

MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
Directorate General of Anti Dumping & Allied Duties

Notification

New Delhi, the 14th December, 2001

PRELIMINARY FINDINGS

Subject: Anti-dumping investigation concerning imports of Flexible Slabstock Polyol of molecular weight 3000 to 4000 originating in or exported from the USA, Japan, European Union and Singapore - preliminary findings

No. 41/1/2001-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:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Manali Petrochemicals Ltd. (MPL), on behalf of the domestic industry, alleging dumping of Flexible Slabstock Polyol of Molecular Weight 3000 to 4000 (hereinafter referred to as subject goods or FSP) originating in and exported from USA, Japan, Singapore and territory of European Union (hereinafter referred to as subject countries);
- ii. The Authority notified the Embassies/Representative of the 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 September, 2001 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Flexible Slabstock Polyol falling under Chapter Heading 39.07 of the Customs Tariff Act.
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, users, industry associations 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. The Authority sent questionnaires, to elicit relevant information, to the following exporters from the subject countries:
 - 1. M/s. SHELL EASTERN PETROLEUM (PTE) LTD., SINGAPORE – 239 920
 - 2. M/s. BAYER POLYURETHANE ASIA (PTE) LTD, SINGAPORE - 189 721.
 - 3. M/s. SANYO CHEMICALS, JAPAN.
 - 4. M/s. BAYER POLYURETHANE ASIA (PTE) LTD, GERMANY.
 - 5. M/s. REPSOL QUIMICA S.A., SPAIN.
 - 6. M/s. THE DOW CHEMICAL COMPANY, TEXAS – 77541, USA.
 - 7. M/s. THE DOW CHEMICAL COMPANY, TEXAS – 775720-585, USA.
- vii. The Embassies/representative of subject countries in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the following users/importers of subject goods:
 - 1. M/s Aagosh Polystyrene Foam Pvt. Ltd., Chandigarh.
 - 2. M/s Arvind International Ltd., Calcutta.
 - 3. M/s Banmore Foam Pvt. Ltd., Banmore, Distt: Morena (M.P.)
 - 4. M/s Cozy Foams Pvt. Ltd, Chantupada, Palghar Thana
 - 5. M/s D P Foam Pvt. Ltd., Pondicherry – 605 101
 - 6. M/s Dura Foam Inds Pvt. Ltd., DADRA NAGAR, HAVELI
 - 7. M/s Diana Foams Pvt. Ltd., ORISSA - 757 043
 - 8. M/s Devi Polyurethane Pvt. Ltd., Tondedumala, Taligatpuri DIST-NASIK
 - 9. M/s Inkay Foam Pvt.Ltd., Village Khekra, Tehsil Baghat Distt. MERRUT (UP)
 - 10.M/s Feather Foam Enterprises Pvt. Ltd., NOIDA – 201 301
 - 11.M/s Foam House (India) Pvt. Ltd., MIDC Talao MAHARASHTRA
 - 12.M/s Feather Foam Enterprises Pvt. Ltd., SILVASSA
 - 13.M/s Joy Foam Pvt. Ltd., Ranipet.
 - 14.M/s Juhi Foam Pvt. Ltd., KHARAR (P.B.) – 140 031
 - 15.M/s Kurlon Ltd., Bhubaneshwar – 751 031
 - 16.M/s Kamal Foam, Pondicherry – 605 009
 - 17.M/s M R Foams, Hyderabad
 - 18.M/s Multiwyn Foams Pvt. Ltd., Calcutta – 700 016
 - 19.M/s Modern Foam Udyog, VillageKakka, Ludhiana
 - 20.M/s N L Foam Industries, Ahmedabad
 - 21.M/s Natson Foam Mfg. Pvt. Ltd., Village - Nandoli District Mehsana
 - 22.M/s Panama Polystyrene Products Pvt. Ltd., Ghaziabad

- 23.M/s Pallivi Foam Inds. Pvt. Ltd., Noida-Dadri Road (U.P) Distt: Ghaziabad
- 24.M/s Poly Foam, Chantupada, Distt: Thana
- 25.M/s Prabhat Polyurethane P. Ltd., Pondicherry.
- 26.M/s Pratap Polyurethane P. Ltd., Calcutta-700 001.
- 27.M/s P.U. Foam Pvt. Ltd., Calcutta – 700 007.
- 28.M/s Raj Leather Cloth Inds. Pvt. Ltd., Distt; Sonapat.
- 29.M/s Sheela Foam Pvt. Ltd., Ghaziabad, U.P. – 201 101.
- 30.M/s SSF Industries Ltd., Patna – 800 004.
- 31.M/s Sheela Foam Pvt. Ltd., Kalol Talukakadi, Noida (UP).
- 32.M/s Tirupati Foam Ltd., Distt. Mehsana
- 33.M/s Tirupati Foam Ltd., Taluk Kalol
- 34.M/s U. Foam Pvt. Ltd., Hyderabad-500 018.
- 35.M/s Surya Foam, Pondicherry
- 36.M/s Aparna Polyproducts Ltd., Jaipur - 302 001 (Rajasthan).
- 37.M/s Soft Foam Industries Pvt. Ltd., Medchol Ind. Area, RR District 501 401 (AP).
- 38.M/s Madras Polymoulds, Mylapore, Chennai-4.
- 39.M/s J.J. Foams Pvt. Ltd., Distt; Ghaziabad (UP).
- 40.M/s M H Polymers Pvt. Ltd., Dadri, Distt. Ghaziabad, U.P.

- ix. A number of importers/users have filed response to the Initiation Notification. M/s Shell Eastern Petroleum (Pte.) Ltd., Singapore, M/s Bayer Polyurethanes Asia Pte. Ltd., Singapore and M/s The Dow Chemical Co., USA among the exporters have responded to the Initiation Notification .
- x. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xi. ***** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xii. The investigation covered the period from 1st October, 2000 to 30th June, 2001;
- xiii. Copies of initiation notice was also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS

3. The petitioners have made the following major points in their submissions:

- i. They are the only producers of the subject goods. Therefore, they have the standing to file the application on behalf of the domestic industry. Further, the petitioners are not related to any importer/exporter of the subject product.
- ii. There is no known difference in Flexible Slabstock Polyol produced by the Indian industry and Flexible Slabstock Polyol exported from Subject countries. Flexible Slabstock Polyol produced by the Indian industry and imported from subject countries are comparable in terms of physical as well as chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Flexible Slabstock Polyol produced by the petitioners and imported from subject countries should be treated as like article in accordance with the anti-dumping Rules.
- iii. The exporters from subject countries have booked orders for significant quantity through their Indian agents. Significant material has already landed at the Indian ports and substantial material is understood to be in transit. The domestic industry is incurring huge losses and should the present trend of imports at dumped prices continue, the domestic industry may have to close their facilities.
- iv. The landed price of the imported material is significantly below the selling prices of the domestic industry. Further, should the exporters from the subject countries continue to offer the material at the present prices, the domestic industry would be compelled to reduce their prices further and lose significantly. Already, the domestic industry is being forced to reduce the price due to dumped imports and offers made by the imports from the subject countries.
- v. The producers in the subject countries are understood to be holding significant capacities for the subject goods. Thus, large-scale imports are imminent, should the dumping not be checked at this stage.
- vi. The dumped imports of Flexible Slabstock Polyol are causing injury to the domestic industry who is also facing a threat of further injury from large imports likely to come in near future.

C. IMPORTERS' AND USERS' VIEWS

4. The submission have been made on behalf of M/s Sheela Foam Pvt. Ltd., M/s Feather Foam Pvt. Ltd., M/s Soft Foam Pvt. Ltd., M/s Bharat Foam Udyog Pvt. Ltd., M/s Multivyn Foam Pvt. Ltd., M/s J.J.Foams Pvt. Ltd., M/s MH Polymers Pvt. Ltd., M/s Welbros Foam Pvt. Ltd., M/s Arvind International Limited, M/s Kansaf Foam Pvt. Ltd., M/s Fylfor Comforts Pvt. Ltd., M/s Tirupati Foam Ltd., M/s SSF Industries Ltd and M/s Joy Foam Private Ltd., which are as under:-

- a. That it is the considered opinion of various technical experts that the viable size of a Polyol Plant is in the region of 80000 MTPA. The standard technology is the Styrene Monomer/Propylene oxide (SMPO Route). Only with this technology and the aforesaid capacity can a Polyol Plant be commercially viable. Any reduction in the capacity or change in technology, would automatically lead to very high costs of production. However, the Petitioner's plant has capacity of only 14000 MTPA and does not employ SMPO Route technology. That the Petitioner's production process and the utilities are technologically obsolete and are not commercially viable and as a consequence the price of the product manufactured by the Petitioner are unrealistically high.
- b. That due to the inferior technology used by the Petitioner, the quality of Flexible Slabstock Polyol is materially and adversely affected and the same in turn affects the manufacture and quality the downstream products using Flexible Slabstock Polyol as raw material.
- c. That by its final findings dated 17.09.1998 the Directorate General of Safeguards had imposed safeguard duty in respect of Flexible Slabstock Polyol. That in the present case the domestic industry is deliberately attempting to abuse the machinery of the Hon'ble Designated Authority to derive an undue advantage and unwarranted protection to itself. The domestic industry has failed to make such necessary commercial and operational measures as were required for it to become commercially viable. That the Petitioner was granted a period of 18 months for positive adjustments. That the domestic industry should not be allowed to take undue advantage of their own inefficiency especially when the alleged injury is entirely due to its own inefficiencies and does not have any relation whatsoever to the import of Flexible Slabstock Polyol.
- d. That the Petitioner is a multi-product company and manufacture Propylene Oxide, Propylene Glycol, Di Propylene Glycol, Tri Propylene Glycol and DCP and DCIPE apart from various categories of Polyol. In the circumstances, it is extremely difficult to ascertain the fixed costs allocation to the Flexible Slabstock Polyol. The Petitioner must clearly set forth the apportionment of fixed costs and overheads proportionate to and in respect of the manufacturer of Flexible Slabstock Polyol. That the Petitioner has failed to demonstrate the same.
- e. That the production of Flexible Slabstock Polyol by the Petitioner is not regular and is seasonal i.e. Flexible Slabstock Polyol is not manufactured throughout the year but is manufactured in trenches. In the circumstances, the Petitioner should not be allowed to allocate fixed costs component spread over the whole year while the article is manufactured for a limited period. That the Petitioner has deliberately failed to disclose the said facts and is seeking to take undue advantage by apportioning a higher costs of production in respect of Flexible

Slabstock Polyol. That the Hon'ble Designated Authority should direct the petitioner to provide all necessary and detailed data with respect to its cost allocations.

- f. That the Petitioner is the only manufacturer of the product in India. That the Petitioner has filed the present petition to consolidate its monopoly in India and to avoid any competition from technologically superior and commercially viable imports despite its operational and commercial inefficiencies. The total capacity of the Petitioner is woefully short of the demand of Flexible Slabstock Polyol in India. The demand for Flexible Slabstock Polyol in India is around 35000 MTPA and is currently growing at the rate of 10%-15% p.a.
- g. That the prices of almost all chemicals and plastics have exhibited a downward trend during the past year including the period under review. However, the Petitioner has deliberately omitted the mention of the same. It is further submitted that the normal value claimed by the Petitioner is high while the international prices are much lower and is evidently highly imaginary and unsupported while also being factually wrong. It is in fact the prices of the product manufactured by the Petitioner that have remained unrealistically high and unviable.

Out of these importers, M/s Sheela Foam Pvt. Ltd. and M/s Joy Foam Pvt. Ltd. have submitted information in the prescribed Importer's Questionnaire. The information is incomplete as both these firms have not submitted the requisite annexures to the Importer's Questionnaire.

5. M/s Tirupati Foam Ltd. submissions are as under:-

That they have been using a special grade of heteropolyol voranol 3010 from one of the reputed multi-national manufacturers and the said product is imported by them directly. This special grade polyol is presently not manufactured by the domestic producer. That they have sophisticated manufacturing facility which demand special technical requirements which they are not able to get from the domestic manufacturers. The domestic producers has protection of customs duty and special additional duty and any further levy of duty would be detrimental to their business.

The company has submitted some information under the Importers' Questionnaire but have not submitted all requisite annexures as required under the Importer's Questionnaire

6. M/s DP Foam Pvt. Ltd. submissions are as under:-

That the domestic polyol industry seeking protection against anti dumping should be asked to maintain quality at par with international standards and should also be cost

effective. The domestic industry is not doing any cost analysis and are fixing their price compared to international price. The quality of their material varies from batch to batch. The domestic industry should maintain quality and have a pricing policy according to their cost of production.

7. M/s U-Foam Pvt.. Ltd submissions are as under:-

That the issue of a local industry being placed at disadvantage due to low prices from imports is not particularly applicable to this Product but practically all goods being imported into the country. It would therefore not be a good idea to give protection to the Petitioner. All small scale industries who are hard pressed for liquidity would continue to patronise the products of the Petitioner even though their cost could be slightly higher in view of the fact that the small enterprise is in a position to order in small lots rather than invest for container loads. It would be wise for both local industry as well as the Petitioner to work out on suitable / mutually beneficial cooperation.

D. EXPORTERS' VIEWS

8. Responses have been received from M/s Shell Eastern Petroleum (Pte) Ltd., Singapore, M/s The Dow Chemical Co. USA, and M/s Bayer Polyurethanes Asia Pte. Ltd., Singapore.

(I) The submissions of M/s Shell Eastern Petroleum (Pte) Ltd., Singapore, are as follows:-

- i. That M/s Shell Eastern Petroleum (Pte) Ltd., Singapore made only marginal sales in Singapore which are minimal compared to the exports and therefore, normal value of the said products can be determined on the basis of the cost of production.
- ii. That the producer in Singapore has several advantages with regard to the cost of production and they share common facilities and logistics with other products.
- iii. That their company exports the majority of the said product in the Asia Pacific and other regions including India and sells only a minimal amount of its total production in the domestic market at Singapore, the cost of production of the said product in Singapore with addition of SA&G overheads and profit be considered as the basis for determining the normal value.
- iv. That the market of the said product in India is greater than the total installed capacity of the Petitioner hence import of the said product is absolutely imperative and necessary.

- v. That the petitioner's case is based on extrapolated information which cannot be considered sufficient to meet the requirements of an anti dumping investigation.
- vi. That the information submitted by the petitioner cannot be considered as accurate as the same has been obtained from secondary sources and are unsubstantiated.
- vii. That the primary impact on the profitability of the petitioner is due to the cost associated with the production plant and the cost of the raw materials. It has further been argued that deterioration in just one or two indices cannot be considered sufficient to substantiate the allegation of material injury.
- viii. The description used in the definition of the product under consideration is too broad.
- ix. There are several methods of producing Polyol Oxide which is the feedstock for the subject goods. Each method has a different set of production and economic dynamics. The process used by the exporter has an advantage over the Chlorohydrin process used by the petitioner as the process adopted by the exporter converts the major raw material i.e., Propylene into the finished product more efficiently and has less waste.

(II) The submissions of M/s Dow Chemical Co., USA are as follows:-

- i. That the applicants M/s MPL are the sole producers of this product in India and the sole reason of their taking over erstwhile Spic Organics Ltd. is to establish monopoly to enable them to dictate terms to the users, all of whom belong to small scale sector.
- ii. The market demand for Flexible Slabstock Polyol is 16200 MTPA and growing @ 10%-12% p.a. The Petitioners have plants of small capacities and also manufactures different grades of Polyols for different applications. The Petitioner being the sole domestic producer does not have the capacity to fulfill the demand and the balance demand needs to be supplemented by imports.
- iii. The Petitioner has an approved / licenced capacity of 37,000 MT of Polyol, however, in order to continue with its monopolistic activity have done nothing constructive to increase their capacity utilisation so as to discourage new entrants in the field.
- iv. That the product of Dow is different from manufactured by the Petitioners. The said product is used in manufacture of Flexible PU Foam. This PU Foam is manufactured by two methods in India viz. Continuous foaming and box foaming. Although the raw material used for both these methods are similar, the continuous foaming method requires high product quality and more importantly consistency in specification from batch to batch.

- v. The Petitioner's claim that its product and the imported product are identical is not the full truth. In Flexible Slabstock Polyol, depending upon the use of Propylene Oxide (PO) or a combination of the same with Ethylene Oxide functional group (EO), Homo Polymers (Only PO) or Hetero Polymers (combination of EO and PO) are made. It is pertinent to note that majority of the Dow Polyol or FSP being imported from US is Hetero Polyol, whereas the majority of that being produced by MPL is Homo Polyol.
- vi. That the volume of imports have decreased significantly from the subject countries during the last three financial years. That the data collected by the Petitioners is only for seven months which is then extrapolated. The sale of the product being cyclical with the month of April, May and June typically being the slump period, the extrapolated figures are highly inaccurate and cannot be relied upon. Moreover, even accepting Petitioner's extrapolation method, subject imports have decreased both in terms of absolute quantity and in market share. During each period, subject imports have decreased. Secondly, the data submitted by the Petitioner is collected from secondary sources, which may not fit with actual, or data from primary sources.
- vii. That the subject imports from USA have not affected prices adversely. The CFR price for imports for the POI into India is in line with the prices in the neighbouring countries.
- viii. That the Petitioner have proceeded on a totally erroneous basis for arriving at the normal value. The inability of the Petitioner to collect price data of the exporting countries which is available with many agencies makes their exercise of constructing cost of product in the exporting countries an exercise in imagination. The Petitioner's claim of unavailability of price data is absolutely baseless.
- ix. That the PO manufacturing facility of the Petitioner is of a size that does not allow for production of PO at an economically viable cost. It should be noted that world scale plants for PO are typically in excess of 1,50,000 MTPA.
- x. That the Petitioner has been able to realise a healthy price increase of 15% over the last three years despite the product prices remaining relatively flat in the international market.
- xi. That the Petitioner appears to have compared the inventory of pre-merger entity with post-merger entity and the increase in inventory is primarily due to comparison with peak and slump seasons rather than a sign of Injury due to imports.
- xii. That there is no justification/justifiable evidence that the profitability of the Petitioner has been affected by the import of FSP.
- xiii. That because of their in-house problems, the Petitioner can neither increase its share nor improve its profitability, even in the absence of alleged dumping.

(III) The submissions of M/s Bayer Polyurethane Asia Pte. Ltd., Singapore as follows:

- i. That they are regular suppliers of the said product in India for the last 25 years backed by their most reliable technical support.
- ii. Their products are backed by well known and established technology and have a consistent demand in the Indian market and are well accepted in the slabstock foam market in India.
- iii. That they never had intention to cause injury to the Indian Slabstock Polyol market.
- iv. That the current Indian Flexible Slabstock Polyol Market size is around 16,000 MTs p.a which has been growing at a double figure growth rate of about 11-12% for the past three years. The domestic production capacity is not enough to meet the growth demand, therefore the shortfall has to be met via imports.
- v. That the domestic producer, M/s Manali Petrochemicals Ltd., has been seeking protection continuously. The economic viability of their operations depends on efficient production process and a larger economic production capacity. But unfortunately they have not been able to achieve either in the last three years despite of the fact that a safeguard was imposed to their favour.
- vi. That there is a general global slowdown of the economy and prices of almost all polymers in general are under pressure. The trend of pricing of Flexible Slabstock Polyol for India has been consistently at par or higher than prices prevailing in the Asia Pacific region and as such cannot be reflected as specific case of dumping into India.
- vii. That the Indian market already has the highest protection duty in the Asia Pacific region i.e. , 35% basic custom duty which actually cascades upto over 42% with the addition of other duties. Whereas, the per capita consumption of Flexible Slabstock Polyol in India is lowest in the region being almost 1/20th in comparison to China and other developing countries. Any further protection will increase costs to the consumer and hamper consumption growth / industrial growth of the segment.
- viii. That the imports into India have also been effected by the escalating exchange rates that have an additional impact of about 5% in the last one-year.
- ix. That Manali Petrochemicals Ltd., and Spic Organics have merged to form one company and have adopted a monopolistic attitude. The respondents presence in the market restricts monopolist practice and protects consumer by encouraging fair pricing

E. EXAMINATION AND FINDINGS BY AUTHORITY

9. The submission made by the importers, exporters, users, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

10. The cases of new exporters or those stated to be willing to give price undertaking shall be considered, on request, by the Authority in accordance with the Rules supra.

F. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

11. The product under consideration in these investigations has been considered as "Flexible Slabstock Polyol of Molecular Weight 3000 to 4000". These products are classified under Chapter Heading 3907.20 of the Customs Tariff Act but the same have also been cleared under Chapter Headings 3907.91 and 3907.99. The exporters have claimed that the product description is too broad. However, no substantive arguments have been advanced to indicate that this description covers any products more than what had been intended by the petitioner and thereafter accepted by the Authority for the scope of investigation. The Authority therefore considers that the description of the product under consideration is precise and accurate. It may be mentioned that the customs classifications are indicative only and are in no way binding on the scope of the present investigation.

12. The petitioners have claimed that the goods produced by them are like articles to the goods originating in or exported from the subject countries. An issue has been raised that the product produced by the petitioners and the imported products cannot be considered as like articles. It has been contended that in Flexible Slabstock Polyol, depending upon the use of Propylene Oxide or a combination of the same with Ethylene Oxide functional group, Homo Polymers or Hetero Polymers are made. They have further argued that it is pertinent to note that majority of the Polyol being imported from US is Hetero Polyol, whereas the majority of that being produced by MPL is Homo Polyol.

The issue has been examined by the Authority. The basic objection of the exporter's is that the Polyol Oxide, which is the main feedstock for the production of the subject goods, is obtained by different methods and, therefore, the resultant Flexible Slabstock Polyol cannot be considered as like articles. It may be mentioned here that the tests of determining whether any two products are like articles or not, inter alia include the determination of whether the two products are technically and commercially substitutable or not. No arguments have been advanced nor has any evidence been forwarded to substantiate their argument that the goods produced by the domestic industry and those imported into India are not like articles. The

Authority, therefore, has determined that the goods being imported are like article to the product under consideration.

G. DOMESTIC INDUSTRY

13. The petition has been filed by M/s Manali Petrochemicals Ltd. (MPL), who are the only producers of the subject goods in the country. Therefore, they have the standing to file the application on behalf of the domestic industry. Further, the petitioners have neither imported the subject goods nor are they related to any importer/exporter of the subject product. The petitioners, therefore, satisfy the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules *supra*.

H. NORMAL VALUE, EXPORT PRICES & DUMPING MARGINS

14. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). However, none of the exporters from European Union and Japan responded to the Authority nor have they furnished any information. The Authority, therefore, holds that none of the exporters from European Union and Japan have cooperated with the Authority as envisaged under the Rules and Rule 6(8) is attracted in their case.

15. The Authority observes that the exporter from USA viz. M/s The Dow Chemical Co., who has sent their comments, has not sent its reply in the prescribed proforma of this Directorate. Further, they have not submitted any information which can be made use of in the investigations. The exporter has merely submitted some reports without giving any information with regard to either the normal value, export prices or the cost of production. For the purpose of determination of individual dumping margin, the said exporter is considered as non-cooperative and the Authority shall proceed on the basis of the best information available to it as per Rule 6(8) *supra* for this exporter as well as for other exporters from USA.

16. From Singapore two exporters have responded to the initiation notification viz. M/s Bayer Polyurethanes Asia Pte. Ltd. and M/s Shell Eastern Petrochemicals Pte. Ltd. As regards M/s Bayer, no details regarding export price, domestic sales price, cost of production, adjustments regarding freight, insurance, credit sales, discounts, etc. have been given in the prescribed format. As regards M/s Shell Petrochemicals Pte. Ltd., Singapore who has filed the response, it is observed that the said exporter has failed to provide any non-confidential version of the appendices to the Exporter's Questionnaire. Further, the Exporter has not provided any details of their sales/credit

arrangement, installed capacity and production of other goods, the allocation of plant and machinery for the product, incidence of interest with regard to their cost of production/export sales, etc.. There is no indication of any kind of finance charges in the cost of production whereas the balance sheet shows that the Company has incurred expenses on this account. The reconciliation in respect of sales of the product under consideration and other products as required for Appendices 3 and 7 have not been provided. The information in respect of related companies specifically relating to trading/manufacturing companies have not been provided. It is therefore observed that the response submitted by the exporter cannot be considered as a complete response. For the purpose of preliminary findings, therefore the Authority has decided to use the best information available in terms of Rule 6(8) Supra in case of all the exporters from Singapore.

17. It has been argued by the exporters/importers that the information supplied by the domestic industry with regard to imports cannot be relied upon as accurate since the same has been obtained from secondary sources. In the absence of availability of data from DGCI&S, the Designated Authority has been consistently relying upon the information made available to it from other sources also. This practice is entirely consistent with the legal position. However, as a part of the detailed investigation, the Authority is making use of the information received from the participating exporters/importers to arrive at the export volumes and values for the determination of dumping margin as well as for injury assessment. Further adjustments has been given on account of freight, marine insurance, commission, port handling etc., to arrive at net export price on the basis of information available.

18. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The dumping margins arrived at for the purpose of preliminary findings are as follows:

Country / Territory	Exporters/ Manufacturers	Dumping Margin (%)
USA	All exporters	46.01
Japan	All exporters	42.19
EU	All exporters	38.60
Singapore	All exporters	32.27

I. INJURY

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

"Determination of Injury:

- i. 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;
- ii. 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."

20. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. For the examination of the impact on the domestic industry in India, the Authority considered such further indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realization etc.

Cumulative Assessment of Injury

21. It is observed from the facts available on record that the margins of dumping from each of the subject countries are more than the 2% limit expressed as % of export price. Also the volumes of imports from each of the country are more than de minimis. Cumulative assessment of the effects of imports would be appropriate since the exports from the subject countries directly compete with each other and with the goods offered by the domestic industry in the Indian Market. The Authority, therefore, proposes to assess injury to the domestic industry from the subject countries cumulatively.

Market share of the imports from Subject countries

22. It can be seen from the following table that the market share of the imports from the subject countries as a percent of the total imports has increased from 83.72% in the year 1999-2000 to 91.73% during the period of investigation. Since all the importers or exporters have not provided the information in the prescribed format, it is quite likely that the actual quantum of imports may be much higher if the imports from the ICDs particularly at Delhi and bulk shipments at Kandla are taken into account, the information on which is yet to come and shall be taken into account in the final findings.

Market Share of Imports from Subject Countries (% of Total Imports)

Year	Imports from the subject countries (MT)	Total Imports	% share
1998-99	2350.12	2383.72	98.59%
1999-2000	1983.15	2368.65	83.72%
Oct 2000-June 2001	1631.97	1779.07	91.73%

Market Share of Imports from Subject Countries (% of Total Demand)

23. As would be revealed from the following table, the market share of imports from the subject countries as a proportion of total demand has also sharply risen from 19.43% during 1999-2000 to 22.08% during the period of investigation.

Year	Imports (MT)	Total Demand	% share
1998-1999	2350.12	8900.58	26.40%
1999-2000	1983.15	10207.21	19.43%
Oct 2000-June 2001	1631.97	7390.16	22.08%

Production & Capacity Utilization

24. It has been observed that despite the marginal increase in the production and the capacity utilization of the domestic industry during the period of investigation, the domestic industry has incurred losses due to poor price realization. It is therefore clear that the domestic industry could retain its customers and market share at the cost of suffering on the financial parameters. Thus, the apparent increase in production as well as capacity utilization has to be seen in the context of the price effect of the dumped imports.

Year	Capacity (MT)	Production (MT)	Capacity Utilization (%)
1998-1999	***	***	***
1999-2000	***	***	***
Oct. 2000-June 2001	***	***	***

Sales Volume & Value of the Domestic Industry

25. As regards the sales price, there is some marginal improvement over the last year but it has been claimed by the domestic industry that the increase in price is due to fall of Rs. as compared to the \$ and the increase in the cost of the major raw materials and fuel. This is also reflected in the fact that the losses have gone up despite marginal increase in the sales prices. At the same time, it is the claim of the domestic industry that it is not feasible for the domestic industry to increase their prices despite increase

in the raw material prices precisely because of dumping. Thus, there is enough evidence of price suppression on account of dumping by the subject countries.

Year	Sales Volume (MT)	Sales Value (Rs. In lakhs)	Unit Price (Rs. / MT)
1998-1999	***	***	***
1999-2000	***	***	***
Oct. 2000-June 2001	***	***	***

Profitability

26. An examination of the records of the domestic industry indicates that the domestic industry has suffered serious injury in the form of direct losses per unit of sale. Thus, it is apparent that it is the price factor alone which can be considered to have led to injury to the domestic industry resulting in losses despite improvement in capacity utilization as well as production.

Year	Sales Value (Rs. In lakhs)	Cost of Sales (in lakhs)	Profit / Unit
1998-1999	***	***	***
1999-2000	***	***	***
Oct 2000-June 2001	***	***	***

Price Undercutting

27. It has been claimed that dumping by the subject countries has had a significant impact on the net sales realization by the domestic industry for the subject goods. To hold on to its market share, the petitioners had to compete with low priced and dumped imports of subject goods from the subject countries. The landed values of the dumped imports also indicate that there is price under-cutting taking place.

Price Underselling

28. The Authority has also examined the claim of the domestic industry that the domestic industry is suffering on account of direct losses. The Authority notes that price underselling is an important indicator to make an assessment of injury. The Authority has worked out a fair selling price and compared the same to the landed value to arrive at the extent of price underselling.

Employment

29. The employment figures also show the effect of injury as there is a drop in the employment level despite the fact that it is usually not feasible to reduce manpower due to the existing labour laws.

Increase in Inventories

30. The domestic industry has claimed that it was not able to sell its products in the market due to massive dumping. This is also revealed from the fact that the inventory in one of the two plants had increased from *** as on *** MT as on 31.3.2000 to *** MT at the end of June 2001, an increase of over three times. Further, they have been already forced to cut down their production due to the huge pile up of inventories. The inventories in the second plant are also at a very high level of *** MT. The overall increase in inventories taking both plants together show an increase of 61% during POI as compared to year 1999-2000.

31. On examination of the evidence, it has been found that there is marginal increase in production, sales, and capacity utilization of the domestic industry. However, the domestic industry is suffering losses on account of low priced and dumped imports from the subject countries. The most significant parameter evidencing injury is the price undercutting and price underselling as per the evidence available with the Authority.

The volume of imports in relative as well as absolute terms has gone up. Market share in the total demand also shows an increase. The above factors clearly show the injury being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury and is suffering further threat of injury during the period of investigation.

J. CAUSAL LINK

32. In determining whether material injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts:-

- a. Substantial imports of subject goods from Subject countries at dumped prices has resulted in losses to the domestic industry.
- b. The authority also observes that there is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. Demand for subject Flexible Polyol is showing a healthy growth. Decline in demand is hence not a factor causing injury to the domestic injury. The imported product is sold to meet the similar commercial grades and standard specifications, as domestically produced Flexible Polyol. The imported subject article and the domestically produced goods are like articles and are used for the same applications/end uses. Thus, pricing becomes the most important factor determining purchase of the article from either imported sources or domestic sources.

- c. The imports from Subject countries suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

K. INDIAN INDUSTRY'S INTEREST

33. The purpose of anti dumping duties 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.

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

L. OTHER ISSUES

35. It has been claimed by the importers, exporters and some interested parties that the petitioner, i.e., MPL, is the only producer of the subject goods in the country, and therefore, the present petition has been filed by them to consolidate their position as a monopoly producer in India and to avoid any competition. Further, the total capacity of the petitioner is woefully short of the demand of FSP in the country and the size of the plants is uneconomical. It has also been argued that the technology used by the domestic industry is obsolete and inferior. Issues have also been raised regarding the poor quality of the goods produced by the domestic industry as well as the methodology adopted for apportionment of fixed costs and overheads to the production of FSP. It has also been stated that the international prices of almost all chemicals and plastics including FSP have exhibited downward trend during the last couple of years and that the prices of exports to India are at the prices prevailing in international market. It has also been brought out in the submissions by the importers and the users that safeguard duty was imposed on the subject goods vide Final Findings dated 17.9.1998 and that the domestic industry is deliberately attempting to abuse the machinery of the Designated Authority to derive an undue advantage.

36. The above issues have been examined by the Authority. The purpose of anti dumping duty is to ensure that any injury caused to the domestic industry due to dumping is addressed adequately. The fact that there is a single producer of the subject goods in the country does not, in any way, restrict the right of the domestic producers to claim relief from the Designated Authority against the dumped imports under the Anti Dumping Rules. It has been the accepted position that anti dumping duty is in the nature and form of providing a remedy against the trade distorting practice of dumping. Further, anti dumping duties do not propose to restrict or block imports from any sources and therefore, the issue of the domestic supply being short of the total consumption in the country, has no relevance. Also since alternative sources of supply are available to the Indian industrial users, the apprehension of the petitioner company exercising monopoly position to exploit the customers, is misplaced. Adequate care has been taken by the Authority while apportioning the fixed cost and other overheads to the product under consideration. As regards the issue of safeguard duty having been imposed on the subject goods in the past, the Authority is of the view that there is no bar on the domestic industry to seek protection against dumped imports only because the said goods had safeguard duties in the past. Regarding the issue of the export prices to India being at par with the prevailing international prices, the Authority notes that dumping is linked to the normal value in the exporting country and export prices of the subject goods to India and while determining the normal value, it has to be established that the sales are in the ordinary course of trade.

M. CONCLUSIONS

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

- i. Flexible Slabstock Polyol as defined above in the para relating to Product under consideration has been exported to India from Subject countries below its normal value;
- ii. the Indian industry has suffered material injury;
- iii. the injury has been caused by the dumped imports from subject countries;

38. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Flexible Slabstock Polyol from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes 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. For the purpose of determining injury, the landed value of imports is

proposed to be compared with the non-injurious selling price of the petitioner companies determined for the period of investigation.

39. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Product under consideration originating in or exported from subject countries pending final determination. The anti-dumping duty shall be the difference between the prices indicated in Column 3 of the following table and the landed value of the concerned imports:

Country / Territory	Exporters / Manufacturers	Amount US D per MT
1	2	3
USA	All exporters	1804
Japan	All exporters	1804
EU	All exporters	1804
Singapore	All exporters	1804

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

N. FURTHER PROCEDURE

41. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would provide opportunity to all the interested parties for making oral submissions which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V. Saptharishi,
Designated Authority