.6 Examination by Authority**

66. The Authority notes that during the continuation of duty, the domestic industry continue to utilize capacity. The available capacity for product was available after production of non-PUC goods. The decline in production of PUC can be attributed to the diversion of capacity to non-PUC goods. In the POI, however, it declined to 88%. The Authority has also noted that the domestic industry was encountering difficulty in sales of Polyol on account of restricted supply of TDI, a complementary raw material for manufacture of PU foam. It has further been noted that another product Methylene Di Isocyanate (MDI), a complementary product for polyol, in the manufacture of polyurethanes, which were also being imported in the country by the applicant or by other also posed difficulties as the prices of this product doubled and its shortage in the market posed a serious threat to this line of business. It has been stated in the 20<sup>th</sup> Annual Report that the tight supply situation and higher price scenario of both MDI and TDI continued to pose problem in the marketing of the polyol formulation. In 21<sup>st</sup> Annual Report, the difficulty about the restricted availability and higher price of imported TDI due to shutdown of plants, has been stated. It has also been stated that the company could maintain the sale of polyol as the business supplier of TDI maintain their supplies regularly.

67. It has further been noted that imports from countries attracting anti dumping duties (except the countries under review) were consistently increasing its share in the imports. The imports from these countries constitute 35.08%, 59.29%, 91.93% and 96.40% in 2004-05, 2005-06, 2006-07 and 2007-08 respectively. It has also been noted that prices from these countries were lower than the imports from subject countries under review except in POI. In the POI, imports prices from subject countries were slightly lower than the other countries attracting anti dumping duties.

68. The Authority has also noted that when reference price for these subject countries become irrelevant and imports were at higher prices, the domestic industry did not show any interest in getting the reference price for these countries reviewed. The domestic industry continued to sell goods at lower prices indicating that the domestic industry was not affected by such

variation in the prices. It has been submitted by domestic industry that cost of subject goods for the producers world over as well as for the domestic industry has increased significantly over the past recent years due to rise in raw material prices. The duties level determined in FSP-1 original investigation remain effective till 4<sup>th</sup> February 2008 and in the FSP-2 original investigation become lower than the cost of subject goods of the domestic industry in the POI. Therefore, the subject goods from the subject countries as well as from the countries in FSP-1 continued coming at the prices higher than the reference prices. It is for this reason that they filed MTR application. The same was not accepted by the Authority and domestic industry was therefore continued to suffer by keeping it prices at un-remunerative level due to dumped prices offered by the subject countries as well as by the countries in FSP-1. The Authority has examined the submissions and noted that the reference price for the subject countries had become ineffective as imports were coming at price higher than that offered by the domestic industry. The reference price for the subject countries were lower than the reference prices fixed in the FSP-1. The domestic industry while preferring sunset review of FSP-1 should have also preferred MTR for the subject countries whereas the domestic industry filed the MTR on 3<sup>rd</sup> March 2008 when it was due for the sunset review. The domestic industry was advised to file the SSR, however, the domestic industry preferred to wait for the suo moto initiation of SSR by the Designated Authority and preferred to file information well after the time permitted indicating lack of urgency on the part of domestic industry.

69. It has also been noted that no imports from Brazil has been reported in the POI and very small quantity of imports has been reported in 2006-07. The anti dumping duty in form of reference price had become irrelevant even then the imports from Brazil did not take place indicating the negative trend of imports from Brazil.

70. During the injury period, the share of imports from other countries attracting anti dumping duty has increased and captured the market share of the subject countries. The anti dumping duties on other countries attracting

anti dumping duty have been reviewed and revised with effect from 6<sup>th</sup> February, 2008. The impact of revised anti dumping duty has not been captured in the injury analysis of this review. Though there is no undercutting, the import prices of other countries attracting anti dumping duty, subject countries and selling price of the domestic industry shows some relationship as prices of import and selling price of the domestic industry have declined in the POI. It has been noted earlier that dumped imports continued to take place from China PR, Chinese Taipei and Korea RP as has been assessed in the earlier section of this findings. In case of revocation of anti dumping duty from subject countries (excluding Brazil), the imports from other countries attracting anti dumping duty are likely to shift to subject countries (excluding Brazil). Therefore, there is a likelihood of continuous injury to the domestic industry from imports from subject countries (excluding Brazil).

## **G. FINAL FINDINGS**

71. The Authority after considering the foregoing concludes that:

- a. Subject goods originating in or exported from China PR, Chinese Taipei and Korea RP have been exported to India below their normal value, resulting in dumping;
- b. Subject goods from Brazil have not been exported to India during the POI, therefore, the current dumping from Brazil cannot be determined. The trend of imports indicates that imports from Brazil may not resume.
- c. in case of revocation of anti-dumping duties on the subject goods from China PR, Chinese Taipei and Korea RP, the dumping is likely to continue, and the dumped imports from these countries likely to continue injury to the domestic industry.

### **Indian industry's interest & other issues**

72. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.

## K. Recommendations

73. In view of positive determination of likelihood of dumping and injury on account of imports from China PR, Chinese Taipei and Korea RP the Authority is of the opinion that continuation of the measure is required against imports from these countries. However, considering the current level of dumping from China PR, Chinese Taipei and Korea RP and performance of the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from Chinese Taipei and Korea RP in the form and manner described hereunder.

74. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, Definitive antidumping duty as the difference between the reference price and the landed value 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 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the China PR, Chinese Taipei and Korea RP. Landed value of imports for the purpose shall be the assessable value as determined by Customs under the Customs Act, 1962 and all duties of customs except duties levied under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

Duty Table

Sl. No	Tariff Item	Description of Goods	Grade	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	3907.20	Flexible slabstock polyol	Molecular weight 3000-4000	China PR	China PR	Any	Any	2601	MT	USD
2	Do	Do		China PR	Any country other than China PR	Any	Any	2601	MT	USD
3	Do	Do		Any country other than country/ies attracting anti dumping duty	China PR	Any	Any	2601	MT	USD
4	Do	Do		Korea RP	Korea RP	Any	Any	2601	MT	USD
5	Do	Do		Korea RP	Any country other than Korea RP	Any	Any	2601	MT	USD

6	Do	Do		Any country other than country/ies attracting anti dumping duty	Korea RP	Any	Any	2601	MT	USD
7	Do	Do		Chinese Taipei	Chinese Taipei	Any	Any	2601	MT	USD
8	Do	Do		Chinese Taipei	Any country other than Chinese Taipei	Any	Any	2601	MT	USD
9	Do	Do		Any country other than country/ies attracting anti dumping duty	Chinese Taipei	Any	Any	2601	MT	USD

75. An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

**(R. Gopalan)**

**The Designated Authority**