

No.14/31/2009-DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES  
UDYOG BHAVAN

***NOTIFICATION***

New Delhi 19<sup>th</sup> January, 2011

**Final Findings**

**Subject: Anti-Dumping Investigations concerning imports of Acetone originating in or exported from Japan and Thailand – Final Finding.**

No. 14/31/2009-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, (hereinafter referred as Rules) 1995 thereof;

**Initiation**

2. The Designated Authority (hereinafter referred to as the Authority), having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as 'the Act') and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as 'the AD Rules'), received a written application from M/s Hindustan Organic Chemicals Ltd., Mumbai which is supported by M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited) on behalf of the domestic industry, alleging dumping of Acetone (hereinafter referred to as subject goods); originating in or exported from Japan and Thailand (hereinafter also referred to as the subject countries).

3. Having satisfied on the basis of positive evidence submitted by the domestic industry, the Authority vide Notification No.14/31/2009-DGAD dated 3<sup>rd</sup> September 2009 published in the Gazette of India, Extraordinary, initiated Anti-dumping Investigation of concerning imports of Acetone, originating in or exported from Japan and Thailand.

**Procedure**

4. The procedure described herein below has been followed:
- i. The Authority notified the Embassies/Representatives 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;
  - ii. The Designated Authority sent copies of initiation notification dated 03.09.2009 to the Embassies of the subject countries in India, known exporters from the subject countries, importers, consumers and the domestic industry as per the addresses made available by the

applicant and requested them to make their views known in writing within 40 days of the initiation notification.

- iii. The Authority provided copies of the non-confidential version of the application to the known exporters and to the Embassies of subject countries in accordance with Rule 6(3) supra.
- iv. The Embassies of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters were also sent to them, along with the names and addresses of the exporters.
- v. The Authority sent questionnaires, to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4).

PTT Phenol Co., Ltd. (PPCL) 123 Suntowers Building B, 36th Floor, Vibhavadi Rangsit Road Chomphon Chatuchak, Bangkok 10900	Chiba Phenol Co. Ltd. Shiodome City Center, 1- 5-2, Higashishimbashi, Japan
Mitsubishi Chemical Shiba 4-chome, Minato-ku, 14-1 Tokyo 108-0014, Japan	

- vi. In response to the above notification, following exporters/ producers/ have responded to the initiation:

Name of Interested party	Country
PTT Phenol Company Limited, Producer & Exporter	Thailand
Mitsui & Co., Ltd. (“MBK”), Japan, Exporter	Japan
M/s. Mitsui & Co. (Asia Pacific) Pte. Limited, Singapore, Exporter	Singapore
Mitsubishi Chemical Corporation (“MCC”)	Japan
Sumitomo Corporation, Exporter	Japan
Sumitomo Corporation Asia Pte Ltd	Singapore
Mitsui Chemicals, Inc., Producer	Japan

- vii. Questionnaire was sent to the following known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4). However, no questionnaire response has been received from any importer of the subject goods.

M/s. National Organic chemical Industries Ltd. Post Box No. 14, Ghansoli P.O. Thane –Belapur Road, Mumbai – 400701, (Maharashtra) India	M/s. Ranbaxy Laboratories Ltd., Plot No. 90, Sector 32, Gurgaon – 122
M/s. Lanxess India Private Ltd. Kolshet Road, Thane Mumbai-400067, India.	M/s. Crescent Chemsol Pvt. Ltd. Windsor, 2 <sup>nd</sup> Floor, CST Road, Kalina, Santa Cruz (East), Mumbai – 400098,

- viii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- ix. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years and period of investigation.

- x. Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if Anti-Dumping duty, lower than the dumping margin, would be sufficient to remove injury to Domestic Industry
- xi. Investigation was carried out for the period starting from 1st Oct 2008 to 30<sup>th</sup> June 2009 (nine months) (POI). The examination of trends, in the context of injury analysis, covered the periods April 2006-March 2007, April 2007- March 2008, April 2008-March 2009 and the POI.
- xii. The Authority, having regard to the Act and the AD Rules; vide Notification No. 14/31/2009-DGAD dated 16<sup>th</sup> February 2010 recommended imposition of provisional Anti Dumping duty on imports of subject goods from the subject countries and requested the interested parties to make their views known to the Authority in writing within forty days from the date of publication of the notification. Subsequently a corrigendum was issued on 8<sup>th</sup> June, 2010.
- xiii. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 18<sup>th</sup> March 2010. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. Interested parties were provided opportunity for rejoinder submissions on the views expressed by opposing interested parties.
- xiv. The arguments made in the written submissions/ rejoinders received from interested parties have been considered, wherever found relevant, in the disclosure statement and this Final Findings;
- xv. The provisional Anti Dumping duty on imports of subject goods from the subject countries were imposed vide Customs notification No. 45/2010-Customs dated 9<sup>th</sup> April 2010.
- xvi. In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the known interested parties and comments received on the same are duly considered in these final findings.
- xvii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xviii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded this finding on the basis of the facts available.
- xix. \*\*\* in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

### **Product Under Consideration And Domestic Like Article**

5. The product under consideration is 'Acetone'. The Acetone is organic chemical also known as Dimethyl Ketone and used in the manufacture of bulk pharmaceuticals, agro chemicals, dye stuffs, certain explosives and downstream chemicals. Acetone is classified under Chapter 29 of Custom Tariff Act under sub-heading 29141100.

6. It is a basic organic chemical produced in single grade. It is a colorless liquid. It is used in numerous organic syntheses either as solvent or as an intermediate. Acetone is specifically used in manufacture of Isophorone, Diacetone, Alcohol, Methyl Methacrylate and Bishacetone A. Besides this, it is used in manufacture of certain rubber chemicals or Oxy Acethylene Cellulose Acetate and also a solvent in the manufacture of Paints/Coatings. It is marketed in two forms – loose bulk and packed.

### **Views Of The Importers, Consumers, Exporters And Other Interested Parties**

7. None of the importers, consumers, exporters and other interested parties has filed any comment or submissions with regard to product under consideration, and like articles.

### **Examination By The Authority**

8. With regard to like articles, Rule 2(d) of the AD Rules provides as under: -

*"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

9. With regard to the possible difference between the product sold by the exporters in the Indian market and the product sold by the domestic industry, the Authority notes that there is no dispute by the exporters that there is any difference in the two products. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject countries and the product produced by the Indian industry. Product under consideration produced by the domestic industry are comparable to the imported subject product in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

10. Thus, the Authority holds that product under consideration produced by the applicant domestic industry is like article to the subject product under consideration in accordance with the AD Rules.

### **Scope Of Domestic Industry & Standing**

11. The application has been filed by M/S Hindustan Organic Chemicals Ltd., Mumbai and supported by M/S SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited).

### **Views Of The Domestic Industry**

12. Following submissions have been made by the domestic industry with regard to standing of the domestic industry:

- i. The petition was filed by M/s Hindustan Organic Chemicals Ltd., Mumbai and supported by M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited). There are no other known producers of the product in the country. Therefore, M/s Hindustan Organic Chemicals Ltd. constitutes domestic industry under Rule 2(b) of the Rules, 1995.
- ii. Production of petitioner constitutes a major proportion in Indian Production and therefore petitioner should be treated as “domestic industry” within the meaning of the Rules.

### **Views Of The Importers, Consumers, Exporters And Other Interested Parties**

13. None of the importers, consumers, exporters and other interested parties has filed any comment or submissions with regard to domestic industry standing.

### **Examination By The Authority**

14. With regard to standing of the domestic industry, Rule 2(b) states as under:

*“Domestic Industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry;*

15. The petition has been filed by M/s Hindustan Organic Chemicals Ltd., Mumbai and supported by M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited). There are no other known producers of the product in the country. The Authority sought the information from the supporter, who however failed to file the data. In any case HOCL being the major producer of the subject goods in India accounts for more than 50% of Indian Production and thus constitutes domestic industry with the meaning of AD Rules. The Authority has considered M/S Hindustan Organic Chemicals Ltd., Mumbai to represent the Domestic Industry within the meaning of Rule 2(b) of AD Rules.

### **Other Issues**

#### **Views Of The Domestic Industry**

16. The following submissions have been made by the domestic industry after oral hearing:-
- i. The DA should determine dumping and injury margin collectively for all goods sold by the producer for export to India, regardless of the channel. The quantum of duty in respect of traders which have supplied goods originating in more than one country should be on the basis of weighted average sale made to India regardless of producer.
  - ii. The Designated Authority should give one weighted average duty to the producer and all its sales channels.
  - iii. The market during POI was highly volatile and producers were exporting the product at very low prices in Indian market which caused severe injury to the domestic industry.

- iv. There is no information in the NCV of the questionnaire regarding methodology followed for valuation of raw material sourced by producers captively or related parties. Thus cost of production cannot be determined as per the ADD rules.
- v. For determining Normal Value of the exporter, contract sales made by exporter cannot be excluded as this is normal business phenomena and does not constitute particular market situation.
- vi. The non confidential versions do not have indexed version of appendices and thus are inconsistent with the procedural requirement.
- vii. Imports from Korea are already attracting ADD and landed value of imports is higher than subject countries thus it does not cause injury to the domestic industry.
- viii. With regard to share of imports from Russia, it has been submitted that share of imports from Russia was increase only in last three months of POI. It was zero till Mar'09. Further, the post POI data shows no imports from Russia. So, it should be considered as kind of one off transactions and thus cannot be considered sufficient for causing injury to the domestic industry.
- ix. The domestic industry considers prevailing raw material prices and import prices for fixing the price of Acetone. There is no other basis for fixing the prices
- x. The decline in custom duty cannot be taken as a cause of injury. Further, it has been submitted by the domestic industry that profitability has declined more in POI as compared to preceding year even the custom duty are same.

#### **Views Of The Exporter, Importers, Consumers And Other Interested Parties**

17. M/s. Mitsui Chemicals, Japan have made following submissions:
- i. Non-confidential version of the petition filed by domestic industry is wholly deficient.
  - ii. The domestic industry uses import data of the subject goods from different sources and same is kept confidential from the interested parties.
  - iii. The nine months period chosen by the Authority is relatively a very short period for analyzing the injury and effect of dumped imports. It should be minimum one year. The Authority has not given any logic or reasoning in the initiation and preliminary finding notification for choosing 9 months period.
  - iv. The export price, dumping margin and injury margin should be determined monthly due to significant fluctuation in the prices of petrochemical product during period of investigation.
  - v. The normal value of the exporter should be determined based on spot prices not on contract prices.
  - vi. There is no justification provided by the Authority for provisional duties.
  - vii. The preliminary findings have not given methodology of arriving NIP. The treatment of co-product for calculating NIP is more important because injury is due to increase in fixed cost.
18. PTT Phenol Co Ltd. Thailand and M/S Mitsui and Company Japan and M/s Mitsui & Co Pte Ltd., Singapore has submitted as under:
- i. The dumping margin should be determined for each exporter/export channel.

- ii. The transaction wise imports from DGCI&S used by Authority for volume analysis may contain imports made by S.I. Group under advance licence. So, it should be excluded from the total imports.
- iii. The exclusion of M/s. S.I. Group while assessment of injury is the clear violation of ADD rules. The injury analysis should be done for domestic industry as a whole not for individual companies
- iv. The reason of increasing imports from subject countries is due to suppression of exports from the countries already attracting ADD.
- v. The imports into India are inevitably goods due to demand and supply gap. The Indian Producers are not capable of meeting demand of the country.

### **Examination By The Authority**

19. The Authority notes that there is no justifiable reason advanced by the interested parties about 9 months period being too short. The Authority has consistently been following the practice of choosing a Period of Investigation ranging from as small as 6 months to as long as 18 months and this principle have been followed in the present investigation as well. The Authority has further determined the Normal Value and Export Price based upon the actual data available with the Authority as made available through submissions by various interested parties, duly verified. The Authority has considered monthly computation of NV and NEP, considering fluctuation in prices of the two basic raw materials. As regards demand and supply gap, the AD measure does not seek to restrict or ban imports but seeks to set a level playing field for all the interested parties, including domestic producers and exporters from subject countries.

### **Normal value, Export Price and Dumping Margin**

#### **Normal Value for Japan**

#### **Mitsubishi Chemical Corporation**

20. M/s. Mitsubishi Chemical Corporation, a producer of subject goods in Japan had been held by the Authority as non-cooperative for provisional determination as per details recorded in Provisional Determination / Preliminary Findings Document. The position has not changed post PF and continues to be the same. The subject producer failed to provide the relevant information and therefore the Authority holds the subject producer as non-cooperative for the Final Determination as well.

#### **Mitsui Chemicals Inc., Japan**

21. The Authority notes that information provided on domestic sales in the home market by the subject producer was verified during spot verification by the investigating team. Various adjustments claimed were also verified and found to be in order. They had also claimed adjustments on post sale debits / credits which have suitably been allocated to each transaction and accepted as an adjustment (positive as well as negative) for determination of Normal Value.

22. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. The Authority notes that the domestic sales of subject goods by the

responding producer in the home market were representative for permitting determination of Normal Value on the basis of domestic selling prices and the ordinary course of trade test was satisfied as per the data provided by the responding exporter.

23. Considering that there have been significant changes in the cost of production and selling price from month to month during POI due to fluctuation in input prices, the Normal Value has been worked out separately for each month. During verification of records it came to the fore that less than 80% sales were profitable sales and therefore only profitable sales have been considered for determination of Normal Value. Mitsui Chemical Inc. however did not export directly but through unrelated traders. Further considering huge fluctuation in input prices on month to month basis, for determination of DM, the normal value determined for the month during which the exports during POI are reported and subsequently verified has been considered. The Normal value so determined is mentioned in the Dumping Margin Table.

### **Non-Cooperating Exporters**

24. The weighted average Normal Value determined for responding producer i.e. Mitsui Chemical Inc. has been adopted for all other exporters. The Normal Value so determined is mentioned in the Dumping Margin table.

### **Normal Value for Thailand**

#### **Cooperating Exporters**

#### **PTT Phenol Company Limited, Producer & Exporter**

25. The Responding exporter has provided data both in respect of their sales in the domestic market in Thailand as well as the Cost of Production. The said responding producer / exporter also provided access to the Authority to this data, which was duly verified by the investigating team deputed by the Authority to do so. The Authority confirms having verified the data and issued a verification report seeking comments of the said responding producer / exporter. In response thereto they sought adjustments on startup cost as explicitly and elaborately explained in the disclosure statement.

### **Examination by the Authority**

26. The claim made by the responding producer / exporter has been examined in detail. It is noted that they have sought adjustments on startup cost on account of cost of raw materials, consumable stores and spares, utilities and depreciation. So far as the sourcing of Raw Materials is concerned, it is noted that the basic major RM i.e Benzene and Propylene was sourced from their related Company and therefore there is no scope for allowing adjustments on RM Cost. As regards claimed adjustments on consumable stores and spares, utilities and depreciation, the methodology for working out the startup cost on account of these was not shown during the verification. Therefore the Authority disallows their claim on this score.

27. Considering the information provided by the said responding exporter, all the reported domestic sales of the subject goods by the responding exporters in their home markets during POI were found to be loss making sales. Therefore the Normal value has been considered by taking into

account their cost of production and adding a reasonable profit margin to the same. Further considering huge fluctuation in input prices on month to month basis, for determination of DM, the normal value determined for the month during which the exports during POI are reported and subsequently verified has been considered. The Normal value so determined is mentioned in the Dumping Margin Table.

### **Non-Cooperating Exporters**

28. Normal Value determined for the responding producer i.e. PTT Phenol Company for exports through PTT Phenol Company / PTT Public has been adopted for all other exporters from Thailand. The Normal Value so determined is mentioned in the Dumping Margin Table.

### **Export Price**

#### **Export price for the responding exporters from Japan**

#### **Mitsui Chemicals Inc., Japan**

29. The subject goods produced by M/s Mitsui Chemical Inc., Japan (MCI) have exported to India through Mitsui & Co., Ltd., Japan ('MBK') and Sumitomo Corporation ('SC') during POI.

30. MCI sells its products to MBK and SC on a \*\*\* while MBK and SC exports to India through their affiliates. Mitsui Chemicals Inc., Japan sells on \*\*\* to Mitsui & Co. Ltd., Japan (MBK), who arranges \*\*\* and sells to Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore (MAP) on \*\*\*. MAP in turn sells it to Indian customer.

31. As per the response filed with the Authority, the Japanese Trader **M / S Mitsui & Co. Ltd. Japan** had shipped \*\*\* MT of Japan origins Acetone purchased from **Mitsui Chemicals Inc., through Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore, to India.** The records to this effect were verified and found to be in order except that, during verification, it came to notice that both **M / S Mitsui & Co. Ltd. Japan and Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore** while filing the response had included, in this export sale, a quantity of \*\*\* MT of Acetone, which, the Singapore entity, Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore had actually sold / invoiced to \*\*\*and not to an Indian customer. The sale to Indian customer was finally completed by \*\*\*.

32. It was noted that \*\*\* had not participated in the investigation and had not submitted any information / response in respect of this sale and consequently the complete chain of transaction through \*\*\* cannot be established. Therefore this transaction cannot be considered for determination of individual NEP and consequential DM. The NEP has therefore been determined considering verified data of direct export sales to India through the following channel. The NEP so determined in respect of this channel of sale after deductions on account of verified adjustments is given in the Dumping Margin Table.

Mitsui Chemicals Inc (Producer)>>>>>> M/S Mitsui & Co. Ltd. Japan (Trader)>>>> Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore >>>>>>>>India

33. M/s Sumitomo Corporation, Japan procures the materials from M/s Mitsui Chemicals Inc., Japan and M/s Mitsubishi Chemicals Corporation, Japan, and sells to M/s Sumitomo Corporation Asia Pte Ltd., Singapore. In turn, M/s Sumitomo Corporation Asia Pte Ltd sells the products to India

through unrelated companies based at \*\*\* or \*\*\*. Sumitomo Corpn. Asia Pte. Ltd., in their response stated that it has sold \*\*\* MT of Acetone produced by M/s Mitsui Chemicals Inc., Japan to India through \*\*\*. \*\*\* has not filed a separate response for the goods exported by it to India. Notwithstanding the claim of Sumitomo that they cannot be treated as non-cooperative exporter because of other party involved in channel has not responded, the fact of the matter remains that in view of the incomplete chain (Chain would be complete only if the response had been filed by the \*\*\* based trader with verifiable data), it is not possible for the Authority to determine the Net Export Price and hence no Individual Margin is possible for this exporter. Same is the case with \*\*\* MT of Acetone procured by Sumitomo from M/s Mitsubishi Chemicals Corporation, Japan and exported to India through \*\*\* and \*\*\* (neither of the two has filed a response).

34. Similarly the Authority notes that individual margin in respect of the exports of PUC produced by M/s Mitsubishi Chemicals Corporation, Japan to India made by Sumitomo Corporation Asia Pte Ltd through the traders can also not be determined in view of non-availability of the Normal Value in respect of M/s Mitsubishi Chemicals Corporation, Japan as already explained in Para 20 above.

#### **Export price for Non-cooperating Exporters from Japan**

35. The lowest export price reported by the responding producer/ exporter from Japan has been relied upon to calculate the ex-factory export price for this category of exporters. Adjustments on account of ocean freight, clearing and handling charges, bank/ credit charges, and commission have been made, at par with the adjustments allowed in respect of Co-operating exporters to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price has been calculated as US\$ \*\*\* PMT.

#### **Export price for the responding exporters from Thailand** **PTT Phenol Company Limited, Thailand**

36. M/s PTT Phenol Company Limited, Thailand while submitting the response had claimed to have exported the subject goods to India in the form of \*\*\* transactions, directly, as well as through its affiliate M/s PTT Public Company Ltd., Thailand and un-affiliated trading companies viz. Mitsui & Co Japan, Mitsui Asia Pacific Pte Ltd Singapore and \*\*\*.

#### **Direct Sales by M/s PTT Phenol Company Limited and through its related trader PTT Public Company Ltd.**

37. Verification of the records of the Company revealed that during POI they had exported Acetone to India in the form of \*\*\* transactions as detailed in Para 36 above. The Authority further holds to disallow the claim of Peekay Intermark Dubai for individual DM on the same exports as has been elaborately explained in the disclosure statement. Authority further notes that the subject exporter has made sales of Acetone to India in the form of \*\*\* transactions through its related entity M/S PTT Public. The total volume of these sales is \*\*\* MT. The Authority considers these sales as well, eligible for determination of individual DM.

38. The Authority notes that while determining the DM for provisional determination, the Authority had allowed a single margin for exports made direct by the producer and those made by

them through the related trading company. The Authority had considered this on the premise that exporter can easily switchover between direct exports and exports through its affiliate, and therefore the Authority had determined one export price and dumping margin for the exports made by M/s PTT Phenol Company Limited, Thailand either directly or through its affiliate M/s PTT Public Company Ltd., Thailand.

39. In response to the verification report it was submitted to the Authority that that since the Producer was a startup company, the initial marketing efforts of the related trading company for a very brief period of time was used to make export sales including to India. They have contested the decision of the Authority to give them only one dumping margin for the exports made through related entities. They have made a reference to subsection 6A of section 9A of the Customs Tariff Act 1975 which states as under.

*“(6A) the margin of dumping in relation to an article, exported by an exporter or producer, under enquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained and information provided by such exporter or producer”*

*Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available”*

40. The Authority notes that sub-section 6A, as above does not bar the Authority to consider one margin for related producer and exporter, particularly when this related combination can interchangeably switchover from one entity to another to export, and in no uncertain terms through the entity which has a lower dumping margin, in case a separate DM is determined, and thus, making a separate higher margin for the other entity redundant. The Authority holds that by adopting this methodology, particularly with reasonable justification as above, the provisions of sub-section 6A are not violated.

41. The Authority has therefore determined one export price in respect of sales made directly by the producer M/S PTT Phenol and the related trader M/S PTT Public, after making necessary adjustments. The NEP for determination of DM works out to US \$ \*\*\* per MT.

42. Further the subject producer had claimed to have sold to India \*\*\* MT of Acetone through \*\*\*. It was however noted that \*\*\* had not filed a response and consequently the complete chain of transactions cannot be established. Therefore this transaction cannot be considered for determination of individual NEP and consequential DM.

**Sales by M/S Mitsui & Co. Ltd. Japan( Trader) / Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore in respect of Phenol produced by PTT Phenol Company Limited Thailand.**

43. While submitting the response, M/S Mitsui & Co. Ltd. Japan (Trader) / Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore has also claimed to have exported the subject goods manufactured by M/s PTT Phenol Company Limited.

44. Verification of records by the Authority through its investigating team revealed that PTT Phenol, the producer, had invoiced \*\*\* MT of Acetone to **Mitsui & Co Japan**, who had in turn raised a corresponding invoice on **Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore**, who had in turn invoiced it to the Indian Importers. The channel of export sales to India was as follows:

PTT Phenol Company Limited Thailand>>> **Mitsui & Co Japan** >>>>Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore>>>>Indian Importer.

45. The Producer in Thailand had raised \*\*\* invoices on M/S Mitsui & Co. Ltd. Japan who in turn had also raised \*\*\* invoices on Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore. Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore had however raised \*\*\* invoices on different customers, the total quantity remaining the same. Adjustments were made on account of verified data which included Ocean Freight, Insurance, Commission amount paid to Mitsui & Co Thailand and Mitsui & Co India, Credit Cost, Bank Charges, and SGA etc. The NEP so worked for this channel of sale is US \$ \*\*\* per MT.

#### **Export Price for Non-Cooperating Exporters from Thailand**

46. The lowest export price reported by the responding producer/ exporter from Thailand in relation to the Normal Value, reported in a quarter has been relied upon to calculate the ex-factory export price. Adjustments on account of ocean freight, clearing and handling charges, bank/ credit charges, and commission have been made to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price has been calculated as US\$ \*\*\* PMT.

#### **Dumping Margin**

47. On the basis of normal values and export prices as determined above, the dumping margins for exporters from subject countries are determined as per table below;

US\$/MT

Producer	Exporter	Normal Value (US \$)	Export Price (US \$)	Dumping Margin (US \$)	Dumping Margin (%)
Mitsui Chemicals Inc. Japan	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	95-105%
Any other Producer from Japan	Any exporter from Japan	***	***	***	135-145%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd Thailand	***	***	***	30-35%
M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	15-20%
All other exporters from Thailand	All other exporters from Thailand	***	***	***	45-50%

48. The dumping margins so determined are significant and above de-minimis level.

### **Injury Determination And Examination Of Causal Link**

#### **Views of the domestic industry**

49. The followings are the views of domestic industry: -

- a) The sales of the domestic industry declined significantly by 22% in POI from the base year. The import volumes in absolute term increased vis-à-vis sales of domestic industry declined. Import volumes increased because of availability of the material at dumped prices, due to which sales of domestic industry declined.
- b) Profits: - Profitability of the domestic industry has significantly eroded. Even when the domestic industry attempted to maintain its market, the impact of the same was very adverse in terms of profits, which declined significantly from a situation of profits to financial losses. Decline in profitability of the domestic industry is high in POI because net sales realization price of domestic industry is less than cost of production.
- c) Productivity: - Productivity of the domestic industry declined. So severe has been the impact of dumping that the domestic industry has been forced to cut production.
- d) Return on capital employed: - The performance of the domestic industry has significant deteriorated from a situation of positive return to negative return. The decline in ROI is a direct consequence of decline in profits.
- e) Output and capacity utilization of the domestic industry declined in spite of the fact that the domestic industry decided to offer sub-optimal prices.
- f) Inventories: - Inventory level of the domestic industry increased. Increase in inventories is in spite of lower prices offered by domestic industry.
- g) Salary & wages: - Salary and wages level with the domestic industry decreased due to low level of production.
- h) Cash Profit: - Deterioration in profits of the domestic industry adversely affected cash profits of the domestic industry, which directly affected cash flow.
- i) Demand and market share: - Whereas the market shares of the imports have increased, that of the domestic industry has declined.
- j) Growth: - Growth of the domestic industry in a number of parameters shows negative trend.
- k) Domestic industry has suffered material injury. With increase in volume of imports of the subject good from the subject countries into the Indian market as a result of excess capacity with the Foreign Producers, the domestic industry suffered from loss of sale and loss of market share. This resulted in adverse volume effect. Loss of sale forced the domestic industry to reduce their domestic selling price in order to sell the subject good in the domestic market thus resulting in adverse price effect Resultantly, domestic Industry faced adverse volume effect and adverse price effect as a result of unfair trade practices of the exporting countries
- l) Price undercutting is significant. In spite of offering matching prices, there is a positive price difference between the domestic product and imported product.

#### **Views of Responding Producers / Exporters**

50. M/s. Mitsui Chemicals, Japan have made following submissions:

- a) The increase in cost of sales is due to increase in fixed cost and low production. The major cause of injury is global meltdown.

- b) The price of acetone is not only governed by the demand –supply of acetone in market but also depends on final selling price of phenol. The Authority should analyze the cost and selling price of the domestic industry for 10 years which show that domestic industry even selling the subject goods less than cost of production.
- c) The imports from countries already attracting ADD are almost 75% in POI which is more than imports from subject countries. This needs to be analyzed while examining causal link.

51. PTT Phenol Co Ltd. Thailand and M/S Mitsui and Company Japan and M/s Mitsui & Co Pte Ltd. Singapore has submitted as under:

- a) The Authority should investigate factors other than dumping while examining injury to the domestic industry as anti-dumping duty is already imposed on most of the countries.
- b) In PF, imports in relation to Indian production are found out by excluding the production of supporter.
- c) Most of the injury parameters shows no or lack of injury to the domestic industry.
- d) There are lots of inconsistencies in the preliminary findings and additional data supplied by the petitioner.
- e) The Authority prior to imposing duties must consider the plight of the downstream consuming industry as it caters to a lot of products such as, Bisphenol-A, Pharmaceutical and Solvent. There is no sufficient capacity of Indian producers to meet the demand of the country.
- f) The exclusion of M/s. S.I. Group while assessment of injury is the clear violation of ADD rules. The injury analysis should be done for domestic industry as a whole not for individual companies.
- g) The evidence Supplied in the petition does not suggest that there is any material injury suffered and thus no basis for initiation.
- h) Injury analysis can be made only for the period extending from 2005-06 to 2008-09 and not on the revised period extending up to June 2009. The petitioner has taken six months period and then has annualized it distorting the analysis thus distorts the correct picture.
- i) The injury data provided by the petitioner is only for HOCL and not for the supporter. Most of the injury parameters shows positive trend as compared to base year and preceding year
- j) The Indian manufacturers are not able to cater the demand of domestic market which leaves only one option i.e. import of subject goods.
- k) It is to be noted that Korea is a big threat to domestic industry than Japan and Thailand despite the levy of ADD as per the evidences.
- l) There are so many factors other than dumped imports, which cause injury to the domestic industry that needs to analyze
- m) The petitioner has been unable to determine the link between the dumping and the injury.

52. Mitsubishi Chemicals Corporation Japan have made following submissions:

- a) The trend of injury parameters does not reflect any significant injury to domestic industry. Moreover, all should be examined by keeping this view that petitioner is a multi product, multi location and multi division company.
- b) The domestic industry along with supporter is not capable to meet demand of India.
- c) The domestic industry had been declared as sick company under BIFR in 2003-04. Thereafter it has received financial supports from government of India. This fact also needs to be considering while assessing injury.

- d) The exporter has added that phenol's price dropped very sharply due to a sudden occurrence of excessive demand and supply imbalance and a large decrease in the raw material price. The price drop happened not only in India but also throughout the world due to worldwide recession.

### **Examination by the Authority**

53. The Authority has taken note of various submissions of the interested parties on injury to the domestic industry and has analyzed injury to the domestic industry considering the facts available on record and the applicable law. Further the Authority had sought data from the supporter, which was however not provided. As regards Injury analysis, the POI has been prescribed by the Authority and therefore for injury analysis the injury during POI has to be considered. As regards the BIFR issue, during POI, no such situation was there.

### **Cumulative assessment of injury**

54. Annexure II para (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries is less than three per cent, the imports collectively accounts for more than seven per cent of the import 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 articles.
55. The Authority observes that:
- The margins of dumping from each of the subject countries are more than the limits prescribed above;
  - Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market. This is evident from the following:
    - a. The subject goods manufactured by the producers from the subject countries inter-se and in comparison to the product manufactured by the domestic industry has comparable properties. In other words, the subject goods supplied from various subject countries and by the domestic industry are inter-se like articles.
    - b. The information furnished to the Authority gives a reasonable indication that there are common parties who are resorting to use of imported material from various sources and domestic material. Imported and domestic materials are, therefore, being used interchangeably and there is direct competition between the domestic product & imported product and inter-se imported product.
    - c. Volume of imports from each of the subject countries is significant.
    - d. Consumers make purchase decision on the basis of prices offered by various suppliers.

56. In view of the above, the Authority notes that it is appropriate to, cumulatively assess the effect of imports of the subject goods from Thailand and Japan on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.

57. Annexure-II of the AD Rules provides for 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 the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

58. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states as follows:

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

### **Volume Effect of dumped imports and Impact on domestic Industry**

59. The Authority collected transaction wise details of imports of subject goods from DGCI&S. The Authority has also collated the volume of exports reported by responding exporters with the volume of imports during the period. The responding exporters from Thailand as well a Japan have reported a lower volume of imports during POI compared to DGCI&S as well as IBIS data source relied upon by the petitioner. Further the imports reported in DGCI&S data source are comparable to those reported in IBIS data source. Therefore Volume analysis has been done based upon DGCI&S data as under:

### **Import Volumes and share of subject country**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Japan	MT	0	0	8,399	9,610	12,813
Thailand	MT	0	0	1,914	5,835	7,780
<b>Subject Countries</b>	<b>MT</b>	<b>0</b>	<b>0</b>	<b>10,313</b>	<b>15,445</b>	<b>20,593</b>
<b>Trend</b>	<b>Indexed</b>	<b>0</b>	<b>0</b>	<b>100</b>	<b>200</b>	<b>200</b>
Other country attracting ADD	MT	54,632	63,441	56,402	38,759	51,679
Other countries	MT	5,194	1,585	1,649	3,888	5,184
<b>Total Imports</b>	<b>MT</b>	<b>59,826</b>	<b>65,026</b>	<b>68,364</b>	<b>58,092</b>	<b>77,456</b>
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>109</b>	<b>114</b>	<b>129</b>	<b>129</b>

Market Share in Imports	Unit	2006-07	2007-08	2008-09	POI (9M)	POI Annualized
Japan	%	0.00	0.00	12.29	16.54	16.54
Thailand	%	0.00	0.00	2.80	10.04	10.04
<b>Subject Country</b>	<b>%</b>	<b>0.00</b>	<b>0.00</b>	<b>15.09</b>	<b>26.59</b>	<b>26.59</b>
Other country attracting ADD	%	91.32	97.56	82.50	66.72	66.72
<b>Other country</b>	<b>%</b>	<b>8.68</b>	<b>2.44</b>	<b>2.41</b>	<b>6.69</b>	<b>6.69</b>
Total Imports	%	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
Production of DI	MT	***	***	***	***	***
Production of Supporters	MT	***	***	***	***	***
Total Indian Production	MT	44,230	46,368	46,896	30,424	40,566
Imports from subject countries	MT	0	0	10,313	15,445	20,593
Imports from subject countries as a percentage of Indian production	%	0.00	0.00	21.99	50.76	50.76

### Market Share in Imports

60. For volume analysis, the data provided by the petitioner as well as supporter has been considered. However, for injury determination, the data supplied by the petitioner alone has been considered. In this context the Authority sought the data from the supporter but the same was not provided to the Authority. As per the data shown in the above table:

- Cumulative imports from subject countries have increased significantly in absolute terms and in relation to imports in India.
- Imports from subject countries have increased in relation to production and consumption in India as compared to the base year. Imports from subject countries show a growing trend in relation to production of the domestic industry. The imports from subject countries was NIL in relation to the Indian production in the base year which has gone up significantly in percentage terms to 50.76% in POI

### Demand, Output and Market shares

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Domestic Industry	MT	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>106</b>	<b>104</b>	<b>78</b>	<b>78</b>
Supporter	MT	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>101</b>	<b>120</b>	<b>124</b>	<b>124</b>
Import – Subject Countries	MT	0	0	10,313	15,445	20,593
Import – Other Countries	MT	59,826	65,026	58,051	42,647	56,863
<b>Total Demand</b>	<b>MT</b>	<b>96996</b>	<b>103876</b>	<b>108913</b>	<b>83963</b>	<b>111950</b>
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>107</b>	<b>112</b>	<b>115</b>	<b>115</b>
<b>Market share in demand</b>						
Domestic Industry	%	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>99</b>	<b>92</b>	<b>67</b>	<b>67</b>
Supporter	%	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>94</b>	<b>107</b>	<b>107</b>	<b>107</b>
Subject Countries	%	0.00%	0.00%	9.47%	18.39%	18.39%
Other Countries Attracting	%	56.32%	61.07%	51.79%	46.16%	46.16%

ADD						
Other Countries	%	5.35%	1.53%	1.51%	4.63%	4.63%

61. The Authority notes that:
- Demand of subject goods has been determined by addition of domestic sales and all imports from all countries. The Authority notes that demand for the subject goods had been growing from base year to POI. It grew by 15% during POI as compared to base year i.e. 2006-07.
  - The market share of imports from the subject countries have significantly increased, whereas that of the domestic industry has declined over the injury period. The share of domestic industry has declined by approximately 8% during POI compared to the base period. During the same period the share of imports from subject countries, which was NIL in 2006-07, went up to 18.39% during POI. It is noted that imports from subject countries have captured a significant proportion of the growth in demand.

### **Capacity, production and capacity utilization of the Domestic Industry**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Installed Capacity	MT	***	***	***	***	***
Trends	Indexed	100	100	100	100	100
Production	MT	***	***	***	***	***
Trends	Indexed	100	103	104	81	81
Capacity Utilization	%	***	***	***	***	***
Trends	Indexed	100	103	104	81	81

62. Data of domestic industry on capacity, production and capacity utilization reveals that the capacity of the domestic industry remained unchanged at 24640 MT during the injury period. The production of subject goods that were increasing until 2008-09 declined significantly during POI. As a result, the capacity utilization of domestic industry, which was 103% during 2006-07, increased to 108% in 2008-09 and then declined significantly to 83% during POI.

### **Sales volume of Domestic Industry**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Sales	MT	***	***	***	***	***
Trend	%	100	106	104	78	78

63. The above data on the sales of domestic industry shows that there was a fall in the sales during POI to the extent of 22% over the base year and 26% over the previous year 2008-09.

### **Price Effect of the Dumped imports on the Domestic Industry**

64. With regard to the effect of 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 undercutting by the dumped imports as compared to the price of like product in India or whether 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.

65. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries have been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry and the landed cost of imports from the subject countries have been examined.

**Price suppression and depression effects of the dumped imports:**

66. The price suppression and depression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization of the domestic industry.

Particulars	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Cost of sales	Rs./Mt	***	***	***	***	***
Trend	Indexed	100	116	136	132	132
Selling Price (NSR)	Rs./Mt	***	***	***	***	***
Trend	Indexed	100	116	120	107	107

67. It is seen from the above table that the selling prices of domestic industry have not increased in line with the increase in its cost of sales during POI compared to the base year. The trend shows that cost of sales increased by 32% during POI as compared to base year whereas the selling price had increased just by 7% during POI indicating that the domestic industry could not realize the selling price commensurate with the increase in cost of sales, thereby causing significant price suppression. The position was exactly reverse when the comparison is made from Base year 2006-07 with the trends in 2007-08, where the DI has been realizing a higher realization compared to the cost of sales. But this trend has reversed since 2008-09 and in POI when the sales realization has fallen below the cost of sales.

**Price undercutting and underselling effects**

**Price Undercutting**

Producer	Exporter	NSR of DI (US\$/MT)	Landed Value (US\$/MT)	Price Undercutting (US\$/MT)	Price Undercutting (%)
Mitsui Chemicals Inc. Japan	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	10-15%
All other Producers from Japan	All exporters from Japan	***	***	***	25-30%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd.	***	***	***	20-25%
M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	10-15%
All other exporters from Thailand	All other exporters from Thailand	***	***	***	25-30%

68. While working out the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been

deducted. The landed value of imports has been calculated by adding 1% landing charge for determination of Basic Customs Duty and then adding this Basic Customs Duty to the export / CIF prices from the subject countries, as reported by each responding exporter. For others category, the transaction of export considered for determination of DM for the residual category (based upon which NEP for residual category has been determined) has been taken for determination of Landed Value.

69. It is seen that the landed price of imports of the subject goods are significantly below the selling prices of the domestic industry, resulting in significant price undercutting.

### Injury Margin

Producer	Exporter	NIP of DI (US\$/MT)	Landed Value (US\$/MT)	Injury Margin (US\$/MT)	Injury Margin (%)
Mitsui Chemicals Inc. Japan	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	Negative	Negative
All other Producers from Japan	All exporters from Japan	***	***	***	15-20%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd.	***	***	Negative	Negative
M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	Negative	Negative
All other exporters from Thailand	All other exporters from Thailand	***	***	***	10-15%

70. Considering huge variation in input prices, particularly Benzene and Propylene during POI, Non Injurious Price of the domestic industry has been determined on a monthly basis for each month of POI. For the purpose of injury margin calculations, as above, the landed prices of imports from subject countries have been compared with the Non-injurious price in respect of the month during which exports to India have been made.

### Examination of other Economic Parameters of Domestic Industry

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

### Profits and actual and potential effects on the cash flow

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Cost of sales	Rs./Mt	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>116</b>	<b>136</b>	<b>132</b>	<b>132</b>
Selling Price (NSR)	Rs./Mt	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>116</b>	<b>120</b>	<b>107</b>	<b>107</b>
Profit/Loss	Rs./Mt	***	***	***	***	***
Trend	Indexed	100	112	45	(14)	(14)

Profit/Loss before Tax	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>119</b>	<b>47</b>	<b>(11)</b>	<b>(11)</b>
PBIT	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>120</b>	<b>53</b>	<b>(2)</b>	<b>(2)</b>
Cash Profit	Rs.Lacs	***	***	***	***	***

72. The Authority notes that there has been significant deterioration in the profitability of domestic industry over the injury period. The profitability of the domestic industry improved in 2007-08 over the year 2006-07. The financial position of the company deteriorated thereafter and profits declined considerably during 2007-08 and 2008-09 and suffered losses during POI. The profit of domestic industry on the domestic sales before interest and tax (PBIT) and cash profits also followed the same trend.

### **Return on investment and ability to raise capital**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
PBIT	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>120</b>	<b>53</b>	<b>(2)</b>	<b>(2)</b>
Net Fixed Assets	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Working Capital	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>117</b>	<b>137</b>	<b>106</b>	<b>106</b>
Capital Employed	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>112</b>	<b>126</b>	<b>104</b>	<b>104</b>
Return on Capital Employed(NFA basis)	%	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>108</b>	<b>42</b>	<b>(2)</b>	<b>(2)</b>

73. The Authority notes that the return on capital employed earned by the domestic industry followed the same trend as that of profitability.

### **Productivity**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Productivity per employee	MT	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>97</b>	<b>144</b>	<b>104</b>	<b>104</b>

74. The productivity per employee increased by 4% in POI compared to the base year but in relation to the previous year 2008-09, the decline in POI is significant.

### **Employment and wages**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Employment (Manpower strength)	Nos.	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>106</b>	<b>72</b>	<b>78</b>	<b>78</b>
Wages	Rs./Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>114</b>	<b>133</b>	<b>128</b>	<b>128</b>

75. The employment level declined by 22% during POI from base year. The wages increased by 28% as compared to base year.

76. The information about the inventory levels of subject goods is contained in the table below. It is seen that the inventory levels for the subject goods have increased significantly in POI as compared to the base year.

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Opening Stock	Mt	***	***	***	***	***
Closing Stock	Mt	***	***	***	***	***
Average Stock	Mt	***	***	***	***	***
Average Stock in terms of No. of Days' sales	Nos.	***	***	***	***	***
Trend	Indexed	100	86	94	295	295

### **Growth**

77. The growth in production and capacity utilization was positive till 2008-09 and in domestic sales till 2007-08. However, the same deteriorated significantly during the period of investigation even below the base year levels. The domestic industry has shown a negative growth in production and domestic sales in spite of positive growth in demand from base year to POI. The profitability of domestic industry has significantly declined during the POI. The performance of the domestic industry has also deteriorated during the period of investigation in terms of return on investment and cash profit. It is also seen that the domestic industry could not increase its selling price in line with the increase in the cost of sales during POI, thereby causing significant price suppression. Besides, the imports of subject goods are significantly undercutting the prices of the domestic industry. The price underselling was also significant.

### **Ability to raise capital investments**

78. The authority notes that the domestic industry had not changed the capacity of subject goods from base year to POI. There has been no fresh investment by the domestic industry during the period of investigation. No evidence of any plans for further investment has come to the notice of the Authority.

### **Magnitude of Dumping**

79. Magnitude of dumping as an indicator of the extent to which the imports can cause injury to the domestic industry shows that the dumping margins determined against the subject countries, for the POI, are significant.

### **Factors affecting prices**

80. It has already been seen in the foregoing paragraphs that imports from subject countries are undercutting the domestic prices. Comparison of cost of production and selling price of the domestic industry shows that the imports are also depressing prices of the domestic industry. It was found that the landed value per MT in POI was lower than both the net selling price and non-injurious price of acetone causing price undercutting and price underselling in the Indian market. As a result of price difference between the imported products' price and domestic industry' price, the imports have taken a major share in the growth in Indian demand for the subject goods.

### **Analysis and Conclusion of injury**

81. The examination of above injury parameters indicates that despite overall growth in demand, both the production and sale of domestic industry declined during POI as compared to the base year and as compared to base year, the financial performance of domestic industry declined significantly in POI.

82. The examination of the imports of the product and performance of domestic industry clearly shows that the imports of the product under consideration have increased in absolute terms and as also in relation to production and consumption in India. The imports are significantly undercutting the prices of the domestic industry in the market and the effect of the dumped imports was to suppress the prices of the domestic industry in the market. The prices have not increased in proportion to the increase in the cost of production. Further, there has been a significant price under cutting by the dumped imports as compared with the price of like product in India and the effect of such imports is prevent price increase which otherwise would have occurred to a significant degree. With regard to consequent impact of the dumped imports on the domestic industry, performance of the domestic industry deteriorated from the base year in terms of sales, production, capacity utilization, market share, profits, cash profits & return on investments. Imports are affecting the domestic prices. It is also noted that the production, sales, profits and return on capital employed should have improved as a result of increase in demand. However, the same have instead declined significantly indicating the material injury suffered by the domestic industry as can be seen from the trend from the base year.

83. The above analysis shows that the domestic industry has suffered material injury.

### **Causal Link and Other Factors**

84. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti Dumping have been examined to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It was examined whether these other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It was noted that:

**a. Volume and Prices of imports not sold at the dumped prices**

The imports from other countries, other than the ones attracting anti-dumping duty are negligible and therefore, the imports from these other countries do not affect the prices in the domestic market;

**b. Contraction in demand and / or change in pattern of consumption**

Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, the injury to the domestic industry has nothing to do with the lack of demand in the country. The data on consumption and demand does

not show any change in the pattern of consumption of the product and has not been a factor causing injury to the domestic industry.

**c. Trade restrictive practice and competition between the foreign and domestic producers**

The goods are freely importable. The applicants are the major producers of the subject goods and account for significant domestic production and sales. No evidence of conditions of competition or trade restrictive practices has come to the knowledge of the Authority. The Authority notes that there is a single market for the subject goods where dumped imports from subject countries compete directly with the subject goods produced by domestic industry. The Authority also notes that the imported subject goods and domestically produced goods are like articles and the imported product is sold to meet the similar applications/ end uses as domestically produced subject goods.

**d. Development of technology**

On the basis of examination of the records of the petitioner, the Authority concludes that development in technology has not been a relevant factor for the injury to the domestic industry.

**e. Export performance**

The Authority notes that there are no exports of the domestic industry during the POI. The performance with respect to various Economic indicators has therefore been determined with respect to domestic sales only. Hence, the Authority concludes that material injury suffered by the domestic industry may not be as a result of the export performance of the domestic industry.

**f. Productivity of the Domestic Industry**

Productivity of the domestic industry in terms of production per employee has shown decline during POI as compared to preceding year because of the decline in total production during the same period.

85. No other factor, which could have possibly caused injury to the domestic industry, has been brought to the knowledge of Authority.

**Conclusion on Causation**

86. The Authority notes that while listed known other factors do not show injury to the domestic industry, following parameters show that injury to the domestic industry has been caused by dumped imports:

- a. The landed prices of imports were lower than the selling price of the domestic industry. As a result of price undercutting, the consumers have resorted to higher volume of imports, leading to decline in market share of the domestic industry.
- b. Decline in market share has prevented the domestic industry from increasing their production and capacity utilization.
- c. Landed price of imports were undercutting the prices of the domestic industry. The imports from subject countries have caused price underselling in the Indian market. Resultantly, lower import prices appear to have prevented the domestic industry from increasing their prices.

- d. Price suppression effect of the imports has directly resulted in deterioration in profitability of the domestic industry and consequently the return on investment and cash profits. Thus, the decline in profits, return on investments and cash profits is apparently due to presence of dumped imports in the market.
- e. Deterioration in performance of the domestic industry in the period of investigation is apparently due to presence of dumped imports in the market.

87. The Authority is of the view that material injury to the domestic industry has been caused by the dumped imports.

**Comments to the disclosure statement**  
**Submissions made by the domestic Industry**

88. The Domestic Industry has submitted following comments to the disclosure statement following

- a. Their elaborate submissions on determination of non-injurious price and comparison of the same with landed value have not been considered.
- b. Non-injurious price determined by the Authority requires reconsideration. As various expenses considered for determination of the same have not been correctly taken into account.
- c. The cumene price considered does not appear to include all expenses which the petitioner claimed are associated with procurement of material. Nor any reason has been given for rejecting the claim of the petitioner. They have claimed that all these expenses are in fact associated with procurement of material and must be allowed.
- d. Discounts should not be deducted from the calculations of non-injurious price. as discounts are reduced from net selling price and non injurious price only for the reason that the price net of discount is the price at which the goods have been sold by the company and represents the price which should be compared with imported product.
- e. Commission should be excluded from landed price or alternatively the commission paid by the domestic industry should be added to non injurious price.
- f. The Authority has given individual interim anti-dumping duties for each sales channel. Complete sales channel may not have been reported to the Designated Authority. In any case not, full sales channel have not been brought in the duty table.
- g. They have sought determination of dumping and injury margin collectively or cumulatively for all goods sold by the producer for export to India, regardless of the channel.
- h. Duty be imposed as fixed quantum of duty denominated in US \$.

**Examination by the Authority**

89. The Authority after having examined the submissions made by the Domestic Industry in response to the disclosure, seeks to address the same as follows.

- i. As regards the submissions on Non-injurious Price (NIP), the Authority concludes that NIP has been correctly worked out in line with the consistent practice being followed by the authority in all AD Cases.

- ii. As regards Commission, this aspect has already been considered and addressed while computing the NEP etc.
- iii. The working of monthly Injury Margin is consistent with the monthly computation of DM for fair comparison considering the huge variation of prices of inputs on month to month basis, as already explained in the preceding paragraphs.
- iv. As regards individual sales channel, the Authority follows the imposition of combination duty consistently in all AD Investigations and has followed this principle in the present investigation as well.

### **Submissions made by Sumitomo Corporation Asia Pte Ltd. Singapore and Sumitomo Corporation Japan**

90. They have submitted that Individual margin for Sumitomo Corporation should not be denied by the Authority as Invoices raised by both \*\*\* and \*\*\* against the final export of the product to the Indian Importer have been submitted to the Authority. It has also been claimed that Normal value determined for Japan is illegal as the domestic sales reported by Sumitomo have been ignored and DGAD should have taken into account the prices at which Sumitomo Japan has sold or resold the goods within the domestic market in Japan as per information made available in the Questionnaire. It has also been pleaded that denial of individual margin for exports of PUC produced by M/s Mitsubishi Chemicals Corporation, Japan and exported by Sumitomo Corporation because of the non determination of normal value is grossly unjustified as a separate determination of normal value of Mitsubishi Chemicals Corporation, Japan is not required. They have also stated that the Normal Value is country specific and not exporter specific.

### **Examination by the Authority**

91. The Authority after having examined the submissions made by Sumitomo Corporation in response to the disclosure holds that the export price of a co-operating exporter can be determined provided the complete chain is established in the form of a response with verifiable data, including verification of realization of sale proceeds by the said trader, as also verification of the fact that the trader is a profit making or a loss making Company for making necessary adjustments for determination of NEP. The Authority holds that merely providing an invoice raised by the final trader is not sufficient to determine the NEP. The Authority further holds that, since Sumitomo did not export to India directly but through two traders and these traders did not file a formal response, individual DM cannot be given to Sumitomo. Since Sumitomo is not entitled to individual dumping margin, the issue raised on determination of normal value is not relevant. Regarding the issue of Country specific Normal Value, the AD Law to this effect has since been amended in 2009 and therefore concept of single normal value for the country as a whole is no more relevant.

### **Conclusions**

92. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority notes that:

- a. The product under consideration has been exported to India from the subject countries below its associated Normal value, thus resulting in dumping of the product.
- b. The domestic industry has suffered material injury in respect of the subject goods.

- c. The material injury has been caused by dumped imports of the subject goods from the subject countries.

### **Indian industry's interest**

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

94. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. 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 the subject goods. With a view to minimize the impact on the downstream industry, the Authority has considered it appropriate to recommend anti-dumping duty based on the lower of the dumping and injury margins. The Authority notes that the imposition of anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

### **Recommendations**

95. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of final duty is required to offset dumping and injury pending completion of the investigation. Therefore, the Authority considers it necessary and recommends imposition of final anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

96. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount indicated in Col 8 of the table below to be imposed from the date of imposition of provisional duties, on all imports of subject goods originating in or exported from subject countries.

**Duty Table**

S.No	Sub Heading of Tariff item	Description Of Goods	Country of Origin	Country of Export	Producer	Exporter	Duty Amount	Unit Measure	Currency
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
1.	29141100	Acetone	Thailand	Thailand	M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand	Nil	MT.	USD
2.	Do	Do	Thailand	Thailand	M/s PTT Phenol Company Limited, Thailand	M/s PTT Public Company Ltd.	Nil	MT.	USD
3.	Do	Do	Thailand	Thailand	M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) <b>OR</b> Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	Nil	MT.	USD
4.	Do	Do	Thailand	Thailand	Any combination other than at Sl. no.1 to 3 above		85.85	MT	USD
5.	Do	Do	Thailand	Any other than Singapore,US A,South Africa, EU,Korea RP, Taiwan and Japan	Any	Any	85.85	MT.	USD
6.	Do	Do	Any other than Singapore, USA,South Africa, EU,Korea RP, Taiwan and Japan	Thailand	Any	Any	85.85	MT.	USD
7.	Do	Do	Japan	Japan	Mitsui Chemicals Inc. Japan	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	Nil	MT.	USD
8.	Do	Do	Japan	Japan	Any combination other than at Sl. no.7 above		94.96	MT	

9.	Do	Do	Japan	Any other than Singapore, USA, South Africa, EU, Korea RP Taiwan and Thailand	Any	Any	94.96	MT.	USD
10	Do	Do	Any other than Singapore, USA, South Africa, EU, Korea RP Taiwan and Thailand	Japan	Any	Any	94.96	MT.	USD

97. Subject to the above, the provisional findings, notified vide notification dated 16<sup>th</sup> February, 2010, are hereby confirmed.

#### **Further Procedures**

98. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

99. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time.

P.K.Chaudhery  
The Designated Authority