

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

Notification

New Delhi, the 11th December, 2003

PRELIMINARY FINDINGS

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. - Preliminary Findings.

No. 14/4/2003-DGAD - The Government of India 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., 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 and Brazil (hereinafter referred to as subject countries);
- ii. The preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was thereafter, considered as properly documented;
- iii. The Authority notified the Embassies of the subject countries in India about the receipt of dumping application made by the petitioners before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iv. 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.

- v. 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.
- vi. 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.
- vii. The Authority sent questionnaires, to elicit relevant information, to the following exporters: -

- M/s S.K. Oxichemical Co Ltd.
23-10. Yoido Dong
Yongdungpo-GU, Seoul
South Korea 180-0101
- M/s Bayer Poly urethanes Taiwan Ltd.
2F290 Chung Hsiao E Rd. Sec 4
Taipei, Taiwan.
- Zhejiang Sanhuan Chemical Company Ltd.
No. 1007.jiu Ling Xi Road
Yongkang
Zhejiang 32130. P.R. China.
- Dow Quimica S.A.
Rua Alexander Dumas
1671 P.P. Box 9037
010065 – 970 Sao Paulo
Brazil.

- viii. The Embassies of subject countries in New Delhi were also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- ix. The questionnaire was sent to the following importers of subject goods:

1. M/s. Feather Foam Enterprises Pvt. Ltd.
Plot No.257, Saily
Umarkvi Road
Silvassa – 396 230 (UT of DNH)
2. M/s. Natson Foam Mfg. P Ltd.
5, Panchayat Bhavan, Bhadras
Ahmedabad-1.
3. M/s. Dura Foam Industries Pvt Ltd
123, Indl. Estate, Silvassa
Union Territory of Dadra-Nagar Haveli
4. M/s Surya Foam
Sedarapet Main Road

- Sedarapet
Pondicherry
5. M/s. DP Foam Private Ltd
13, Rangapillai St.,
P B No.130
Pondicherry-605 001.
 6. M/s. KurlonLtd.
Jalahalli Camp Road
Yeshawanthpur
Bangalore 560 022.
 7. M/s. Aparna Polyproducts Ltd.,
452, Ganapati Plaza
M.I. Road
Jaipur 302 001 (Rajasthan)
 8. M/s Tirupati Foams Ltd
502, Harekrishna Complex
Opp. Kothawala Flats
Pritam Nagar, Ellis Bridge
Ahmedabad - 380 006
 9. M/s. Soft Foam Industries Pvt. Ltd
Survey No.3852, Medchal Indl. Area
R.R. District 501 401 (AP)
 10. M/s. Madras Polymoulds
28, C&D Krishnaswamy Avenue
Mylapore
 - 10.M/s Madras Polymoulds
28, C&D Krishnaswamy Avenue
Mylapore
Chennai-4.
 - 11.M/s. Sheela Foam Private Limited
37/2, Site No.IV, Sahibabad Indl. Area
Sahibabad-201010
Ghaziabad (U.P.)
 - 12.M/s. J J Foams Pvt. Ltd
B-12/2, Site-IV, Sahibabad Indl. Area
Sahibabad (Dist. Ghaziabad) U P
 - 13.M/s. M H Polymers Pvt. Ltd
B 15, Site B, Suraj Pur Indl. Area
Tehsil, Dadri
Dist. Ghaziabad (UP)

14. Sandeep Foam Industry Pvt. Ltd.
Unit – II, B-374 Main Road
Gajipur Village
Delhi - 110 096.
15. Arvind International Ltd.
E95-96 & 76-78 RIICO Industrial Area
Bagru Extension
Bagru 303 007
Rajasthan
16. Dura Puf (Silvassa) Pvt. Ltd
121, Piparia Industrial Estate,
Union Territory of Dadra & Hagar Haveli
Via. Wapi (W. Rly.), Silvassa
17. Joy Foam Pvt. Ltd.
55-B/3, Sipco industrial Estate,
Ranipet
18. Devi Foam Pvt. Ltd.,
391-A, Gonde Tal, Igatpur,
Nasik-Mumbai Road,
Nasik, Maharashtra
19. Swiss Foam Industries
823 & 8254, GIDC Phase – II,
Chattral, Kalol,
Gujarat.
20. Cozy Foams Pvt Ltd.,
Plot No. 17, Survey No. 820/F,
Village –Mahim, (Chintjparada)
Palghar, Dist – Thane.
21. Foam Home (India) Pvt. Ltd.,
H-30/2 MIDC Tajoja
Maharashtra.
22. Romega Foam Pvt. Ltd,
36 Canal Road,
Kudapakkam,
Villanur
Pondicherry – 605 110
23. Alfa Chemical Corporation,
Shiv Compoundm,
Godown No. 19,
Rahanal Village,

Bhiwandi 421 302

Dist - Thane.

24. Polyurethane Association of India

Mr. K. Ramamurthy

Secretary

Flat 7, III Floor, Shakti Mahal

New No. 24 (Old 41), First Main Road,

CIT Colony, Mylapore,

Chennai – 600 004.

- x. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xi. 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;
- xii. Some of the interested parties requested for extension in time to file their response to the questionnaire which was granted upon due cause shown;
- xiii. ***** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xiv. The investigation covered the period from 1st April 2002 to 31st December, 2002.
- xv. Copies of initiation notice were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS

3. The petitioner has made the following major arguments in their submissions:-

- i. The petition is filed against the subject products exported from or originating in China, Korea, Brazil and Taiwan (hereinafter also referred to as the subject country/countries).
- ii. MPL is sole manufacturer of propylene oxide in India, starting from basic raw material propylene, which in turn is processed to manufacture flexible polyol.
- iii. This product is used to produce flexible slabstock foam. There are no substitutes for this product.
- iv. Flexible Slabstock Polyol of molecular weight 3000-4000 used in the manufacture of Slabstock foam. Details of articles that petitioner is capable of producing product range include propylene oxide, propylene glycol and various grades of polyether polyols (flexible, rigid and elastomer, speciality grades). The petitioner does not import any goods similar to their produce to trade.

- v. The subject products manufactured in India by the petitioners are commercially and technically substitutable to the imported products. Hence all conditions of 'like-article' are satisfied.

4. On Dumping

- i. We have tried to get information on prices of the subject goods in the domestic market of Korea, Taiwan and Brazil. We have also made efforts to get price lists of the exporters or evidence for their export prices to other countries. We have not been able to get any documentary evidence either with regard to the prices of the subject goods in the subject countries or the price list of the exporters either for sale in that country or for exports to other countries. In the light of the above constructed Normal Value in the subject countries is a good indicator of the Normal Value for the subject goods, particularly as the prices are determined on the basis of international prices of raw materials.
- ii. In case of China, the provisions of Para 8 of Annexure I to the Anti-dumping Rules are applicable as several Members of the WTO including India have treated China as Non-market Economy in the last three years. Accordingly, the Hon'ble Authority may kindly apply the principles of Non-market Economy as laid down in Paras 7 & 8 of Annexure 1 to Anti-dumping Rules.
- iii. We have not been able to ascertain the prices in third countries which can appropriately surrogate for prices prevailing in China for reasons in the aforesaid paras. As provided in the Rules, the Designated Authority may kindly adopt the prices based on prices payable in India for the purpose of initiation.
- iv. The Export Price for subject country has been worked out on the basis of the import figures available with us along with their CIF values as detailed in Part I of this application. The subject countries are exporting the subject products into India at prices, which are significantly lower than their normal values.

5. On Injury

i) Cumulative Assessment

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 is, therefore, requested to assess injury to the domestic industry from the subject countries cumulatively.

ii) Market share of the imports from Subject countries

Market share of the imports from the subject countries as a percentage of the total imports has increased from 1.48% in the year 2001-2002 to 98.57% during the period of investigation. This is primarily due to the reason that the importers continue to import at dumped prices to the detriment of the Domestic Industry.

The market share of imports from the subject countries in the total demand has sharply risen from 0.59% during 2001-2002 to 32.90% during the period of investigation.

iii) Changes in Market Share held by the Indian producers.

The market share of domestic industry has decreased from 87.25% in 2000-2001 to 66.43% in the period of investigation. However, during the period of investigation, there is some increase in the market share of the Domestic Industry as it has been selling at extremely low prices to match the prices of the dumped goods. This increase has been there primarily due to the imposition of anti-dumping duties on other countries which had resulted in a better market access to the Domestic Industry until the dumped imports from the subject countries started coming into the country causing injury to the Domestic Industry.

iv) Output, Productivity & Capacity Utilization

The production as well as capacity utilization of the Domestic Industry increased in the period of investigation. This was primarily on account of the fact that the Hon'ble Designated Authority had initiated the investigations against four major suppliers on 21st September, 2001 and subsequently provisional anti-dumping duties were imposed on 11th February, 2002 vide Notification No. 17/2002- Customs. This remedial action by the Government of India allowed the Domestic Industry to improve its production and capacity utilization, which is likely to suffer again due to dumping by the subject countries.

v) Sales Volume & Value

There has been an increase in the sales volume of the domestic industry in the period of investigation as compared to the preceding year. However, it has to be seen that the Domestic Industry has been able to increase its sales only by reducing the prices which has resulted in losses despite improvement in sales volume. After achieving improvement in capacity utilization, the petitioner made special efforts to dispose of the production even at reduced prices so as not to be saddled with increased inventories.

vi) Import Price Analysis

The import price from the subject countries have declined considerably during the period of investigation. It may be noticed that the prices from the subject countries increased marginally in the year 2001-2002 over the preceding period but declined sharply from Rs. 43402 in 2000-2001 to Rs. 41857 during the period of investigation. The drop in prices has to be seen in the context of the drastic increase in imports from these sources during the period of investigation (from a mere 48 MT in 2000-2001 to Rs. 4550 (annualized) during the period of investigation).

vii) Inventories

The petitioner has been able to reduce its inventories only by clearing the production stocks at unremunerative prices.

(Indexed)

YEAR 1 2000-2001		YEAR 2 2001-2002		POI (9 MONTHS) April 2002-Dec 2002	
Quantity	Value	Quantity	Value	Quantity	Value
MTs.	Rs. lakhs	MTs.	Rs. lakhs	MTs.	Rs. Lakhs
100	100	130.33	126.44	26.84	23.82

viii) Price Undercutting

There has been a significant price undercutting by the dumped imports from the subject countries. The extent of undercutting is 11.64% in case of China, 7.90% for Korea, 13.92% for Taiwan and 22.46% for Brazil. It may be seen that even the current loss-making prices of the Domestic Industry are being undercut by the imports from the subject countries leading to further injury to the Domestic Industry.

ix) Profitability & Return on Investment

The domestic industry is suffering serious injury in the form of direct losses per unit of sale. It needs to be appreciated that it is this price factor along with the volume effect which has also led to extensive injury to the domestic industry. It is extremely damaging to the interests of the domestic industry to continue to suffer losses despite reasonably good level of production, capacity utilization and sales. This has also adversely affected our ability to raise capital and to plough funds for further expansion.

x) Evidence of Lost Contracts

The evidence of loss of contracts has been attached as Confidential Annexure.

xi) Employment & Wages

There has been a drastic decline in manpower from 576 in 2000-2001 to 430 during the period of investigation. Such is the adverse effect of dumping on the Domestic Industry that it 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. It may also be mentioned that 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.

xii) Actual and Potential Negative Effect on Cash Flows

Since the Flexible Slabstock Polyol has incurred a cash loss during the period of investigation, it has caused a severe strain on the cash flow position of the company as a whole.

xiii) Ability to Raise Capital or Investments & Growth

With the present state of financial losses, it would not be feasible for the Domestic Industry to make any further investments in this business.

xiv) Magnitude of Margin of Dumping

The Petitioners have estimated the margin of dumping based on the constructed cost method as 106.83% for China, 93.44% for Korea, 113.38% for Taiwan and 135.26% for Brazil. Details are in the Petition.

6. CAUSAL LINK

- i. The imports of subject goods from sources other than China, Korea, Taiwan and Brazil are *de minimis* and are coming at higher prices during the period of investigation. Only the imports from China, Korea, Taiwan and Brazil are being made at dumped prices causing material injury to the petitioners.
- ii. Demand for subject goods is showing a growth. Decline in demand is hence not a factor causing injury to the domestic industry. It may also be seen that the market size is growing and therefore, contracting demand is not a reason for the injury to the Domestic Industry.
- iii. There is a single market for the subject goods where dumped imports compete directly with the goods produced by the domestic industry. The price determines the choice of supplier. The dumped goods are good substitutes for the like product of the indigenous producers. The imported product is sold to

meet the similar commercial grades and standard specification, 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.

The share of domestic industry would have been much better but for dumped imports. The domestic industry is incurring losses on the sale of the subject products significantly. This can be directly attributed to the low priced imports from the subject countries as the domestic industry is always expected to match the prices offered by the importers from the subject countries. In the absence of dumped imports from the subject countries, the domestic industry would have been able to realize its fair selling price with a reasonable margin of profit.

C. EXPORTERS', IMPORTERS', USERS' AND OTHER INTERESTED PARTIES' VIEWS

7. Responses have 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

8. Only M/s SKC Co. Ltd. Korea has furnished response on the exporter's questionnaire.

9. M/s Dow Quimica S.A., Brazil has not furnished information on the questionnaire for the Authority to determine Normal Value and export price. They have, however, made following comments :

- i. The Authority has allowed two weeks extension for filing the response but the time available was short to submit voluminous confidential data required.
- ii. The applicants-MPL are the sole producers of Flexible Slabstock Polyol (FSP) in India. Anti dumping duty has been imposed only last year on the same product for exports from USA, Japan, Singapore and EU. Being sole producer, the intention of the petitioner appears to be monopolistic to enable them to dictate terms to the users.
- iii. The market demand is 17,500 MT and growing at the rate of 12-15% p.a. The petitioner does not have the capacity to fulfill the demand. Petitioner produces

different grades of Polyol for different applications. Balance demand needs to be supplemented by imports.

- iv. Petitioner's production facility being highly uneconomic is the cause of their woes. The total volume of imports has in fact declined from 4553.27 MT in 2001-02 to 3461.69 during the POI. As regards to imports originating from Brazil, the question of increase in imports does not arise as there were no imports from Brazil prior to the POI.
- v. The claim of petitioner as regards having market share of 87.25% in 2000-01 does not appear to be correct when seen with the petition in the previous case. Further, with a market share as high as 87.25%, imports of the product can hardly have any effect on them.
- vi. The average CFR for the period of investigation for import into India as per the data provided by the petitioner is US\$ 783.4 PMT. The supplies made by them are in bulk, thereby saving on drum packing and related costs.
- vii. Petitioner's claims that reduction in price is a direct result of import is not true. It may be related to reduction in import duties since 2000-01.
- viii. From the capacity data declared in their annual report and the market share data submitted by the petitioner in their earlier petition, it is clear that petitioner is mistaken about its FSP capacity / utilization. The petition proceeds on erroneous data and should be dismissed.
- ix. Petitioner's profitability and return on investment cannot be based on one product (Hetero Polyol) which constitutes only 27% of its total revenue. It is the overall inefficient production process, uneconomic plant size and availability of raw material and other utilities that are the cause of the petitioner's woes and not the price of FSP.
- x. The imports from subject countries have commenced only during the POI, in which case the losses suffered by the petitioner in the past cannot be due to imports from the subject countries.
- xi. The petitioner has not used the imposition of safeguard duty or anti dumping duty imposed last year to improve its industrial competitiveness or efficiencies.
- xii. Any imposition of anti dumping duty would only serve to further shield an uncompetitive and an inefficient sole domestic producer.

10. M/s Bayer Polyurethanes, Taiwan has not furnished information on the questionnaire for the Authority to determine Normal Value and export price. They have, however, made following comments :

- i. We, as Bayer, are regular suppliers of the said product in your country with our registered brands Arcol 5613/Desmophen 7186 for the last 25 years backed by our most reliable technical support.

- ii. Our 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. The consumers prefer to pay a premium for our superior international quality product and services.
- iii. We are very surprised and astonished about the petition as it is not and never was our intention to cause injury to the Indian Slabstock Polyol market and in fact, we strongly believe that we never did so.
- iv. According to reliable market information the current Indian Flexible Slabstock Polyol Market size is around 18,000 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 growing demand, therefore, the shortfall has to be met via imports.
- v. 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 and recent anti dumping from US, EU, Singapore and Japan was imposed to their favour.
- vi. Moreover, the Indian market already has the highest protection duty in the Asia Pacific region, 25% basic custom duty which actually cascades upto over 33% 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.
- vii. Manali Petrochemicals Ltd., and Spic Organics have merged to form one company and have adopted a monopolistic attitude. Our presence in the market restricts monopolist practice and protects consumer by encouraging fair pricing. Any decision on imposing protection duty in this situation may develop into violation of the MRTP Act, 1969 and may tantamount to encourage monopolistic practice by the sole local producer.

The exporter had sought extension of time for submission of response with relevant data. Extension was granted by the Authority, however, no detailed response on questionnaire was received.

11. M/s Jin Hua Chemicals (Group) Corporation, China has not furnished complete response as required in the questionnaire. They have given following information / documents :

- i. Agency agreement
- ii. Invoices (in Chinese) in respect of domestic sales.

- iii. Product handbook
- iv. Introduction about the Company
- v. One statement about sales price in Indian market.

12. The Authority finds that the response of the Chinese, Brazilian and Taiwanese exporters is grossly deficient as it does not contain information as required in the questionnaire.

Responses of importers / users association:

13. M/s Sheela Foam Pvt. Ltd., Ghaziabad – They have furnished information on importer's questionnaire.

14. M/s Joy Foam Pvt. Ltd., Chennai – They have furnished information on importer's questionnaire and have also given following arguments :

- i. Manali Petrochemical is an outdated old and uneconomic plant in size and any support at the cost of downstream producers is not going to make it viable.
- ii. The financial problems of Manali Petrochemical are mainly arising out of the mis-management of the company as can be verified from the history of the company so far.
- iii. Manali Petrochemical belongs to SPIC Group of Companies, which as per newspaper reports is facing financial difficulties and restructuring is being proposed for them.
- iv. Under the circumstances it is for consideration whether temporary measures like Anti-dumping Duties could save the company.
- v. It is our experience that the company has followed discriminatory sales policy. The monopolistic character of this producer, in a market, devoid of any competition even from importers of developing country would be ruinous for downstream manufacturers and their employees.
- vi. Throughout the last year the price of Polyol has been fluctuating between USD 900 to USD 1050 per ton depending upon the seasonal variation. Even in the limited market that was open to us the prices had not changed substantially inspite of the fact that the Anti Dumping Duties virtually closed Indian Market for producers in all developing countries. It is only fair to assume that the basic price even under such circumstances in all developing countries remaining the same itself, is the indication that the prices fixed on commercial terms are existing now and are fair and reasonable.

15. M/s Star Foam Pvt. Ltd., Chennai – They have only furnished following comments :

- i. Manali Petrochemical cannot meet the all India marketing requirements.
- ii. The price of the Polyol is higher than the imported Polyol.
- iii. The quality of the product is not as the quality of the imported product.
- iv. Manali Petrochemical will not give Credit / Letter of Credit facility.
- v. We have imported the materials against 90 days Letter of Credit.

16. Polyurathene Association of India, Ghaziabad – They have made the following arguments :

- i. M/s Manali Petrochemcals is the only manufacturer of Flexible Slabstock Polyol in India and they are in the habit of repeatedly seeking protection through anti dumping and other allied duties. They had sought protection under the Safeguard duty in 1998, thereafter they sought anti dumping duty in December, 2001.
- ii. The petitioner is trying to block imports from the entire Polyol manufacturing companies in the world.
- iii. The petitioner uses the inferior and obsolete technology and they are not commercially viable and competitive. They wish to avoid competition and want to monopolize the supply of Polyol in the country.
- iv. The PU Foam Industry has no access to the information regarding the costing of Polyol at the end of the exporter or the petitioner.
- v. Levy of anti dumping duty on Polyol will result in imports of PU Foam taking place at very low price from neighbouring countries like Bangladesh, Nepal, Sri Lanka, Thailand, Malaysia as these countries have very low custom duty.
- vi. The PU foam industry comprises about 120 small scale units who work on a very low capital in a very competitive market. The industry is already facing stiff competition from other products like coir etc. and levy of anti dumping duty cannot be absorbed by the PU foam industry.

In view of above reasons, anti dumping duty should not be undertaken in public interest.

D. EXAMINATION AND FINDINGS BY THE AUTHORITY

17. The submission made by the petitioners, importers, exporters and other interested parties, to the extent filed before the Authority have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

18. 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.

Product Under Consideration

19. 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 clear 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.

Like Article

20. 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 notes that the domestic industry produces Flexible Slabstock Polyol of molecular weight 3000 to 4000. The Authority holds the product being manufactured by the domestic industry to be like article to the subject goods being imported from subject countries.

Domestic Industry

21. The petition has been filed by M/s Manali Petrochemicals Ltd., Chennai. The petitioner 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, considers that M/s Manali Petrochemicals Ltd. represents the 'Domestic Industry' within the meaning of Rule 2(b) supra.

E. DUMPING & EXAMINATION OF CLAIMS MADE ON NORMAL VALUE & EXPORT PRICES

Normal Value

22. Under Section 9A(1)(c) of the Customs Tariff (Amendment) Act,1995 normal value in relation to an article means:

- i. "The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or

- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)";

23. The Authority sent questionnaire to all the known exporters of the subject countries for the purpose of determination of normal value in accordance with Section 9A(1)(c). The Embassies of subject countries in New Delhi were also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. The responses were received only 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

Republic of Korea

24. M/s SKC Co. Ltd., Korea has furnished information in the questionnaire regarding domestic sales, exports to India, adjustments, sales price structure, cost of production etc. Based on the information furnished regarding cost of production and unit sales price for domestic market, the domestic sales appeared to be in the ordinary course of trade. For the purpose of preliminary findings, the Authority has considered the domestic sales price for determination of Normal Value, subject to verification of information. The exporter has shown adjustment on account of discounts, inland freight, storage and other costs. These have been allowed subject to verification. The Normal Value thus has been arrived at US\$ ***/PMT.

Brazil

25. M/s Dow Quimica S.A., Brazil has not furnished information on the questionnaire for the Authority to determine Normal Value and export price. They have only made some general comments. The Authority considers the exporters from Brazil as non-

cooperative and is constrained to resort to facts available as per Rule 6(8) of Rules supra for determination of Normal Value. The Authority has determined Normal Value on constructed cost of production on the basis of evidence furnished by the petitioner. For this purpose, the cost of Propylene has been taken for the period September-December, 2002 as reported in Asian Chemical News. For the other element of costs, the Authority has considered other evidence as reasonably available. The Normal Value is thus determined as US\$ *** / PMT.

People's Republic of China

26. Only one Chinese exporter M/s Jin Hua Chemicals (Group) Corporation, China has responded, however, they have not furnished complete response as required in the questionnaire. They have given following information / documents :

- i. Agency agreement
- ii. Invoices (in Chinese) in respect of domestic sales.
- iii. Product handbook
- iv. Introduction about the Company
- v. One statement about sales price in Indian market.

The Authority finds that the response of the Chinese exporter is grossly deficient as it does not contain information as required in the questionnaire. Full details of the domestic sales on the prescribed proforma, full details of sales to India on the proforma and sales to other countries, adjustments – sales price structure, cost of production etc. have not been furnished. Further, the exporter has also not furnished any evidence to rebut the presumption that they operate in Non-Market Economy conditions. The Authority is thus constrained to determine the Normal Value in respect of China on the basis of facts available as per Rule 6(8). The Authority has determined Normal Value on constructed cost of production on the basis of evidence furnished by the petitioner. For this purpose, the cost of Propylene has been taken for the period September-December, 2002 as reported in Asian Chemical News. For the other element of costs, the Authority has considered other evidence as reasonably available. The Normal Value is thus determined as US\$ ***/PMT.

Taiwan

27. Only one exporter from Taiwan viz., M/s Bayer Polyurethanes, Taiwan has responded, however, they have not furnished information on the questionnaire for the Authority to determine Normal Value and export price. They have only made some general comments. The Authority considers the exporters from Taiwan as non-cooperative and is constrained to resort to facts available as per Rule 6(8) of Rules supra for determination of Normal Value. The Authority has determined Normal

Value on constructed cost of production on the basis of evidence furnished by the petitioner. For this purpose, the cost of Propylene has been taken for the period September-December, 2002 as reported in Asian Chemical News. For the other element of costs, the Authority has considered other evidence as reasonably available. The Normal Value is thus determined as US\$ *** / PMT.

Export price

Republic of Korea

28 M/s SKC Co. Ltd., Korea has furnished information on questionnaire regarding exports of *** MT of subject goods to India. Adjustments have been shown on account of discounts, packing, freight, inland freight, ocean freight, shipping charges which have been allowed as claimed. An adjustment of US\$ *** PMT on account of credit cost has also been made as reflected by the invoices. Net Export Price has been arrived at US\$ *** PMT.

Brazil

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

People's Republic of China

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

Taiwan

31. None of the exporters from Taiwan 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 petitioner has made

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

Other exporters from Republic of Korea

32. Except for M/s SKC Co. Ltd., no other exporter from Republic of Korea has responded to the questionnaire. For the other exporters, the Authority has determined Normal Value on constructed cost of production on the basis of evidence furnished by the petitioner. For this purpose, the cost of Propylene has been taken for the period September-December, 2002 as reported in Asian Chemical News. For the other element of costs, the Authority has considered other evidence as reasonably available. The Normal Value is thus determined as US\$ *** / PMT. As regards export price for other exporters, 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 petitioner has made adjustments from the average CIF price on account of sea freight and insurance, which have been allowed. The net export price arrived for other exporters of Republic of Korea is US\$ *** PMT.

Dumping margin

33. The principles governing the determination of normal value, export price and the dumping margin are laid down in Annexure-I to the Rules. For the purpose of the fair comparison between the normal value and export price, the Authority has made calculations and comparisons at the same level of trade in respect of subject goods. Normal Value at ex-factory level has been compared with the export price at ex-factory level of subject goods. Considering the normal value and export price, determined as detailed above, the dumping margin comes as under:

S. No.	Country	Name of Exporter	Dumping Margin %
1.	Republic of Korea	M/s SKC Co. Ltd.	39.91
2.	Republic of Korea	Other exporters	70.34
3.	Brazil	All exporters	107.50
4.	People's Republic of China	All exporters	82.53
5.	Taiwan	All exporters	88.36

F. INJURY

34. 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."

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

- i. 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.
- ii. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices 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.

36. Views of the petitioners

The views of the petitioner as regards injury and causal link are contained in Part B of these findings and these are not being repeated for the sake of brevity.

37. Views of Exporters, Importers and User Industry Association

The views of the Exporters, Importers and User Industry Association as regards injury and causal link are contained in Part C of these findings and these are not being repeated for the sake of brevity.

Examination by the Authority:

38. The Authority has considered the views of the petitioner, exporters, importers and users as regards injury. The Authority has examined the information regarding various injury parameters as under:

Imports from subject countries :

39. As per the petition, the imports from subject countries and total imports were as under :

Import Quantity	2000-2001	2001-2002	April-Dec.2002
Subject countries	48	67.20	3412.27
Other countries	1003.95	4486.07	49.42
Total	1051.95	4553.27	3461.69
%age Share of subject countries	4.56	1.48	98.57

The petitioner has stated that the import data have been obtained from M/s International Data Services, Mumbai, which is based on the Customs Daily List but covers only certain ports. The overall imports for the product under consideration will be higher than what has been reflected in the tables in the petition. Further, it has been stated that DGCI&S figures do not have a separate dedicated code and therefore, domestic industry had to rely upon secondary sources. The Authority has examined the information as per DGCI&S published data and observed that imports under ITC HSN Classification 3907 2000 cover different kinds of Polyol. It would be difficult to assume that the entire imports under this classification would relate to the product under consideration i.e. Flexible Slabstock Polyol of Molecular Weight 3000-4000. The imports of all categories of Polyol as per DGCI&S data are as under :

Import Quantity MT	2000-2001	2001-2002	April-Dec.2002
Subject countries	1180.29	1307.72	5791.57
Other countries	14208.96	25785.95	10438.00
Total	15389.25	27093.67	16229.57

The Authority has taken into consideration the import data furnished by the petitioner, which is based on the secondary sources. However, this data also covers only certain ports. The DGCI&S data could not be used as it contained imports of other Polyols. In the circumstances the Authority has considered imports figures as furnished by the petitioners and wherever the evidence furnished by the exporters and importers shows the actual imports to be higher, then such higher figures have been considered. Accordingly, the Authority finds that the imports of the subject goods are as under :

Import Quantity MT	2000-2001	2001-2002	April-Dec.2002
Subject countries	48	1060.6	3412.27
Other countries	3276.31	4486.07	120.7

Total	3324.31	5546.67	3532.34
%age share of subject countries	1.44%	19.12%	96.6%

The Authority finds that there has been significant increase in the dumped imports from subject countries in absolute terms. The imports increased from 48 MT in 2000-01 to 1060.6 MT in 2001-02 and to 3412.27 MT during POI. There was an increase from 1.44% in 2000-01 to 96.6% during the POI. Therefore, there was an increase in imports of subject goods from subject countries in absolute terms.

Market share:

40. 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 :

Quantity (MT)	2000-2001	2001-2002	April-Dec.2002 (POI)	POI Annualised
Imports	3324.31	5546.67	3532.34	4709.79
Domestic Sales	***	***	***	***
Demand	***	***	***	***
Share of domestic industry (%)	68.41	55.20	66.11	66.11
Share of imports from subject countries (%)	0.46	8.57	32.74	32.74

The Authority finds that the share of imports of subject goods from subject countries has increased from 0.46% during 2000-2001 to 32.74% 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.

Production and Capacity Utilisation:

41. The Authority finds that 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	6037
Capacity Utilization %	65.03	63.37	71.54

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.

Sales Volume:

42. Sales volumes of domestic industry increased from ** in 2000-01 to *** 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 significantly.

Inventory :

43. The inventory of finished stock has been as under :

2000-2001	2001-2002	POI
100 MT	130.33 MT	26.84 MT

Indexed

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.

Price Undercutting

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

	China	SKC Korea	Korea Others	Taiwan	Brazil
Average Net Sales realization of domestic industry	***	***	***	***	***
Landed Value of imports	***	***	***	***	***
Price Undercutting as % of NSR	12.31	8.20	8.59	14.57	23.05

Employment :

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

Wages :

46. 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.

Profitability:

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

Year	Sales Value (Rs./Lakhs)	Cost of Sales (Rs./Lakhs)	Profit/Loss per unit
2000-01	***	***	(-) 3.59%
2001-02	***	***	(-) 9.71%
April-Dec. 2002 (POI)	***	***	(-) 5.37%

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.

Evidence of Lost Contracts

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

Actual and potential negative effect on cash flows

49. 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.

Growth:

50. The Authority finds that because of losses, it would not be feasible for the domestic industry to make any new investment.

Conclusions on Injury

51. After above examination of various economic factors, the Authority has made following conclusions regarding injury :

- i. There has been significant increase in the volume of dumped imports from subject countries in absolute terms as well as in relation to the demand of the said product in India.
- ii. The market share of the domestic industry in total demand has declined in comparison to year 2000-01.

- iii. The domestic industry has suffered injury on account of price undercutting by the dumped imports.
- iv. As a result of low sales realization, the domestic industry has suffered losses in the sale of subject goods.
- v. The domestic industry has not been able to retain the existing manpower. They have not been able to negotiate a fresh wage contract with their employees union.
- vi. Due to financial losses, the domestic industry is not able to make further investments in their business.
- vii. There has been improvement in the production and capacity utilization of the domestic industry during the POI. The sales volumes have increased. The inventory level has come down.
- viii. The Authority, however, concludes that despite improvement in production, capacity utilization, sales volumes and reduced inventory, the domestic industry has suffered injury due to significant increase in the volume of imports from subject countries at dumped prices. The dumped imports have led to price undercutting and financial losses.

Cumulative assessment of injury

52. 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%. The Authority has also found 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 the imported products and the domestically produced goods. The Authority has found that there is a cumulative effect of injury by imports of subject goods from subject countries on the domestic industry.

G. CAUSAL LINK

53. The Authority has examined the impact of the dumped imports on the domestic industry as per principle (v) of Annexure-II of the Anti-Dumping Rules. The relevant

indices as set forth in para (iv) of Annexure II of the Rules have been examined by the Authority.

54. The Authority has considered the views expressed by the petitioners and other interested parties as regards the causal link, which have been mentioned, in the preceding paragraphs. After examining the various economic parameters as above the Authority has come to the following conclusions :

- i. There has been an increase in imports of subject goods from subject countries in absolute terms.
- ii. The market share of the dumped imports from the subject countries has increased significantly during POI in comparison to the previous years.
- iii. The net sales realization of the domestic industry has been significantly lower than the landed value of imports from subject countries. The net sales realization has been below the non-injurious price (NIP) on account of dumped imports.
- iv. The domestic industry has suffered financial losses due to low price realization in the sale of subject goods.
- v. As a result of lower landed value of imports of subject goods from subject country, the domestic industry has not been able to realize a fair and reasonable price for its products. This has led to negative return on investment.
- vi. The above economic parameters cumulatively and collectively establish that domestic industry has suffered material injury on account of dumping.
- vii. The demand of the subject goods has not decreased but has instead increased and therefore, contraction of demand cannot be attributed as a cause of injury. No technological development in the industry or any other such factor which could have resulted in injury to the domestic industry has been noticed. The domestic industry has been able to achieve higher capacity utilization during the POI in comparison to the previous years. Therefore, the injury cannot be attributed to low productivity.

H. INDIAN INDUSTRY'S INTEREST

55. 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.

56. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the user-industry 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.

I. CONCLUSIONS

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

- i. Subject goods have been exported to India from subject countries below their normal value;
- ii. The domestic industry has suffered material injury; and
- iii. The material injury has been caused cumulatively by the dumped imports from subject countries.

58. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of subject goods 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 not exceeding the margin of dumping or the margin of injury whichever is lesser and which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports has been compared with the non-injurious selling price of the domestic industry determined for the period of investigation.

59. Accordingly, the Authority recommends that 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 Flexible Slabstock Polyol of Molecular weight 3000 to 4000 falling under Chapter Heading 3907 2000 of Schedule I of Custom Tariff Classification originating in or exported from China PR, Republic of Korea, Taiwan and Brazil pending final determination. The anti dumping duty shall be the difference between the amount mentioned in column 9 in the following table and the landed value of imports of the subject goods in US\$/kg.

S.No	Sub-Heading	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1.	3907.2000	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	P.R. China	Any country	Any producer	Any exporter	1463.71	MT	US\$
2.	3907.2000	Flexible Slabstock	Molecular Weight 3000	Any country	P.R. China	Any producer	Any exporter	1463.71	MT	US\$

		Polyol	to 4000							
3.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Republic of Korea	Any country	Any producer	Any exporter	1463.71	MT	US\$
4.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Republic of Korea	Any producer	Any exporter	1463.71	MT	US\$
5.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Taiwan	Any country	Any producer	Any exporter	1463.71	MT	US\$
6.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Taiwan	Any producer	Any exporter	1463.71	MT	US\$
7.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Brazil	Any country	Any producer	Any exporter	1463.71	MT	US\$
8.	3907.200 0	Flexible Slabstock Polyol	Molecular Weight 3000 to 4000	Any country	Brazil	Any producer	Any exporter	1463.71	MT	US\$

60. 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.

J. FURTHER PROCEDURE

61. 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 these 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.

Abhijit Sengupta,
Designated Authority