

No.15/28/2004-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING &
ALLIED DUTIES)

NOTIFICATION

New Delhi, the 31st October, 2005

Final Findings
(Mid-term Review)

Subject: Anti-Dumping (Mid-Term Review) investigations concerning imports of Methylene Chloride originating in or exported from EU, South Africa and Singapore – Final Findings.

No 15/28/2004- DGAD - Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof:

A. Background

2. (i) The Designated Authority (hereinafter also referred to as the Authority) notified final findings vide Notification No17/1/2001-DGAD dated 14th August 2003 recommending imposition of anti-dumping duties on all imports of Methylene Chloride originating in or exported from EU, South Africa and Singapore.
- ii) The original investigation in this proceeding was initiated on 19th August 2002. The Preliminary findings was issued by the Designated Authority vide Notification No. 17/1/2001-DGAD 24th December, 2002. Final findings of the Authority were issued by the Designated Authority vide Notification No. 17/1/2001-DGAD dated 14th August 2003 and the final duty was imposed on the subject goods vide Customs Notification No. 49/2003 dated 27th March, 2003.

B. Procedure

3. (i) The Customs Tariff Act, 1975(as amended) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 made thereunder require the Authority to review from time to time, the need for the continued imposition of definitive anti dumping duty imposed by the Central Government.

ii) The Designated Authority, received an application from the European Commission on the behalf of exporters including Ineos Chlor, of European Union for review of the antidumping duties levied on the subject goods, on the grounds of changed circumstances. On the basis of positive information submitted by the above-mentioned applicants the Designated Authority considered that mid-term review of the anti dumping duty in force would be appropriate in view of the changed circumstances brought to the notice to the Authority. Accordingly, a public notice dated 28th January, 2005, was issued and published in the Gazette of India, Extraordinary, initiating anti-dumping mid term review investigation under Rule 23 of the Antidumping Rules read with Article 11.2 of the Agreement on Antidumping, in respect of the duty in force against the subject countries as above, to determine whether the continued imposition of the duty is required to offset dumping, and whether injury would be likely to continue or recur if the duty were removed or varied, or both.

iii) Having decided to review these final findings, the Authority initiated the present investigations vide Notification No. 15/28/2004-DGAD dt.28/1/2005 to review the need for continued imposition of anti dumping duty on Methylene Chloride from EU,South Africa and Singapore. (hereinafter referred to as subject countries) in accordance with the Customs Tariff Act,1975(as amended) 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 AD Rules). This review covers all aspects of Notification No. 17/1/2001-DGAD dated 14th August 2003.

iv) After initiation of the review the Authority sent questionnaires, alongwith the initiation notification, to the known exporters/producers, as per addresses available in the original investigation, in the subject countries in accordance with the Rule 6(4), to elicit relevant information.

v) Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;

vi) The Embassies/High Commissions/ Representatives of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with

Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.

vii) Questionnaires were sent to the known importers and consumers of subject goods in India, as per addresses available in the original investigation, calling for necessary information in accordance with Rule 6(4),

viii) Investigations were carried out for the period of investigation (POI) from 1st April 2003 to 31st March 2004 (12 months). However injury analysis have been carried out for the years April 2000 – March 2001, April 2001 – March 2002, April 2002 – March 2003 and the period of investigation.

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

x) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.

xi) The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.

xii) M/s. Gujarat Alkali & Chemicals Ltd., the domestic producer of the subject goods and the original petitioner in the original investigation submitted its responses opposing the review;

xiii) The Authority verified the information furnished by the domestic industry to the extent possible examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP);

xiv) The Authority held a public hearing on 16/6/05 to hear the interested parties orally, which was attended by representatives of the domestic industry, the applicant exporters of the subject goods from the European Union and other interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;

xv) The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing are discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the

case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in relevant paragraphs.

xvi) In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed on 13.9.2005 to known interested parties and comments received have been duly considered in the findings.

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

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. The product involved in the original investigation and the current review is Methylene Chloride falling under heading No. 29031200 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. This classification however, is indicative only and in no way binding on the scope of the present investigation. This being a changed circumstances mid-term review investigation, the investigation covers the product covered in the original investigation. No argument has been extended, by any interested party, on the issue of product under consideration or like article and therefore, the Authority holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject countries are like articles as per AD Rules.

D. DOMESTIC INDUSTRY

5. In the original investigation the application for anti-dumping investigation was filed by M/s. Gujarat Alkali & Chemicals Ltd., on behalf of the domestic industry. The applicant was the major producer of the subject goods in India and had the required standing to file the petition under AD Rules. In this mid-term review M/s. Gujarat Alkali & Chemicals Ltd. is providing all relevant information and supported by M/s Chemplast Sanmar and M/s SRF Ltd. M/s Chemplast Sanmar Ltd. also submitted costing and injury information. However, on verification the information was found to be incorrect and unreliable, hence, the costing and injury information provided by the company have not been relied upon in this investigation. M/s Gujarat Alkali & Chemicals Ltd. therefore, constitute domestic industry within the meaning of AD Rules.

E. INITIATION OF THE REVIEW AND ARGUMENTS RAISED

E1. VIEWS OF APPLICANTS

6. Views of the applicant is summarized below

The applicant claims that the condition of injury to the domestic industry has changed substantially requiring a review of the anti dumping measure in force. It is claimed that in the financial year 2002-03, the production of Methylene Chloride by Gujarat Alkalies and Chemicals Limited was 25481 MT. The applicant claims that though the production has increased only by 1 % from 2002-03 to 2003-04 but sales have increased by 14 % from Rs. 616 million to Rs. 702 million in the same period. The applicant further claims that the installed capacity for Methylene Chloride had since 2002 remained at 23760 MT and utilization has been more than 100 % as production levels had reached 25481 MT in 2002-03 and 25784 in 2003-04, therefore, the domestic industry is producing at its maximum and is not suffering under utilization of the capacity. The applicant has also claimed that the demand for Methylene Chloride in India is approximately 57000 MT/ annum, however, current annual production levels in India for the domestic manufacturers (Gujarat Alkalies Ltd., Chemplast Sanmar and SRF Ltd.) lie at approximately 30000 MT. In order to meet the domestic demand, the user industry in India is obliged to import Methylene Chloride, in spite of the Anti-dumping duty currently in force. The domestic producers have not increased their capacity in spite of growing domestic consumption, which suggests that there are elements other than alleged dumping which are impeding the domestic industry from expanding their production. The applicant also stated that prices on the market have doubled since the period of investigation. At the time of imposition, prices were in the range of US \$ 270-350/MT, these prices have now increase to US \$ 650/MT and have remained at this level for a considerable period of time. The applicant claims that these high prices would indicate that the domestic industry is not suffering any injury on account of dumping. It has been informed that the average export price to India for Methylene Chloride during 2004 was \$ 655/MT for packed product and \$ 611/ MT for bulk product.

E2. VIEWS OF THE DOMESTIC INDUSTRY

7. Views of the Domestic industry are summarized below

- i. The applicant is not clear about the product under consideration whose review is being sought. The covering letter, which is a letter from the European Commission, states about Methylene Chloride as the product under

- consideration under the heading subject, while the letter refers to review of the duty on imports of Choline Chloride.
- ii. The application is vague about the applicant who has sought the review of anti-dumping duties.
 - iii. The Designated Authority should be satisfied on the basis of positive information submitted by the applicant that there is no need to review Anti-dumping Duties in force. Such satisfaction of the Designated Authority must be before initiation and not during the course of investigation. In the instant case, no positive information has been provided by the applicant justifying the need for review of the Anti-dumping Duty.
 - iv. The applicant M/s Ineos Chlor neither cooperated during the original investigation nor during present investigation. Even during the public hearing M/s Ineos Chlor did not make any submission.
 - v. A review can be taken up at the request of an interested party provided the circumstances in which Anti-dumping Duty was recommended earlier have changed and the duty is required to be revoked, increased or reduced. However, in the instant case the alleged circumstances do not constitute 'changed circumstances' warranting mid-term review. The application filed by European Commission or a European producer lacks positive evidence demonstrating changed circumstances. It is not the ground of the applicant that the product is no longer being dumped in the Indian market. Imports from European Union and Singapore have continued at dumped prices even after imposition of duty.
 - vi. The claim of applicant is restricted only to 'no material injury' and does not extend to 'no likelihood of recurrence of injury to the Domestic Industry'. Therefore, claim is insufficient in the light of legal requirements for initiation of review or discontinuation of the Anti-dumping Duty.
 - vii. The claim of applicant is not based on Methylene Chloride, the production under consideration in the present case and the applicant has relied on irrelevant and useless information.
 - viii. Marginal improvement in production, sales and capacity utilization is a direct consequence of continuous efforts of the Indian producers to improve the production. By no stretch of imagination this can be considered as reasonable ground for revocation of anti-dumping duty.
 - ix. Inability of the domestic industry to meet the demand was not a pre-requisite for imposition of anti-dumping duty. It cannot now become a parameter for revocation of the anti-dumping duty.
 - x. The applicant has argued that export prices have increased since the imposition of duties. However, it should be seen that world over prices of raw material have increased. Prices of Chlorine which is the major raw material has increased significantly after imposition of the Anti-dumping Duty and the

increase in export prices as stated by the exporter is due to increase in cost of production.

- xi. There is no application on the record by any producer/exporter from Singapore and South Africa or any importer in India for reviewing Anti-dumping Duty on imports from Singapore and South Africa.
- xii. It is a settled principle of law that one who asserts has to prove his assertion. Therefore, the onus of establishing that there is a need for withdrawal of anti-dumping duty in force lies on the party which is seeking the said withdrawal.

E3. EXAMINATION BY THE AUTHORITY

8. The authority has taken note of arguments raised by the domestic industry and is of the view that European Commission has made request on behalf of the exporters including M/s Ineos Chlor of the European Union. The request was sent through diplomatic channel to the Designated Authority. As per Anti-dumping Agreement and Anti-dumping Rules, European Commission and exporter M/s Ineos Chlor both are interested parties in this case and have right to file the application. In this case European Commission being interested party has right to file the application for review on behalf of the exporter.

9. The argument raised by the domestic industry that the product is not clear as in the body of the forwarding letter 'Choline Chloride' is mentioned. The Authority is of the view that the product under consideration is Methylene Chloride as is very clearly stated on the letter under the heading subject. The letter is accompanied by a write up giving details about changed circumstances relating to Methylene Chloride. On the letter Choline Chloride is also mentioned, however, it cannot negate a complete write up on changed circumstances relating to Methylene Chloride.

10. The lack of cooperation by the exporter or any other interested party is visualized under Article 6.8 of the Anti-dumping Agreement and Rule 6(8) of the Anti-dumping Rules. The Authority follows the rules already in operation in this regard.

11. The domestic industry has argued that the 'satisfaction' of the Authority must be before the initiation and not during the course of the investigation. In this regard they have drawn the attention of the Designated Authority to Article 11(2) of the Anti-dumping Agreement.

12. The Authority has taken note of the provisions of Article 11(2) of the Anti-dumping Agreement and Section 9(5) of the Customs Tariff Act and relevant Anti-dumping Rules. Section 9A (5) read with Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall from time to time review the need for

continued imposition of anti dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal. And also Article 11.2 of the Agreement provides that the Authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately.

13. The Authority has examined the argument and is of the view that the condition 'satisfaction' in Rule 23 refers to the satisfaction of the Authority of the need of continued imposition of duty after conducting a proper investigation and not for initiation of the review. What is required for initiating a review is positive information with the Authority on which the Authority can rely upon to decide whether a review is required to examine the need for continued imposition of the duty. In the instant case the applicant had filed positive information before the Authority in its review application and the review was initiated based on these positive information filed. The positive information imply any information on basis of which the Authority can reasonably act. However, it cannot be expected from the Authority to test the information with strict evidence at the initial stage as is done during the course of the investigation. Production of evidence to substantiate the claims and counter claims by various parties are the matter of investigation and are to be submitted by the parties including the party making a request for review during the course of investigation. The outcome of the review will however, depend upon the quality of evidence submitted by various parties to the review. Therefore, the Authority is of the view that the review has been correctly initiated on the basis of positive information available with the Authority which suggested that a review of the duty in force was warranted.

14. The domestic industry contended that the onus of establishing the need for withdrawal of anti-dumping duty at this pre-mature stage is on the petitioner. The domestic industry is not required to establish the need for continued imposition of anti-dumping duty and the domestic industry is not required to establish that the revocation of anti-dumping duty would result in recurrence of injury and anti-dumping duty is required to be continued. The Authority has examined the issue and taken note of provision contained in Article 11 (1) & 11(2) and Section 23 of the Anti-dumping Rules. As per these provisions, the Authority, on being satisfied on the basis

of information received that there is no justification for the continued imposition of anti-dumping duty, the Authority shall recommend for withdrawal of such duty. The Authority finds that this provision put onus on the Authority to have satisfaction on the basis of information received by it. The Authority is also required to examine material for its satisfaction whether continued imposition of Anti-dumping duty will help in preventing recurrence of injury to the domestic industry. This also imply lack of information for continued imposition of anti-dumping duty. Any interested party cannot take shelter on the ground that the other interested party is not cooperating, therefore, adverse view should be taken. Neither the Anti-dumping Agreement nor Anti dumping Rules gives mandate to take such adverse view against the non-cooperating parties. To deal with the non-cooperating interested parties the Authority is required to rely on facts available as per provision of the Agreement and the Rules. Therefore, the Authority is relying on the information available to it from any source, including information provided by the interested parties.

15. The Authority also takes note of other arguments raised by the domestic industry regarding applicant's claim about lack of injury to the domestic industry. These arguments have been taken into account while analyzing the injury to the domestic industry.

F. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN:

DUMPING DETERMINATION: NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

F1. THE EUROPEAN UNION

F1.1. NORMAL VALUE

16. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c) of the Customs Tariff Act, 1975. None of the exporters / producers from EU has filed submissions for the determination of normal value in the form and manner required by the Authority.

17. Article 6.8 of the Agreement provide that in case any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Annex II to the Agreement further provides that such determination can even be made on the basis of information provided by the domestic industry. Since

none of the exporters / producers from EU has filed the required information for determination of normal value, the normal value for all exporters / producers has been constructed based on facts available as per Rule 6(8) of AD Rules. The normal value is therefore, constructed as US\$ ***/MT for loose material and US\$***/MT for packed material. for all exporters / producers from EU.

F1.2. EXPORT PRICE

18. The export price is determined on the basis of import statistics provided by DGCI&S. As per DGCI&S import statistics EU has exported 3012 MT of during the POI. After segregating data for loose and packed material the adjustments on account of in land freight, ocean freight and marine insurance have been adjusted to arrive at ex-factory export prices. The ex-factory export price for loose material is determined as US\$ ***/MT and US\$ ***/MT for packed material for all exporters/producers from EU.

F2. SINGAPORE

F2.1. NORMAL VALUE

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) of the Customs Tariff Act, 1975. None of the exporters / producers from Singapore has filed submissions in the form and manner required by the Authority. Article 6.8 of the Agreement provides that in cases any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Annex II to the Agreement further provides that such determination can even be made on the basis of information provided by the domestic industry. Since none of the exporters / producers from Singapore has filed the submissions for determination of normal value, the normal value for all exporters / producers has been constructed based on facts available as per Rule 6(8) of AD Rules. In absence of any other information, the information provided by the domestic industry has been considered as the basis of normal value for the purpose of assessment of extent of current dumping. The normal value is therefore, constructed as US\$ ***/MT for all exporters / producers from Singapore.

F2.2. EXPORT PRICE

20. The export price is determined on the basis of import statistics provided by DGCI&S. As per DGCI&S import statistics Singapore has exported 44 MT of Methylene Chloride during the POI. To arrive at ex-factory export price, adjustments

on account of inland freight, ocean freight and marine insurance have been considered as provided by the domestic industry. The ex-factory export price is determined as US\$***MT for all exporters / producers from Singapore.

F3. SOUTH AFRICA

21. As per DGCI&S import statistics South Africa has not made any export of Methylene Chloride during the POI. Therefore, the Authority could not calculate export price.

F4. DUMPING MARGIN

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

SUBJECT COUNTRIES	NORMAL VALUE(\$/MT)		EXPORT PRICE(\$/MT)		DUMPING MARGIN (%)	
	(Loose)	(Packed)	(Loose)	(Packed)	(Loose)	(Packed)
EU	***	***	***	***	-5	-9
Singapore		***		***		83

G. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

G1. INJURY DETERMINATION AND CONTINUATION OF INJURY

G1.1. VIEWS OF THE APPLICANTS

23. The applicant has submitted that the domestic industry has improved its performance and does not suffer any material injury. The applicant claims that though the production has increased only by 1 % from 2002-03 to 2003-04 but sales have increased by 14 % from Rs. 616 million to Rs. 702 million in the same period. The applicant further claims that the installed capacity for Methylene Chloride had since 2002 remained at 23760 MT and utilization has been more than 100 % as production levels had reached 25481 MT in 2002-03 and 25784 in 2003-04, therefore, the domestic industry is producing at its maximum and is not suffering under utilization of the capacity. At the time of imposition, prices were in the range of US \$ 270-350/MT, these prices have now increase to US \$ 650/MT and have remained at this level for a considerable period of time. The applicant claims that these high prices would indicate that the domestic industry is not suffering any injury on account of dumping. It has been informed that the average export price to India for Methylene

Chloride during 2004 was \$ 655/MT for packed product and \$ 611/ MT for bulk product.

G1.2. VIEWES OF THE DOMESTIC INDUSTRY

24. Views of Domestic industry are summarized below:

Domestic industry has been making dedicated efforts to optimize its production. Imposition of anti dumping duty helped the domestic industry tremendously in improving its production volumes. It has been argued by the petitioner that the domestic industry has not enhanced capacity. While capacity addition in this product are not feasible in the short run, the domestic industry has made significant increase in production volumes, once it has been protected from unfairly priced dumped imports. As a result, production and capacity utilization of the domestic industry has not declined and has rather shown improvement. The improvement in the performance of profits, cash flow and return on investments is due to imposition of anti dumping duty on dumped imports. This clearly shows that the performance of the domestic industry was adverse in terms of these parameters only because of dumping of the product in the market

25. Changes in the employment level with the domestic industry are more a result of overall situation of the domestic industry and is not reflective of performance of the product per-se. Employment with the domestic industry has declined more as an overall corporate performance of the domestic industry. The wages with the domestic industry increased because of annual wage increments the domestic industry must offer to its employees. Productivity of the domestic industry has improved with the imposition of anti dumping duty. While the domestic industry has been able to reduce employment on the one hand, it has been able to increase its production level on the other hand

G1.3. EXAMINATION BY THE AUTHORITY

26. The Authority proposes to analyse the injury parameters to determine whether the domestic industry is continuing to suffer material injury on account of such dumped imports.

G2. **VOLUME OF IMPORT AND IMPORT PRICES**

27. DGCI&S data for the injury analysis period shows that imports have taken place from several sources including the subject countries during the injury investigation period. Accordingly, the import as reported by DGCI&S are as follows:

Imports from various countries		2000-01	2001-02	2002-03	2003-04 (POI)
Imports From Subject Country	MT	3225.00	8199.00	2697.74	3056.00
European Union	MT	3224.00	6178.00	2692.00	3012.00
Singapore	MT	1.00	1501.00	5.00	44.00
South Africa	MT	0.00	520.00	0.74	0.00
Other Countries	MT	630.00	649.00	3258.26	10190.00
Total Imports	MT	3855.00	8848.00	5956.00	13246.00
Market share in Imports					
Subject Countries	%	83.66	92.67	45.29	23.07
European Union	%	83.63	69.82	45.20	22.74
Singapore	%	0.03	16.96	0.08	0.33
South Africa	%	0.00	5.88	0.01	0.00
Other Countries	%	16.34	7.33	54.71	76.93

28. Imports as per the transaction-wise DGCI&S data shows imports of 3012 MT from subject countries during POI. The domestic industry have contended that volume of imports as per data published by Eurostat establishes much higher import at 10200 MT during January-December 2004. The viewpoint of domestic industry is that import of subject goods are either not being reported to DGCI&S or have been cleared under some other Customs classification with the possibility of circumvention of Anti-dumping Duty.

29. The Authority has taken note of fact that Eurostat data shows much higher exports to India from European Union, however, it has also been taken note that data relate to calendar year from January to December whereas POI is for the financial year i.e. April 03 to March 04.

30. The data published by IBIS also shows similar quantity of imports in India as reported by DGCI&S. Value-wise also data published by IBIS shows similarities to that of DGCI&S. Though there is a small difference over the per unit value of the products, it is the volume which shows significant difference in data published by DGCI&S, IBIS and Eurostat. The Authority, therefore, has taken note of the fact that import quantity could be higher than what has been reported by DGCI&S.

31. The data reported by DGCI&S and IBIS does not make any difference between loose and packed imports, therefore, for segregating data of imports the Authority has agreed to method adopted by domestic industry. By this method, the data of only Kandla and Mumbai Ports have been used, as only these two ports have facility to handle loose imports. Further, only higher volume of imports have been taken into loose category as loose product is not generally imported in small quantity.

32. The data shows that the share of subject countries in total imports shows declining trend as it declined to approximately 23% during POI as compared to approximately

84% during the base year. From the South Africa, import is nil during POI. From Singapore, imports constitute 0.33% during POI whereas from European Union, imports constitute approximately 23% during POI. Imports data also shows significant rise of imports from other countries. It grown to 77% during POI as compared to 16% during the base year.

33. In post-disclosure submissions the domestic industry has contended that the data from the Kandla Port should have been used to calculate the export price. In this regard, the Authority observed that the domestic industry in its original submission used data from IBIS to calculate export prices. In subsequent submissions they used data provided by DGCI&S and segregated imports transactions made at Kandla and Bombay ports and calculated the export prices, however, while calculating the export price certain high volume transactions were considered under packed material. The Authority has used same data as segregated by domestic industry, however, high volume transactions were considered as loose material and export prices were calculated accordingly. The contention of the domestic industry that data of only Kandla port should have been used to calculate the export price is untenable as Kandla and Bombay ports both have facility to handle loose material, therefore, imports data from both the ports have been used to calculate the export prices.

G3. CAPACITY, OUTPUT AND CAPACITY UTILIZATION OF DOMESTIC INDUSTRY

34. The performance of the domestic industry has also been examined with reference to its capacity, output and capacity utilization and impact of the dumped imports on these parameters, if any. There is no change in capacity of domestic industry. It remained the same during POI as compared to base year 2000-01. Though the capacity has not changed during POI yet it shows improvement in utilization of capacity. It had been working at more than 100% of the capacity even in the base year yet it shows further growth of 3% during POI as compared to base year. Similarly, production shows growth of 3% during POI as compared to the base year.

Utilization of Capacity		2000-01	2001-02	2002-03	2003-04 (POI)
Capacity	MT	***	***	***	***
Trend	Indexed	100.00	100.00	100.00	100.00
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100.00	93.89	96.33	103.40
Output					
Production	MT	***	***	***	***
Trend	Indexed	100.00	93.89	96.33	103.40

G4. DEMAND AND MARKET SHARES

35. The total demand has been estimated based on the combined volume of domestic sales and imports from other countries, as well as imports made into the domestic market from the Subject countries. Demand shows growth of 38% during POI as compared to base year. Market share in demand shows significant decline to 69 during POI from the base year in respect of the subject countries. However, for the other countries it shows robust growth to 1171 from base of 100 in 2000-01. Market share of the domestic industry shows declining trend and it declined to 78 during POI from the base year. Similarly share of other domestic producers declined to 83 during POI as compared to base year. It shows that in growing market though domestic industry was in position to improve capacity utilization and could also improve sales in value and volume term yet market share of domestic industry and other Indian producers declined. Market share from the subject country also shows declining trend, however, countries other than subject countries gained significant share and grown to 1171 during POI from the base of 100 in 2000-01.

In Demand		2000-01	2001-02	2002-03	2003-04 (POI)
Merchant Demand	MT	***	***	***	***
		100.00	115.81	108.83	138.14
Imports from subject countries	MT	3225.00	8199.00	2697.74	3056.00
Trend	Indexed	100.00	254.23	83.65	94.76
Imports from other countries	MT	630.00	649.00	3258.26	10190.00
Trend	Indexed	100.00	103.02	517.18	1617.46
Sales of domestic industry	MT	***	***	***	***
Trend	Indexed	100.00	93.73	96.31	107.12
Sales of other Indian producer	MT	***	***	***	***
Trend	Indexed	100.00	104.82	106.06	114.31
Market share in Demand					
Domestic industry	%	***	***	***	***
Trend	Indexed	100.00	80.93	88.49	77.55
Other Indian producers	%	***	***	***	***
Trend	Indexed	100.00	90.51	97.45	82.75
Subject Countries	%	***	***	***	***
Trend	Indexed	100.00	219.53	76.86	68.60
Other countries	%	***	***	***	***
Trend	Indexed	100.00	88.95	475.21	1170.88
Total		100.00	100.00	100.00	100.00

G5. SALES REALISATION OF THE DOMESTIC INDUSTRY

36. Sales volume have grown by 7% during POI as compared to base of 100 in 2000-01. Sales value has grown by 23% in the same time showing better realization.

37. Sales volume of loose material have grown by 1% during POI, however, sales value increased by 22% during the same period showing significant improvement in realization. Sales volume of packed material have grown by 26% during POI as compared to base year however, sales value increased by 36% during the same period showing better realization.

Particulars	Unit	2000-01		2001-02		2002-03		2003-04 (POI)	
		Volume	Value	Volume	Value	Volume	Value	Volume	Value
Actual & Potential Decline in			Rs/Lacs		Rs/Lacs		Rs/Lacs		Rs/Lacs
Sales									
Sales (Domestic)	MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	94	86	96	101	107	126
Sales loose	MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	90	80	91	101	101	122
Sales Packed	MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	106	100	112	99	126	136
Export Sales	MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	100	33	31	1	2	0	0

G6. PRICE UNDERCUTTING

38. A comparison for subject goods during the period under investigation was made between the weighted average landed value of dumped imports and the domestic selling price in the domestic market. The landed value of imports from the subject countries was lower than the net sales realization of the domestic industry for the subject goods during the POI thereby, undercutting the selling price of the domestic industry. The undercutting margin was in the range as mentioned below during the POI.

Price Undercutting	EU(loose)	EU(Packed)	Singapore (Packed)
Net sales realization	***	***	***
Landed Value	***	***	***
Price Undercutting	***	***	***
Price Undercutting (%)	***	***	***
Price Undercutting range	1-10%	1-7%	20-30%

G7. PRICE UNDERSELLING

39. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. Also in order to

eliminate inefficiencies, the capacity utilization has been normated. The analysis shows that the weighted average landed value of the subject goods from subject countries is less than the non injurious price determined for the domestic industry during the period of investigation. The underselling margin was in the range as mentioned below during the POI.

Price Underselling	EU(loose)	EU(Packed)	Singapore (Packed)
Non Injurious Price	***	***	***
Landed Value	***	***	***
Price Underselling	***	***	***
Price Underselling (%)	***	***	***
Price Underselling range	5-15%	4-13%	25-35%

40. Further, the landed value of subject goods is lower than the domestic selling price of the domestic industry thereby, undercutting the domestic sales prices.

OTHER INJURY PARAMETERS

41. After having examined the 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 here as follows:

G8. PROFITABILITY

42. The profitability of the domestic industry has been analysed from the record of the company:

43. The cost of production excluding interest increased by 17% in case of loose product and 15% for the packed product during POI as compared to the base year. Selling price shows increase of 22% for the loose product and 8% for the packed product. Profitability has shown improvements and in indexed form for loose product loss of 100 in the base year which turned positive and in the indexed form it has become 96. For the packed product it shows deterioration and profit of 100 in the base year has turned negative during POI to -2. Profit shows improvement and it increased to 480 during the POI as compared to 100 of the base year.

Profits- Domestic Sales		2000-01	2001-02	2002-03	2003-04 (POI)
Cost of Production (loose)	Rs./MT	***	***	***	***
Trend	Indexed	100.00	82.89	125.00	109.28
Net Cost of Production excluding interest (loose)	Rs./MT	***	***	***	***
Trend	Indexed	100	78	130	117

Cost of Production (packed)	Rs./MT	***	***	***	***
Trend	Indexed	100	86	122	102
Net cost of production excluding interest (packed)	Rs./MT	***	***	***	***
Trend	Indexed	100	82	125	115
Selling Price (loose)	Rs./MT	***	***	***	***
Trend	Indexed	100.00	88.81	111.31	121.52
Selling Price(packed)	Rs./MT	***	***	***	***
Trend	Indexed	100.00	94.93	88.24	107.80
Profit Before Interest & Taxes (loose)	Rs./MT	***	***	***	***
Trend	Indexed	-100	468	-1025	96
Profit before Interest & Taxes (Packed)	Rs./MT	***	***	***	***
Trend	Indexed	100	311	-505	-2
Profit before Interest & Taxes	Rs. Lacs	***	***	***	***
Trend	Indexed	100	4180	-8277	480

G9. EMPLOYMENT

44. Number of employees have been reduced during POI as compared to base year. In indexed form it declined to 73 during POI as compared to 100 of base year

Employment		2000-01	2001-02	2002-03	2003-04 (POI)
Employees	Nos.	***	***	***	***
Trend	Indexed	100	70	73	73

G10. WAGES

45. Wages have increased during POI as compared to base year. It increased by 36% during POI. Wages calculated as per/kg. of production grown by 32%.

Wages		2000-01	2001-02	2002-03	2003-04 (POI)
Wages paid to employees	Rs. Lacs	***	***	***	***
Trend	Indexed	100.00	78.66	97.79	136.28
Wages Per KG of Production	Rs./KG	***	***	***	***
Trend	Indexed	100.00	83.78	101.52	131.79

G11. PRODUCTIVITY

46. The number of employees has been reduced to 73 (Indexed) during POI as compared to base year. The wages have increased by 36%, however, the productivity per employee improved by 42% during the same period.

Productivity		2000-01	2001-02	2002-03	2003-04 (POI)
Productivity per Employees					
Employees	Nos.	***	***	***	***

Trend	Indexed	100.00	70.45	72.73	72.73
Productivity per Employee	MT	***	***	***	***
Trend	Indexed	100.00	133.26	132.45	142.17

G12. INVENTORIES

47. The position of inventory has shown improvement. In the indexed form the closing stock shows increase of 17% during POI. The opening stock shows declining trend and it declined to 75 during POI as compared to base year. Similarly the average stock declined to 88 during POI as compared to base year

Inventories		2000-01	2001-02	2002-03	2003-04 (POI)
Closing Stocks	MT	***	***	***	***
Trend	Indexed	100.00	104.64	161.60	117.30
Opening stocks	MT	***	***	***	***
Trend	Indexed	100.00	46.38	48.53	74.95
Average Stocks	MT	***	***	***	***
Trend	Indexed	100.00	64.84	84.36	88.37

G13. INVESTMENT AND RETURN ON INVESTMENT

48. There has been no capacity addition or any remarkable fresh investment by the applicants during the investigation period. The domestic industry has been improving its profitability. The domestic industry has been able to improve ROCE during the POI from the base year.

Return on Investment	Unit	2000-01	2001-02	2002-03	2003-04 (POI)
Net Assets (Chloromethane)	Rs. Lacs	***	***	***	***
Trend	Indexed	100	99	92	101
Net Assets (Methylene Chloride)	Rs. Lacs	***	***	***	***
Trend	Indexed	100	91	81	72
Working Capital	Rs. Lacs	***	***	***	***
Trend	Indexed	100	117	116	100
Capital Employed-NFA Basis	Rs. Lacs	***	***	***	***
Trend	Indexed	100	98	91	80
Return on capital employed	%	***	***	***	***
Trend	Indexed	100	4257	-9089	601

G14. CASHFLOW

49. The domestic industry is a multi-product company therefore it was not possible to determine the actual magnitude of cash-flow of the product. However it has been observed that the company has improved its cash-profit of the product over the period of injury.

H. CONCLUSION

50. On the basis of examination of injury factors, it is noted that the domestic industry have been able to improve production and capacity utilization of the subject goods. Though the domestic industry was working at more than 100% of its capacity during the base year, yet it could improve it further by 3% during POI as compared to the base year. Sales volume of the domestic industry improved by 7% during POI as compared to the sales value which grown by 26% during the same period showing better realization. The market demand has grown by 30% during POI as compared to base year. Though the domestic industry have been able to increase production by 3% during the same period, however, market share of the domestic industry declined by 18% during POI as compared to base year, but declining share cannot be sign of injury as domestic industry is producing at more then 100% of its capacity.

I. OTHERS KNOWN FACTORS AND CAUSAL LINK

I.1. Volume and prices of imports from other sources

Market share		2000-01	2001-02	2002-03	2003-04 (POI)
In imports					
Imports from various countries					
Imports From Subject Country	MT	3225.00	8199.00	2697.74	3056.00
European Union	MT	3224.00	6178.00	2692.00	3012.00
Singapore	MT	1.00	1501.00	5.00	44.00
South Africa	MT	0.00	520.00	0.74	0.00
Other Countries	MT	630.00	649.00	3258.26	10190.00
Total Imports	MT	3855.00	8848.00	5956.00	13246.00

51. During the POI, imports have taken place from many countries. It shows that imports from the other countries are higher as compared to European Union. The imports from other countries including USA, Russia and China have risen sharply to 77% of total imports during POI as compared to 16% during the base year. As regards USA, Russia and China, the imports are on lower prices than that from the European Union. The domestic industry has contended that the imports are also being dumped from USA, Russia and China.

I.2. Contraction in demand and / or change in pattern of consumption

52. The total demand of the subject goods shows significant growth. It increased by 30% during POI as compared to the base year, therefore, this factor is not possible reason which could have caused injury to the domestic industry.

I.3. Trade restrictive practices of and competition between the foreign and domestic producers

53. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. Moreover, imports from other sources have sizable presence in the Indian market, which has grown substantially along with the imports from subject countries. Therefore, this factor could not have been reason to cause injury to the domestic industry

I.4. Development of technology and export performance

54. Technology or technology related issues have not been raised by any interested party as cause of injury to the domestic industry. It is noted that the domestic industry was exporting small quantity during the base year however, but now there is no export during the POI. The quantity being so small in the base year, so cessation of exports during the POI cannot be reason which could have caused injury to the domestic industry.

I.5. Productivity of the Domestic Industry

55. Productivity of the domestic industry has shown improvement. It has improved by 42% during POI as compared to the base year. Wages to the employees have increased by 36% during POI and wages per kg. of production also increased by 32% during POI as compared to the base year.

56. The foregoing analysis indicates that the domestic industry is working at full capacity utilization and also have been able to improve sales realization, profitability and return on capital employed. The demand had grown by 30% during POI as compared to base year. The domestic industry could also improve production and sales, however, market share of domestic industry declined in view of 100% capacity utilization of the domestic industry.

57. As per data of imports, the share of subject countries had declined in imports and consequently share in demand has also declined. On the other hand, share in imports from other countries had increased significantly and consequently share in demand also increased accordingly. The Authority also finds that exports from other countries are at low prices than the import prices from European Union.

58. The Authority finds that domestic industry is not suffering injury as indicated by analysis of economic parameters. The prices of imports from subject countries are not causing impact on prices of domestic industry in view of prices of domestic industry and in view of prices and rise in imports from other countries.

J. LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY

59. In addition to the examination of material injury, likelihood of recurrence of injury or threat of injury to the domestic industry has been examined by the Authority on the basis of the claims made by the domestic industry.

60. The domestic industry has submitted that the Designated Authority is required to examine -

- a. Whether the domestic industry is continuing to suffer material injury as a result of continued dumping;
- b. Whether the domestic industry is likely to suffer injury as a result of revocation of anti-dumping duty.

And made under mentioned submissions:-

J.1. Vulnerability of the domestic market

61. There is a great possibility that this continuance of anti-dumping duty will result in flooding of material in Indian market because of the following reasons:

- a. The product is continued to be exported to India at dumped prices from subject countries and also huge volume is coming European Union as per data published by Eurostat.
- b. Comparison of imports and sales price shows that the market for the subject goods is highly price sensitive. Any difference in prices of the imported product would drag the demand in favour of cheaper source. In such case domestic industry would have to either reduce the prices or the market would be flooded with imports from subject countries.
- c. The Indian market is targeted by countries which are leaders in the production of Methylene Chloride. Data released by Customs Departments of various countries shows that as per quantum of exports, rank of India in their total exports is a first in respect of European Union, second in case of China and Korea, third in case of Russia and fifth in case of USA. Since India is a prime destination of exports from these countries, it is thus natural that any revocation of anti-dumping duty would result in flooding of imports.

62. The Authority examined the issue raised and noted that imports from countries other than subject countries are at cheaper prices which are not attracting any anti-

dumping duty, therefore revocation of anti-dumping duty would unlikely to affect the price of the subject goods adversely.

J.2. Significant market share of imports

63. Market share of subject countries is already significant. While major present imports are in the category of duty free import which are not subject to anti-dumping duty. In case anti-dumping duty is revoked, imports are likely to flood the Indian market which would lead to recurrence of injury to domestic market.

64. The Authority finds that assertion of domestic industry is not backed by any evidence, however, it is unlikely that pattern of duty free imports would change on revocation of anti-dumping duty as duty free material is required to be used for export production.

J.3. Level of current dumping margin

65. Domestic industry has contended that dumping margin from subject countries are very high, therefore, withdrawal of duty would lead to recurrence of injury to the domestic industry. The Authority finds that dumping margin is negative in case of European Union. The dumping margin is positive in case of Singapore however, the volume of imports is insignificant to make any significant impact on prices of the subject goods on revocation of anti-dumping duty.

66. The Authority has already determined that the subject goods are not entering in to the Indian market at dumped prices from the European Union and South Africa. The volume of imports from Singapore is insignificant (merely 0.33% of total imports), though it has been determined to be entering at the dumped prices. The Authority has evaluated the likelihood of resumption of dumping by the subject countries. In this regard, the Authority takes note of the fact that imports from European Union remain approximately at the same level during POI as compared to the base year despite the anti-dumping duty. The imports during POI also found to be at un-dumped prices. Though the resumption of dumping cannot be ruled out in view of the past history, however, in view of the volume and price of imports, there is little possibility that the European Union would commence dumping after withdrawal of anti-dumping duty. In view of the absence of imports from South Africa and insignificant volume of imports from Singapore, it can be safely concluded that there is no likelihood of recurrence of dumping by these countries in case the anti-dumping duties are revoked.

J.4. Export orientation of foreign producers

67. Exporters in the subject countries have built capacities far in excess of their domestic demand. Significant production is exported from these sources. Exporters in European Union were dumping the subject goods in China, which are now attracting anti-dumping duty. The producer shifted their exports to the Indian market. Exports to India would have increased further but for anti-dumping duty in force at present. In case of discontinuation of duty the market would be flooded with the dumped material.

68. The Authority finds that domestic industry has not submitted any evidence of excess capacities of the exporters from European Union, secondly, under the present review, dumping margin from the European Union found to be negative.

J.5. Demand of the subject goods in Europe

69. The production of Methylene Chloride necessarily results in production of Chloroform and Carbon Tetrachloride and producers have no control on these two products. In view of the declining demand of the Methylene Chloride and increasing demand of Chloroform, the producers in Europe have no option but to dump the subject goods at whatever prices. This is evident from continued dumping by exporters from European Union in the Indian market. As per Chlor Alkali, the major shipment of subject goods were destined to India. Increase in Indian demand is acting as an instant filler to their needs. The domestic industry has also contended that in the event of dumping of the material, they would either have to reduce the prices of volume or possibly both which in turn would adversely impact all major injury parameters viz. sales volume, inventories, production, capacity utilization, profits, cash flow and return on investment. Thus, revocation of anti-dumping duty would result in recurrence of injury to the domestic industry.

70. The Authority finds that imports from European Union is already competing with cheaper imports from other countries, therefore, withdrawal of duty is unlikely to result in recurrence of injury.

K. FINAL FINDINGS

71. The Authority after considering the foregoing concludes that:

1. Subject goods originating in or exported from European Union during POI are found to be exported at above their normal value and are undumped. No imports have taken place from South Africa during the period of investigation. Volume of exports from Singapore during POI, which is insignificant (merely 0.33% of total imports), has been found to be exported to India below their normal value and are dumped;

2. The domestic industry has not suffered material injury due to imports from subject countries;
3. And discontinuation of anti-dumping duties on the subject goods from subject countries is not likely to lead to the recurrence of dumping or injury to the domestic industry;
4. In view of the above, the Designated Authority considers it appropriate to recommend discontinuation of the anti-dumping duties recommended earlier vide Notification No17/1/2001-DGAD dated 14th August 2003 and imposed on all imports of Methylene Chloride classified under chapter 29 of the Customs Tariff Act, 1975 (as amended) originating in or exported from EU, South Africa and Singapore.
5. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975(as amended).

(Christy L Fernandez)
Designated Authority