

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

NOTIFICATION
Final Findings

New Delhi, the 11th November, 2004

Subject : Anti-dumping investigation concerning import of Flexible Slabstock Polyol of Molecular weight 3000 to 4000 from China PR, Republic of Korea, Taiwan and Brazil. – Final Findings.

No. 14/4/2003-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:

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

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Manali Petrochemicals Ltd., Manali, Chennai representing the domestic industry, alleging dumping of Flexible Slabstock Polyol of Molecular weight 3000 to 4000 (hereinafter referred to as subject goods) originating in and exported from People's Republic of China, Republic of Korea, Taiwan (hereinafter mentioned as Chinese Taipei) and Brazil (the said four countries are hereinafter referred to as subject countries);
- ii. The Authority notified the Embassies of subject countries in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority issued a Public Notice dated 21st May, 2003 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Flexible Slabstock Polyol of Molecular weight 3000 to 4000 covered under Chapter heading/subheading 3907.20, 3907.99 and 3907.91 of Schedule I of the Customs Tariff Act;

- iv. The Authority forwarded copy of the said public notice to the known exporters, importers and to the complainants and gave them an opportunity to make their views known in writing;
- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Embassies of subject countries in India;
- vi. Request was made to the Central Board of Excise and Customs (CBEC) and Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods;
- vii. The Authority provided copies of the non-confidential version of the Petition to the known exporters and the Embassies of the subject countries in accordance with Rule 6(3) supra;
- viii. The Embassies of the subject countries were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to them;
- ix. A questionnaire was sent to the known importers/users (as per details in the preliminary findings) of subject goods in India calling for necessary information in accordance with Rule 6(4);
- x. The Authority notified preliminary findings vide notification dated 11th December, 2003 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- xi. The Authority also forwarded a copy of the preliminary findings to the Embassies of subject countries in India with a request that the exporters/producers of subject goods and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated above;
- xii. The Authority forwarded a copy of the preliminary findings to all the known exporters (whose details were made available by the Petitioner) other exporters who responded to the initiation notification, importers in India and they were requested to furnish their views, if any, on the preliminary findings within forty days from the date of the letter;
- xiii. The Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 17th February, 2004. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- xiv. The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7);

- xv. Arguments made by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in the disclosure statement and these findings;
- xvi. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 13th October, 2004 vide a disclosure statement and comments received on the same have also been duly considered in these findings;
- xvii. Cost investigations including spot verification (as deemed necessary) of the domestic industry were also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the Petitioner;
- xviii. The Authority conducted on the spot verification of information furnished by the exporter M/s SKC Co. Ltd., Korea;
- xix. *** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xx. The investigation covered the period from 1st April, 2002 to 31st December, 2002. The injury analysis covered the two preceding years 2000-2001, 2001-2002 and the POI.
- xxi. Copies of the Initiation Notice and Preliminary Findings were also sent to FICCI, CII, ASSOCHAM etc. for wider circulation.

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

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

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

Exporters: -

- i. M/s SKC Co., Ltd. Korea
- ii. M/s Dow Quimica S.A., Brazil
- iii. M/s Jin Hua Chemicals (Group) Corporation, China
- iv. M/s Bayer Polyurethanes, Taiwan

Importers

- i. M/s. Sheela Foam Pvt. Ltd., Ghaziabad
- ii. M/s Joy Foam Pvt. Ltd., Chennai
- iii. M/s Star Foam Pvt. Ltd., Chennai
- iv. M/s Polyurathane Association of India, Ghaziabad

Subsequent to the preliminary findings and the public hearing, following interested parties have made submissions :

- i. Domestic Industry
- ii. M/s Dow Quimica – SA, Brazil – Exporter
- iii. M/s SKC Co. Ltd., Seoul, Korea – Exporter
- iv. Government of Republic of Korea – through their Embassy
- v. Government of Republic of Brazil – through their Embassy

The submissions made by various interested parties had been dealt with in the preliminary findings and these are not being repeated here for the sake of brevity.

5. Product under Consideration :

The product under consideration in this investigation is Flexible Slabstock Polyol of Molecular weight 3000 to 4000 (hereinafter referred to as subject goods). The product is used to produce flexible slabstock foam. The product is covered under Customs heading 3907.20 of Schedule I of Customs Tariff Act and is also cleared under Chapter Heading 3907.99 and 3907.91. This Custom classification is however, indicative only and is in no way binding on the scope of the present investigation. There are no arguments as regards the product under consideration. The Authority confirms the product under consideration as considered in the preliminary findings.

6. Like Article :

The petitioner has claimed that there is no difference between the product manufactured by them and the imported product. They have also stated that the subject product manufactured in India by the petitioner is commercially and technically substitutable to the imported product and hence all conditions of like article are satisfied. There are no arguments to oppose this claim. The Authority found

that the domestic industry produces Flexible Slabstock Polyol of molecular weight 3000 to 4000. Based on the information received from exporters and importers, the Authority holds that the product being manufactured by the domestic industry is like article to the subject goods being imported from subject countries.

7. Domestic Industry :

The application had been filed by M/s Manali Petrochemicals Ltd., Chennai. The applicant company is the sole producer of Flexible Slabstock Polyol of molecular weight 3000 to 4000 in India. Therefore, they represent the 100% domestic production of the subject goods. There is no other argument to oppose this position. The Authority, therefore, held that M/s Manali Petrochemicals Ltd. represents the 'Domestic Industry' within the meaning of Rule 2(b) supra.

8. Submission of Non-confidential Information :

It had been argued by the domestic industry that the non-confidential version of response of exporter M/s SKC Co. Ltd., Korea was inadequate and that there was no information or data which could be commented by them. The Authority has found that the exporter had furnished non-confidential response which contained summary of the response in respect of general information, sales, price structure and sales arrangement, accounting system and policies. The exporter had considered the information in the various appendices 1 to 9 as confidential. As this information relates to sales, adjustments, actual prices, cost of production, these have been treated as confidential. The Authority does not find the argument of the domestic industry as valid.

9. Inadequate and inaccurate information in application for initiation of investigation :

It has been argued by the exporter that the claim of domestic industry regarding the alleged dumping is based on constructed normal value. Information on critical issues of dumping, injury and causal link is not based on adequate data. It is bad in law to initiate anti dumping investigation on the basis of unsubstantiated allegations and unreliable data.

The Authority has examined these arguments and found that the DGCI&S data on imports of Polyol under Heading 3907.20, 3907.91 and 3907.99 is not dedicated for import of Flexible Slabstock Polyol alone. Under this heading, other grades of polyol like rigid, moulded and other speciality products are also imported. Therefore, relying completely on DGCI&S data would not have been appropriate in this case. Information based on secondary sources was therefore, considered to be more

appropriate. The information from the secondary sources has also been corroborated and further supplemented by the response from the exporter from Korea and some importers. The Authority did not find the argument of the exporter maintainable regarding inadequacy and inaccuracy of the information relating to volume of imports, dumping, injury and causal link at the stage of initiation of investigation. The petitioner had furnished information regarding the volume of imports of subject goods that could reasonably be assessed at the stage of making the application. The estimate regarding normal value in the subject countries was based on information relating to constructed normal value on the basis of information reasonably available in respect of cost of production of subject goods in the subject countries.

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

10. Copy of Initiation Notice and Preliminary Findings were sent to the Embassies of subject countries, the exporters, importers and domestic industry. As brought out in the preliminary findings, the Designated Authority sent questionnaires to known exporters of the subject goods in subject countries. Responses were received from the following exporters:

- i. M/s SKC Co., Ltd. Korea
- ii. M/s Dow Quimica S.A., Brazil
- iii. M/s Jin Hua Chemicals (Group) Corporation, China
- iv. M/s Bayer Polyurethanes, Taiwan

However, only M/s SKC Co. Ltd. Korea had furnished questionnaire response which was also verified by the Authority by a verification visit to the Republic of Korea. Other exporters did not furnish questionnaire response and have been treated as non-cooperative.

Subsequent to the Preliminary Findings and the public hearing, comments were received from the following :

- i. Domestic Industry
- ii. M/s Dow Quimica – SA, Brazil – Exporter
- iii. M/s SKC Co. Ltd., Seoul, Korea – Exporter
- iv. Government of Republic of Korea – through their Embassy
- v. Government of Republic of Brazil – through their Embassy

None of the interested parties have made any comments on the Disclosure Statement except the domestic industry. The arguments made by all the interested parties have

been duly examined by the Authority in the succeeding paragraphs to the extent these were relevant to the investigation.

11. Normal value for Brazil

The Authority recalls the preliminary findings as regards normal value for Brazil. None of the exporters / producers from Brazil had furnished questionnaire response giving information regarding cost of production, domestic sales price, adjustments etc. Only M/s Dow Quimica (Dow) from Brazil had made some statement about injury. The Authority considered the Brazilian producers/exporters as non-cooperative. In the preliminary findings, the Authority had determined normal value on the constructed cost of production on the basis of evidence furnished by the applicant, which included the cost of main raw material Propylene as reported in international journal and other elements of costs as available reasonably. Subsequent to the Preliminary Findings, the Brazilian Government has made arguments that, full explanation of the reasons for the methodology used in the establishment of normal value and export price has not been provided in the preliminary findings as required under Article 12.2 of the Agreement. Lack of such information makes it difficult to assess the methodology employed. In the absence of full explanation of the methodology used for the establishment of normal value and export price, an adequate assessment of the compliance with the 'fair comparison' provisions in Article 2.4 of the Agreement was not possible.

The Authority considered these arguments and found that in the absence of co-operation from Brazilian exporters, the Authority was justified in resorting to facts available in accordance with Article 6.8 read with Annex II. In the absence of information about domestic sales price of subject goods in Brazil and evidence about exports to other countries from Brazil, cost of production of Brazilian producers, the Authority considered it appropriate to determine normal value on the basis of a reasonable estimate of cost of production of subject goods in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. The applicant had furnished information in this regard in the application. The Authority considered the cost of major raw material Propylene during the POI for US region on the basis of published prices in Asian Chemical News. The cost of other raw materials, utilities, selling, general and administrative expenses have been taken on the basis of verified information of the domestic industry. A reasonable profit margin has been added to arrive at the normal value of US\$*** PMT.

12. Export Price for Brazil :

None of the exporters from Brazil have given information regarding export price. The Authority has considered the information furnished by the petitioner regarding export prices which is based on the data obtained from M/s International Data Services,

Mumbai as stated in the non-confidential petition. The information furnished by importers corroborates the price of exports from Brazil. Adjustments from the average CIF price have been made on account of sea freight and insurance. The net export price arrived is US\$ *** PMT.

13. Normal Value for People's Republic of China

The Authority recalls the preliminary findings as regards normal value for China. None of the exporters / producers from China had furnished questionnaire response giving information regarding cost of production, domestic sales price, adjustments etc. Only M/s Jin Hua Chemicals from China had given some information regarding invoices (in Chinese) of domestic sales and agency agreement etc. The information furnished could not be used for normal value determination in the absence of information regarding cost of production. The Authority considers the Chinese producers/exporters as non-cooperative. In the preliminary findings, the Authority had determined normal value on the constructed cost of production on the basis of evidence furnished by the applicant, which included the cost of main raw material Propylene as reported in international journal and other elements of costs as available reasonably. Subsequent to the Preliminary Findings, no information has been furnished by any Chinese producer / exporter. In response to the Disclosures, the domestic industry has argued that in the absence of response from Chinese exporter, the Authority should treat China as non-market economy and determine the normal value under the specific provisions meant for such economy.

The Authority finds that in the absence of co-operation from Chinese exporters, it was justified in resorting to facts available in accordance with Article 6.8 read with Annex II. Moreover, there is no response from any Chinese producer / exporter to rebut the presumption about non-market economy conditions. The applicant had furnished information with regard to constructed normal value in the application. Para 7 of Annexure 1 of Anti Dumping rules inter alia allows the Authority to determine the normal value in the case of non-market economy country on any other reasonable basis. Accordingly, the Authority has considered the cost of major raw material Propylene during the POI for North-East Asia region on the basis of published prices in Asian Chemical News. The cost of other raw materials, utilities, selling, general and administrative expenses have been taken on the basis of verified information of the domestic industry. A reasonable profit margin has been added to arrive at the normal value of US\$ *** PMT.

14. Export Price from P.R. China :

None of the exporters from PR China have given information regarding export price. The Authority has considered the information furnished by the petitioner regarding

export prices which is based on the data obtained from M/s International Data Services, Mumbai as stated in the non-confidential petition. Adjustments have been made from the average CIF price on account of sea freight and insurance. The net export price arrived is US\$ *** PMT.

15. Normal Value for Chinese-Taipei

The Authority recalls the preliminary findings as regards normal value for Chinese-Taipei. None of the exporters / producers from Chinese-Taipei had furnished questionnaire response giving information regarding cost of production, domestic sales price, adjustments etc. Only M/s Bayer Polyurethanes from Taiwan had given some general comments. Without any information relating to normal value determination, the Authority considers the producers/exporters from Chinese-Taipei as non-cooperative. In the preliminary findings, the Authority had determined normal value on the constructed cost of production on the basis of evidence furnished by the applicant, which included the cost of main raw material Propylene as reported in international journal and other elements of costs as available reasonably. Subsequent to the Preliminary Findings, no information has been furnished by any producer / exporter.

The Authority finds that in the absence of co-operation from Chinese-Taipei exporters, it was justified in resorting to facts available in accordance with Article 6.8 read with Annex II. In the absence of information about domestic sales price of subject goods in Chinese-Taipei and evidence about exports to other countries from Chinese-Taipei, cost of production of Chinese-Taipei producers, the Authority considered it appropriate to determine normal value on the basis of a reasonable estimate of cost of production of subject goods in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. The applicant had furnished information in this regard in the application. The Authority has considered the cost of major raw material Propylene during the POI for North-East Asia region on the basis of published prices in Asian Chemical News. The cost of other raw materials, utilities, selling, general and administrative expenses have been taken on the basis of verified information of the domestic industry. A reasonable profit margin has been added to arrive at the normal value of US\$*** PMT.

16. Export Price in respect of Chinese-Taipei

None of the exporters from Chinese-Taipei has given information regarding export price. The Authority has considered the information furnished by the petitioner regarding export prices which is based on the data obtained from M/s International Data Services, Mumbai as stated in the non-confidential petition. Adjustments have

been made from the average CIF price on account of sea freight and insurance which have been allowed. The net export price arrived is US\$ *** PMT.

17. Normal Value for Republic of Korea :

M/s SKC Co. Ltd., Korea had furnished information in the questionnaire regarding domestic sales, exports to India, adjustments, sales price structure, cost of production etc. The Authority had conducted on the spot verification of the information furnished by the exporter.

The Company had given information regarding sales of *** MT of Flexible Slabstock Polyol during the POI i.e. April – December 2002. The exporter had shown adjustments from the domestic sales price on account of discount, inland freight, storage, advertisement, technical services, sales promotion and credit.

After allowing adjustments on account of discounts, credit, inland freight, storage, advertisement, technical services, sales promotion and credit, the sale value at ex-factory level comes to KW *** per Kg. Individual domestic sales transactions were compared with the cost of production plus SGA determined for the company and it was found that the domestic sales were in the ordinary course of trade. Normal value based on domestic sales price at ex-factory level comes to US\$ *** PMT.

18. Export Price for Republic of Korea :

The Company had exported *** MT of Flexible Slabstock Polyol to India during the POI. These sales were made to different customers on CIF Indian port/ ICD delivery terms. The payment terms were against LC at *** days credit. The company has shown adjustments on account of discount, inland freight, shipping cost including terminal handling charges, packing charges, overseas freight and insurance. The weighted average export price at ex-factory level comes to US\$*** PMT. The exporter has shown an adjustment of KW*** per kg towards import duty drawback to add back to the export price. This was verified with reference to the claims for drawback filed by the company, which was KW*** per kg. This comes to US\$ ***PMT. After adding this, the net export price comes to US\$ *** PMT.

19. Other Non-cooperative Exporters from Republic of Korea :

In respect of other exporters from Republic of Korea, who have not co-operated, the Authority has considered the highest domestic sale price of the co-operative exporter for normal value determination. For the export price, the lowest sale price to India of the co-operative exporter has been considered. Appropriate adjustments have been

allowed. The normal value for other non-cooperative exporter has been determined as US\$ *** PMT. The export price has been determined as US\$ *** PMT.

20. Dumping Margin :

The Authority followed the consistent practice of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I to the anti-dumping rules. Dumping margins have been determined on the basis of a fair comparison of Export Price with the Normal Value in pursuance of the principle laid down in Para 6 of Annexure-1 to the Rules. The comparison is at the same level of trade, i.e. Ex-factory level. Normal Value at ex-factory level has been compared with the export price at ex-factory level of relevant comparable type of Flexible Slabstock Polyol of Molecular weight 3000 to 4000. Based on the Normal Value and export price as determined above, the Authority has determined the following dumping margins (%):

	China	Chinese-Taipei	Brazil	SKC-Korea	Korea-Others
Normal Value \$PMT	***	***	***	***	***
Export Price \$PMT	***	***	***	***	***
Dumping Margin \$PMT	***	***	***	***	***
Dumping Margin %	58.54	63.01	79.07	37.01	56.87

D. INJURY TO THE DOMESTIC INDUSTRY

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

“Determination of Injury:

1. In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
2. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.”

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

- a. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.
- b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

23. The Authority recalls the preliminary findings regarding injury determination and causal link. Subsequent to the preliminary findings, following arguments have been made by the exporter M/s Dow Quimica, Brazil and the Governments of Brazil and Republic of Korea :

- i. Throughout the POI, the domestic industry increased its sales, production, capacity utilization, significantly reduced its inventory and succeeded in reducing per unit losses as compared to the preceding year 2001- 02. When imports under investigation increased during POI, the domestic industry did recover.
- ii. With respect to employment, no data relating to the evolution of employment level for the second period under analysis (2001-02) was supplied.
- iii. With regard to the claim that the domestic industry was not able to grant any wage raises, it should be noted that, according to information contained in the preliminary findings, the share of the like product in the total production of the petitioner is a minor one. An adequate analysis of the wage policy implemented by the company should take into account the other products produced by the company.
- iv. As for the level of imports, Authority should have analyzed their performance on the basis of official import statistics and not on information supplied by the petitioner or third party. Even taking into account the data on imports utilized in the preliminary findings, the conclusion should have been that the increase in the alleged dumped imports was due to a surge in domestic demand, the incapacity of the producer to fully meet the stronger demand and restrictions already in place on imports from other origins. Therefore, it is not the increase in the alleged dumped imports which is causing injury to the domestic industry.

- v. The increase in imports was inevitable because the domestic industry could not satisfy a rising demand. The demand of Polyol is growing at 15% per annum and the domestic industry has two plants of total capacity of 14000 MT. The petitioner utilizes only 50% of its capacity for production of subject goods and remainder being used for production of different grades of Polyol.
- vi. In view of above, it cannot be logically demonstrated that the allegedly dumped imports are through the effects of dumping, causing injury to the domestic industry.
- vii. India's total imports of subject merchandise has not increased in absolute terms, on the contrary, the volume of imports decreased from 5546.67 MT in 2001-02 to 3532.34 MT during POI whose annualized figure comes to 4709.79.
- viii. Strains of cash flow may result from a variety of reasons i.e. mismanagement of cash flow. The preliminary findings do not show whether or not the alleged cash loss or strains on cash flow has been caused by the subject goods.
- ix. Manali has repeatedly sought protection through safeguard and anti dumping measures in 1998 and December, 2001 respectively. However, Manali's competitiveness or efficiency has not improved. Protection by imposition of anti dumping duty would probably only solidify Manali's monopolistic status in the Indian domestic market, eliminating further competition from foreign producers.

24. Domestic Industry has given rebuttals to the various arguments made by the interested parties on the issue of injury. The domestic industry's Polyol production capacity is 14000 MT as per Balance Sheet. However, the plant is designed, constructed and tested for a capacity of 15500 MT, which can be enhanced to 23000 MT by making suitable process modification. The capacity available for FSP is 11250 MT. The domestic industry has produced 8049 MT (annualized) FSP against a capacity of 11250 MT which means 72% of capacity utilization. The overall capacity utilization of Polyol plant is more than 78%. There is no legal or logical reason to suggest that the domestic industry cannot claim for imposition of anti dumping duty if it does not fulfill the entire demand of the product. As regards the arguments that M/s Manali Petrochemicals is trying to perpetrate a 'monopoly', the domestic industry has argued that if it was in a position to monopolize the market, then they were not required to drop their prices continuously to retain its market share. The existence of a single producer does not mean a monopoly. As regards the losses of the domestic industry, there was dumping from USA, Singapore, Japan and EU in the years 2000-01 and 2001-02. The domestic industry expected to improve its position after imposition of anti dumping duty on exports from USA, Singapore, Japan and EU (provisional duties were imposed from 11.2.2002). The situation, however, again worsened due to dumping of FSP from China, Korea, Taiwan and Brazil. The domestic industry could not earn profits and a reasonable return on its investment

despite increase in its production, capacity utilization and sales. The selling prices dropped further during the POI as compared to the previous year, even though the cost of major raw material increased during this period.

Examination by the Authority :

25. Cumulative assessment of injury:

As per annexure-II (iii), in cases where imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article --- and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.

With a view to assess the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product, the Authority's views are that :

- i. The subject goods have been imported from the subject countries under the same tariff classification;
- ii. The Authority has found that the imported subject goods are commercial substitutes of the domestically produced Flexible Slabstock Polyol. The domestic producers of foam have imported the subject goods as well as sourced from the domestic producer. Therefore, there is complete substitutability of the imported subject goods with the domestic like product.
- iii. The information furnished by the importers gives a reasonable indication that the exports made from the different subject countries compete in the same market as these are similar products though the pricing of these may vary from country to country.
- iv. Therefore, the Authority finds it appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced like article in the light of conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product. The Authority finds that there is a cumulative effect of injury by imports of subject goods from subject countries on the domestic industry.

26. The Authority has considered the various arguments made by interested parties on the injury claimed to have been suffered by the domestic industry. The Authority has also conducted verification of information furnished by the domestic industry. As regards the argument that there is no finding regarding the increase in dumped imports in absolute terms or relative to the consumption in India, the Authority recalls the preliminary findings wherein it had made clear determination in para 39 and 40 regarding increase in dumped imports from subject countries during the POI in absolute terms and in relation to the demand of the product of the country.

The information regarding the various injury parameters has been examined and analyzed by the Authority as under :

27. Volume of Imports :

The Authority has taken note of information regarding imports of subject goods as reflected by the official statistics published by the DGCI&S, information furnished in application based on secondary sources, the responses of the exporter and some importers. As earlier stated the data published by DGCI&S under Heading 3907.20 covered other polyols also which were not the subject matter of this investigation. Relying on these import figures as it is, would not have been appropriate as these were much higher than actual imports of subject Polyol. After taking into account the secondary source information relating to subject Polyol, the information provided by co-operative exporter and some importers, the Authority has assessed the imports of subject goods as under which under the circumstances appears to be appropriate.

Imports (MT)	2000-01	2001-02	POI	POI annualised
China	48	33.6	952.8	
Chinese-Taipei	0	16.8	1144.79	
Korea	16.8	1060.6	861	
Brazil	0	0	1015	
Sub. Countries Total	64.8	1111	3973.59	5298.12
Others	3276.3	4486	120.7	160.93
Total	3341.1	5597	4094.29	5459.05
% share of subject countries in total imports	1.93%	19.84%	97.05%	97.05%

The imports increased from 64 MT in 2000-01 to 1111 MT in 2001-02 and to 3973 MT during POI. There was an increase of imports from subject countries from 1.93% in 2000-01 to 97.05% as a share of total imports during the POI. Therefore, there was an increase in imports of subject goods from subject countries in absolute terms.

28. Market share:

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

	2000-01	2001-02	POI	POI annualised
Imports-total	3341.1	5597	4094.29	5459.05
Domestic sales	***	***	***	***
Demand	***	***	***	***
Imports from subject countries	64.8	1111	3973.59	5298.12
Imports from other countries	3276.3	4486	120.7	160.93
Share in demand-imports from subject countries	0.61	8.94	36.18	36.18
Share in demand-domestic industry	68.30	54.98	62.73	62.73
Share in demand- imports from other countries	31.09	36.08	1.09	1.09

The Authority finds that the share of imports of subject goods from subject countries has increased from 0.61% during 2000-2001 to 36.18% during POI. There is thus an increase in the dumped imports from subject countries in relation to the demand of the product in the country. The share of domestic industry in total demand has gone down from 68.3% in 2000-01 to 62.73% during the POI.

29. Production and Capacity Utilisation:

The production and capacity utilization of the domestic industry has been as under :

	2000-2001	2001-2002	POI
Capacity	11250	11250	8438
Production	7316.15	7129.45	6057
Capacity Utilization %	65.03	63.37	71.79

The Authority finds that there has been improvement in the capacity utilization of the domestic industry during the period of investigation in comparison to the earlier years.

30. Sales Volume:

Sales volumes of domestic industry increased from *** MT in 2000-01 to *** MT (on annualized basis) in POI and indexed figures are as under :

Year	Sales Volume (MT)	Unit Price Rs./MT
2000-2001	100	100
2001-2002	95	92.53
April- Dec. -2002 (POI-Annualized)	127.6	91.05

The Authority finds that the volume of sales of domestic industry have increased during the POI in comparison to earlier years. However, the unit value realization has gone down.

31. Inventory :

The inventory of finished stock as a percentage of sales has been as under :

	2000-01	2001-02	POI
MT	***	***	***
% of sales	***	***	***
Indexed	100	137.31	28.05

The Authority finds that the inventory of finished goods held by the domestic industry has declined considerably at the end of POI in comparison to the previous year closing on March, 2002.

32. Price Undercutting

The Authority finds that the price undercutting due to the dumped imports has been as under :

	China	SKC Korea	Korea Others	Taiwan	Brazil
Average NSR	***	***	***	***	***
Landed Value	57165.69	***	59587.76	55694.26	50164.80
Price Undercutting	***	***	***	***	***
%age Price Undercutting	***	***	***	***	***
Price under-cutting range	6-15%	3-12%	4-13%	7-16%	15-25%

33. Price underselling

The Authority finds the price underselling as a result of dumped imports as under

	China	SKC Korea	Korea Others	Taiwan	Brazil
Landed Value	57165.69	***	59587.76	55694.26	50164.80
NIP	***	***	***	***	***
Price underselling	***	***	***	***	***
% Price underselling	***	***	***	***	***
Price underselling range	15-25%	10-20%	15-25%	17-27%	25-35%

While determining the non-injurious price (NIP) for the like article for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry which would take

into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation. In response to the Disclosures, the domestic industry sought more details regarding the working of NIP which was provided by the Authority. Comments of the domestic industry in this regard have also been taken into account.

34. Factors affecting domestic prices :

The Authority notes that the selling prices of the domestic industry are linked to the raw material cost and the prices of imports of subject goods from different countries. The domestic industry has increased its productivity, however, the selling price was under pressure due to the dumped imports. The Authority notes that the industry has suffered from price depression as they were prevented from realizing higher sales price due to dumped imports despite rising cost of production.

35. Magnitude of the margin of dumping :

The Authority finds that the magnitude of the margin of dumping of subject goods from the subject countries has been in the range of 37 to 79% which is considered significant.

36. Employment :

The employment level of the company has been as under :

2000-01	2001-02	POI
576	469	430

There has been a decline in manpower from 576 in 2000-2001 to 430 during the period of investigation.

37. Wages :

The Authority notes that the domestic industry has not been able to grant any increments or promotions during the last few years. All bonuses other than the statutory bonus have been reduced substantially. The company is not in a position even to conclude a fresh wage settlement with the labour union under Section 12(3) of the Industrial (Disputes & Regulation) Act which has been due since January 2001 despite numerous representations made to the management.

It has been argued by the Brazilian Government that the analysis of the wage policy implemented by the company should take into account the other products produced by

the company. The Authority notes that sales revenue of all types of Polyols produced by the company accounts for about 53% of the sales revenue for the year 2002-03. Therefore, the inability of the company to enter into a fresh wage settlement with the employees reflects the overall situation of the company including that relating to manufacture of Polyols.

38. Profitability:

The domestic industry has suffered direct losses on per unit sale of subject goods as per information below :

Year	Net Sales Realization (Rs./PMT)	Cost of Production (Rs./PMT)	Profit/Loss PMT	Profit/Loss per MT Indexed
2000-01	***	***	***	(-) 100
2001-02	***	***	***	(-) 243
April-Dec. 2002 (POI)	***	***	***	(-) 360

The Authority finds that the per unit losses on the sale of subject goods have increased significantly during the POI in comparison to the earlier years. Since the company is suffering losses, the return on investments is negative.

39. Evidence of Lost Contracts

The domestic industry has produced some evidence of loss of orders in the form of copies of orders purportedly placed by suppliers from China.

40. Actual and potential negative effect on cash flows

The Authority finds that the domestic industry has suffered cash loss during the period of investigation in the sale of subject goods, which has caused strain on the cash flow position of the company as a whole.

41. Growth:

The Authority finds that because of losses, it would not be feasible for the domestic industry to make any new investment. However, factors such as production and sales of subject goods showed positive trends during the POI.

42. Productivity :

The productivity has been as under :

	2000-01	2001-02	POI

Production MT/employee	***	***	***
Indexed	100	119.68	147.87

43. Conclusions on injury:

The Authority notes that factors production, capacity utilization, sales, productivity indicate positive trend during the POI in comparison to the year 2000-01. The inventory of finished goods has also come down. The volume of dumped imports from subject countries has, however, increased significantly from 1.93% to 97.05% in the total imports of subject goods. The volume of dumped imports has increased in absolute terms. There is also an increase in the volume of dumped imports in relation to the consumption of the subject goods in India as the share of dumped imports in demand has increased from 0.61% during 2000-01 to 36.18% during the POI. The share of the domestic industry in the domestic demand has declined to 62.73% during POI from 68.3% during 2000-01.

The price effect of the dumped imports is evident from the price undercutting suffered by the domestic industry as a result of the dumped imports. There is also price depression. The industry also has suffered price underselling, as the landed value of dumped imports is significantly lower than the non-injurious price of the domestic industry. The industry has suffered cash losses in the sale of subject goods. The authority thus concludes that the domestic industry has suffered material injury.

E. CAUSAL LINK

44. As regards the impact of the dumped imports on the domestic industry the Authority has examined the effect of the dumped imports in accordance with principle (v) of Annexure-II of the Anti-Dumping Rules.

Arguments have been raised that the demand of subject goods is growing at the rate of 15% per annum and the domestic producer has a capacity to produce 11250 MT. In such a situation, increase in imports is inevitable. It has also been argued that the petitioner has inefficient production process, uneconomic plant size and availability of raw material. It has also been argued that the domestic producer has repeatedly sought protection through safeguard and anti dumping measures. Protection by anti dumping duties would probably grant Manali a monopoly status in the Indian market.

The Authority has considered the views expressed by the petitioners and other interested parties as regards the causal link. The Authority notes that the technology adopted by the domestic industry for the manufacture of Flexible Slabstock Polyol is comparable with that adopted by the exporters. Any claim of perceived efficiency of

cost of production of any exporter should normally get reflected in its selling prices and eventually in the computation of dumping margin. None of the exporters from Brazil, China and Taiwan has given the information regarding their cost of production. Based on the verification of the data of the sole co-operative exporter from Korea, the Authority had found that exports are at dumped prices. The Authority also notes that the domestic producer is faced with the competition from producers located in various countries. The production costs are directly linked to the international prices of major raw material Propylene. The evidence of the investigation indicates that the selling prices realized by the domestic industry are largely impacted by the prices of the imported subject goods. The Authority found that the demand of the subject goods has been increasing and the domestic producer is using the contemporary technology and therefore, these factors cannot be attributed as the cause of injury. The imports of subject goods from other countries have come down to 120 MT during POI which cannot be the cause of injury. The productivity of the domestic industry has also increased. The Authority concludes that the material injury to the domestic industry has been caused due to the dumped imports from the subject countries. No other material factor that may be a cause of injury has come to the notice of the Authority.

F. INDIAN INDUSTRY'S INTEREST

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

46. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the subject goods or the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. With a view to minimize the impact on the downstream industry, the Authority has considered it appropriate to recommend anti dumping duty based on the lower of the dumping and injury margins. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

G. CONCLUSIONS

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

- i. Flexible Slabstock Polyol of Molecular weight 3000 to 4000 has been exported to India from subject countries below the normal value;
- ii. The domestic industry has suffered material injury;
- iii. The material injury has been caused cumulatively by the dumped imports from subject countries;

48. It is considered necessary to impose definitive anti-dumping duty on the imports of subject goods. Accordingly, the Authority recommends imposition of anti dumping duty on the imports of Flexible Slabstock Polyol of Molecular weight 3000 to 4000

49. It is decided to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. The landed price of imports was also compared with the non-injurious price of the domestic industry, determined for the period of investigation. Accordingly, it is proposed that definitive anti-dumping duties be imposed on Flexible Slabstock Polyol of Molecular weight 3000 to 4000 originating in or exported from the subject countries falling under Chapter Heading 3907 2000 of the Schedule I of Customs Tariff Act. The anti-dumping duty shall be the difference between the amount mentioned in Col. 9 in the following Table and the landed value of imports of the subject goods in US\$/MT:

S.No	Sub-Heading	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1	2	3	4	5	6	7	8	9	10	11
1.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	P.R. China	Any country	Any producer	Any exporter	1472.77	MT	US\$
2.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	P.R. China	Any producer	Any exporter	1472.77	MT	US\$
3.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Republic of Korea	Any country	Any producer	Any exporter	1472.77	MT	US\$
4.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Republic of Korea	Any producer	Any exporter	1472.77	MT	US\$
5.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Chinese Taipei	Any country	Any producer	Any exporter	1472.77	MT	US\$
6.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Chinese Taipei	Any producer	Any exporter	1472.77	MT	US\$
7.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Brazil	Any country	Any producer	Any exporter	1472.77	MT	US\$
8.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Brazil	Any producer	Any exporter	1472.77	MT	US\$

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

51. Subject to the above, the Authority confirms the preliminary findings dated 11th December, 2003.

52. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Christy L. Fernandez
Designated Authority