

No.14/27/2009-DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES  
UDYOG BHAVAN

***NOTIFICATION***

New Delhi- 8<sup>th</sup> October, 2010

**Final Findings**

**Subject: Anti-Dumping Investigations concerning imports of Phenol originating in or exported from Japan and Thailand – Disclosure Statement.**

No. 14/27/2009-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, supported by M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited) on behalf of the domestic industry, alleging dumping of Phenol (hereinafter referred to as subject goods); originating in or exported from Japan and Thailand (hereinafter also referred to as the subject countries).

3. Having been satisfied on the basis of positive evidence submitted by the domestic industry, the Authority vide Notification No.14/27/2009-DGAD dated 11<sup>th</sup> August 2009 published in the Gazette of India, Extraordinary, initiated Anti-dumping Investigation of concerning imports of Phenol, 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 11.08.2009 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 14-1 Tokyo 108-0014, Japan Shiba 4-chome, Minato- ku,	

- 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. C.J. Shah and Company 105, Bajaj Bhawan 10th Floor, Nariman Point Mumbai- 400021.	M/s. Haresh Kumar and Company 1212, Maker Chambers 5 Jamnalal Bajaj Road, Nariman Point , Mumbai-400021.
M/s. PCL Industries M-105, Connaught Place New Delhi-110001	M/s. Kantilal Manilal and Company 16, Princess Street Mumbai-400003.
Sonkamal Enterprises 10, Dev Darshan Apartment Old Nagardas Road Andheri (East) Mumbai-400069	M/s. Khetan Brothers C-17, Dalia Industrial Area Off New Link Road, Opposite Laxmi Industrial Estate Andheri (West) Mumbai-400058
M/s. Shubham Dyes & Chemicals Limited 1/26, Roop Nagar, Delhi 110007	Acron Enterprises Plot No. 218-219/3, G.I.D.C, Naroda, Ahmedabad Pin Code- 382330, Gujarat.
M/s. Naiknavare Chemicals Limited 1, Vidya Bhavan, 121, Keluskar Road Shivaji Park, Dadar	M/s. Paras Dyes & Chemicals 12th Floor, Vijaya Building 17 Barakhamba Road, New Delhi-110001

(West) Mumbai (Maharashtra).	
M/s. Torrent Pharmaceuticals Limited Ashram Road, Ahmedabad Road 380009 Gujarat	M/s. United Phosphorus Ltd. Eadymoney Terrace, 167, Dr. Annie Basant Road Worli, Mumbai-400 018
M/s. Resins & Plastic Ltd. Cross Rd. B, Mumbai 400093	M/S Kailash Polymers, 60 Krishna Market Kalka Ji New Delhi
M/S Centurian Metalics Pvt. Ltd 6/221, Deodhar Road, matunga-400019-Mumbai	M/s. Wonder Laminates Pvt. Ltd. 14, Bhasa, Diamond Harbor road, Kolkata.
M/s. Meghdev Enterprises P.K. House, H/H M.J. Library, Ellisbridg, Ahmedabad	M/s. Satguru International 204-D, Pocket-12, Jasola Vihar Opp. Appollo Hospital, New delhi
M/s. High Polymer Labs Ltd. 803, Vishal Bhavan, 95, Nehru Place, New delhi	M/s. Rainbow colours & Chemicals 14/A, Bhavik Complex Ghod Dod Rd. Surat, Gujrat
M/s. M/s. Bleach Marketing Pvt. Ltd. 120, Bleach Chem Compound Nr. Chandola, Ahmedabad	M/s. Karmen International (P) Ltd. 31A/20, NP, Sidco Industrial Estate, Chennai
M/s. Krishna Antioxidants Pvt. Ltd. Lopes Maner, I C Colony, Near Chandra Ho, Mumbai	M/s. NGP Industries Ltd. M-13, Punj House, New Delhi
M/s. Farmson Pharmaceutical Gujrat Ltd. 5th Floor, Commerce Centre, Sayajigunj, Baroda	M/s. India Glycols Ltd. C-124, Okhla Industrial Area, Phase-I, New Delhi
M/s. Singh Plasticisers and Resins (I) Pvt. B-316, 3rd Floor, Somdut Chamber-1, Bhika ji Gama Place, New Delhi	M/s. National Plywood Industries Ltd. 5, Fancy Lane, 700001 Kolkata.
Kundan Rice Mills Ltd., d-17, Century Market, Prashant Vihar, Delhi-110085	

- 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. 14/27/2009-DGAD dated 3<sup>rd</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.
- 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 this final findings;**
  - xv. The provisional Anti Dumping duty on imports of subject goods from the subject countries were imposed vide Customs notification No. 53/2010-Customs dated 19<sup>th</sup> April 2010.
  - xvi. **In accordance with Rule 16 of the AD Rules, the essential facts considered by the Authority disclosed to the known interested parties and comments received on the same would be 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 'Phenol'. It is an organic chemical, also known as Carboic Acid, and used in the manufacture of Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide and downstream chemicals. Phenol is classified under Chapter 29 & 27 of Custom Tariff Act under the sub-heading 29071110, 27079900 respectively. The customs classification is however, indicative only and in no way binding on the scope of the present investigation.

6. It is a basic organic chemical, marketed in two grades viz. Crystalline and Hydrated. The two grades are differentiated on the basis of flow characteristics of Phenol. 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 exporters have not disputed 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. The domestic like article 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 Phenol produced by the applicant domestic industry is like article to the subject goods imported from subject countries 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 application has been filed by M/s Hindustan Organic Chemicals Ltd., Mumbai (HOCL) 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 the 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. China has extended duty after sunset review on Japan, Korea, USA and Taiwan. This clearly establishes likelihood of intensified injury to the Indian producers.
- vii. The non confidential versions do not have indexed version of appendices and thus are inconsistent with the procedural requirement.

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

17. M/s. Mitsui Chemicals Inc. 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.
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 license. So, it should be excluded from the total imports.
  - iii. The reason of increasing imports from subject countries is due to suppression of exports from the countries already attracting ADD.
  - iv. 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.
19. M/s. Sumitomo Corporation, Japan and M/s. Sumitomo Corporation Asia Pte. Ltd., Singapore has submitted as under:
- i. The extension of period of investigation without the availability of subsequent data shows violation of Rule (5) of ADD Rules.
  - ii. Sumitomo cannot be treated as non-cooperative exporter because of other parties involves in channel has not responded. The export price can be determined from the exports made by company to India.

### **M/s. PTT Phenol Company Limited**

20. They emphasized the effect of the economic downturn of 2008-2009 and the various problems facing the company during commissioning on product sales during the period of investigation. They also tried to present the pricing evidence to illustrate the fact that phenol producers globally felt the effect of the recent economic downturn. It was claimed that Koreans, Taiwanese, Japanese have had to shutdown various units as a response to weak demand and Players in both Europe and North America suffered drastic inventory loss. In addition, the company also reported various problems they faced during commissioning ranging from which

ultimately resulted in its inability to market the products at an economical price.

### **Examination By The Authority**

21. The Authority having taken note of various submissions made by interested parties and has addressed the same appropriately in the disclosure statement and in these final findings. 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. As regards exclusion of imports under advance license for volume analysis, the Authority has followed the practice being followed in all such cases in the past. 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. The Authority also takes note of the suggestion having been made about monthly computation of NV and NEP, considering fluctuation in prices of the two basic raw materials.

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

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

#### **Producers / Exporters who had made submissions to Initiation, Partial or Complete**

#### **Mitsubishi Chemical Corporation**

22. 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 since the Preliminary Findings and continues to be the same. The subject producer failed to provide the relevant information and therefore the Authority holds the subject exporter as non-cooperative for the Final Determination as well.

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

23. 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

24. 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 the subject goods by the responding producer in its home market was representative for permitting determination of Normal

values on the basis of domestic selling prices and the ordinary course of trade test was satisfied as per the data provided by the respondent.

25. Considering that there have been significant changes in the cost of production and selling price from month to month during POI due to fluctuations in input prices, the Normal Value has been worked out separately for each month. During the course of verification it is noted that less than 80% sales in the domestic market are profitable sales and therefore only these 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 corresponding to the months during which exports were made by the responding exporters i.e Mitsui Co Japan and Mitsui Singapore is given in the DM table.

### **Non-Cooperating Exporters**

26. The Normal Value determined for the responding producer / exporter and subsequently verified has been adopted for all other exporters from Japan. The Normal Value so determined is US \$ \*\*\* per MT

### **Normal Value for Thailand Cooperating Exporters**

#### **PTT Phenol Company Limited, Producer & Exporter and PTT Public Company Ltd (Exporter)**

27. 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**

28. The claim made by the responding producer / exporter was 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 holds that the claim on this account is not called for and disallows the claim.

29. 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 in the present case is mentioned in the dumping margin table.

### Non-Cooperating Exporters

30. The Normal Value determined in respect of responding producer has been adopted for all other exporters from Thailand. The Normal Value so determined in the present case is mentioned in the dumping margin table.

### Export Price

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

##### Mitsui Chemicals Inc., Japan

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

32. 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 \*\*\* basis to Mitsui & Co. Ltd., Japan (MBK), who arranges logistics and sells to Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore (MAP) on \*\*\* or \*\*\*. MAP in turn sells it to Indian customer.

33. As per the response filed with the Authority and subsequently verified during spot verification, the Japanese Trader **M / S Mitsui & Co. Ltd. Japan** had shipped Japan origin PUC purchased from **Mitsui Chemicals Inc.**, PUC in the form of \*\*\* invoices to \*\*\* different customers in India. The total quantity of Bulk Phenol so shipped was \*\*\* MT. For determination of the Net export price to India, the adjustments as verified have been made on account of ocean freight, clearing and handling charges, bank charges, credit cost, and commission paid to Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore and Mitsui and Co. India. That apart, SGA expenses incurred by the trading company have also been adjusted for determination of NEP.

34. Further the Japanese Trader **M / S Mitsui & Co. Ltd. Japan** had shipped Japan origin PUC purchased from **Mitsui Chemicals Inc.**, PUC in the form of \*\*\* invoices through their another related trading Company **Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore** to customers in India. The total quantity of Bulk Phenol so shipped, claimed as per response was \*\*\* MT. During verification of records of the Japan as well as Singapore entity of Mitsui, it came to the fore that at least one of the shipments of Bulk Phenol, (Qty. \*\*\* MT), comprising \*\*\* of the shipment based upon which Individual DM was claimed and allowed in provisional determination based upon their claim, was actually sold by the Singapore entity to another Trader M/S \*\*\*. a USA based Company who had in turn sold it to Indian Customer, and not by **Mitsui & Co. (Asia Pacific) Pte. Ltd.** To that extent the Authority notes that either intentionally or un-intentionally, the subject trader in Singapore had erroneously claimed an individual DM by declaring exports made by another trader (Such exporter / trader M/S \*\*\* has actually not participated in the investigation) in Preliminary Findings and never declared this mistake till the same was detected by the investigating team deputed by the Authority, during verification of records of **Mitsui & Co. (Asia Pacific) Pte. Ltd.** While responding to the disclosure statement, although they have not admitted their mistake, but have claimed that this sale be

accepted for determination of landed value. The Authority after reconsidering the issue has decided that instead of not allowing margin as a whole for this chain, the direct sale shall be considered for the purpose of determination of individual DM. Thus for determination of NEP one weighted average NEP has been determined based upon all eligible sales of M/S Mitsui & Co. Ltd. Japan and Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore. The NEP so determined in respect of this channel of sale after deductions on account of verified adjustments is US \$ \*\*\* Per MT.

**35. 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 directly or through unrelated companies based at Singapore or UAE. Sumitomo Corpn. Asia Pte. Ltd., in their response stated that it has sold \*\*\* MT of Phenol produced by M/s Mitsui Chemicals Inc., Japan to India through M/s Noble Resources Pte. Ltd., Singapore. M/s Noble Resources have not filed a separate response for the goods exported by it to India. The ultimate export price at which the goods are exported to India by **M/s Noble Resources Pte. Ltd., Singapore** has therefore not been shared with the Authority. Notwithstanding the claim of Sumitomo that they cannot be treated as non-cooperative exporter because of other parties involved in channel has not responded, the fact of the matter remains that in view of the incomplete chain it is not possible for the Authority to determine the Net Export Price and hence. The Authority therefore holds that no Individual Margin is possible to be determined for **this exporter**.

**36. 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 cannot be determined in view of non-availability of the Normal Value in respect of M/s Mitsubishi Chemicals Corporation, Japan as explained in para 22 above.**

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

**37.** The lowest export price for the month 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 and PTT Public Company Ltd., Thailand**

**38.** M/s PTT Phenol Company Limited, Thailand while submitting the response had claimed to have exported the subject goods to India directly, as well as through its affiliate M/s PTT Public Company Ltd., Thailand. According to this response, the Company had sold Bulk Phenol to India in the form of \*\*\* transactions, which included \*\*\* transactions through the trading company M/s PTT Public Company Ltd, \*\*\* through \*\*\*, \*\*\* through M/S Mitsui & Co. Ltd. Japan (Trader) / Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore and of the remaining \*\*\*, \*\*\* direct to Indian Importer \*\*\* and one transaction direct to Indian Importer \*\*\*.

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

39. Verification of the records of the Company revealed that during POI they had exported Bulk Phenol to India in the form of \*\*\* transactions to India as detailed in Para 38 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 M/s PTT Phenol Company Limited has made sales of Bulk Phenol 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.

40. 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.

41. 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”*

42. 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.

43. 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.

**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.**

44. 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.

45. Verification of records by the Authority through its investigating team revealed that PTT Phenol, the producer, had invoiced \*\*\* MT of Phenol to **Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore, for an invoice value of US \$ \*\*\*** who had in turn invoiced it to the Indian Importer M/S Haresh Petrochem Pvt. Ltd. For an invoice value of US \$ \*\*\*. This was the \*\*\* transaction where the channel of exports was as follows:

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

46. Apart from this it was also seen that as per response filed with the Authority and during subsequent verification, that \*\*\* MT of Phenol (Bulk) were shipped to India through following Channel during POI

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

47. 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 (Where ever applicable), Commission amount paid to Mitsui & Co Thailand and Mitsui & Co India, Credit Cost, Bank Charges, and SGA etc. The NEP for exports of Thai origin Phenol exported either by M/S Mitsui & Co. Ltd. Japan *or* Mitsui & Co. (Asia Pacific) Pte. Ltd Singapore works out to **US \$ \*\*\* per MT.**

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

48. The lowest export price reported by the responding producer/ exporter from Thailand 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.**

**Dumping Margin**

49. 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;

Producer	Exporter	Normal Value	Export Price	Dumping Margin	Dumping Margin (%)
Mitsui Chemicals Inc., Japan	M/S Mitsui& Co. Ltd. Japan / <i>Mitsui &amp; Co. (Asia Pacific) Pte. Ltd Singapore</i>	***	***	***	95-105%

All other producers from Japan	All other exporters from Japan	***	***	***	130-140%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd Thailand	***	***	***	40-45%
M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	20-25%
All other exporters from Thailand	All other exporters from Thailand	***	***	***	75-80%

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

### **INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK**

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

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

- a) Export price from the subject countries has remained at dumped level during POI. Further, these prices have been declined more than input prices.
- b) Production, sales volumes and capacity utilization of the domestic industry declined in POI after showing improvements up to 2007-08.
- c) Profit/Loss (PBT, PBIT and PBDIT) of the domestic industry have all shown significant decline even become negative after improvement up to 2007-08.
- d) Market share of the domestic industry declined marginally. This is due to the fact that dumped imports have captured significant market share of demand in India.
- e) Import from each of the subject countries has been undercutting the prices of the domestic industry to a significant degree.
- f) Imports from the subject countries have forced the domestic industry to reduce the price steeply during investigation period. Thus, the imports were depressing the prices in this period.
- g) Employment levels with the domestic industry have not undergone any significant change even though there is a marginal decline.
- h) Salary & wages: - Salary and wages level with the domestic industry decreased due to low level of production.
- 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 and is trapped in a vicious cycle of volume effect and price effect. 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) Imports from subject countries are adding to the material injury, already being suffered by the domestic industry.

- m) There is significant increase in the import volumes in absolute terms. This increase in imports is in spite of best efforts of the domestic industry to sell their material even at sub-optimal prices. The increase in imports would have been more, had the domestic industry not made efforts to curtail the same by offering lower prices.
- n) Price undercutting is significant. In spite of offering matching prices, there is a positive price difference between the domestic product and imported product. Given nature of the product involved, any price difference between the domestic product and imported product is not acceptable to the consumers and the domestic industry is under constant pressure for price reductions. Domestic industry cannot afford to sell at prices, significantly higher than the imported prices. The only option with the domestic industry is to sell at matching prices. Even a small price difference is in fact huge in this kind of product.

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

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

- a) There is no injury to the domestic industry on account of production, capacity utilization. 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 imports from countries already attracting ADD are almost 52% in POI which is more than imports from subject countries. This needs to be analyzed while examining causal link.
- c) There is substantial fall in custom duty of the subject goods over the injury period which might be the cause of injury to the domestic industry.

**53.** 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) The Capacity utilization of Indian industry considered as whole is better than the applicant alone.
- d) Most of the injury parameters shows no or lack of injury to the domestic industry.
- e) There are lots of inconsistencies in the preliminary findings and additional data supplied by the petitioner.
- f) 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.
- g) The injury analysis can be done based upon the data provided in the original petition based upon which the case was initiated and not based upon the data of the revised POI.
- h) The Injury data in the petition is provided only for the petitioners and not for the supporter to the petition.
- i) Capacity utilization of the petitioner during 2008-09 is in excess of the licensed installed capacity.
- j) There is a miniscule drop of 6.4% sales volume in FY 2008-09 and the same cannot be attributed to causing injury.

- k) Sale value drop is on account of the drop in the prices of Benzene and thus directly related to reduced cost of production.
- l) Average inventories during FY 2008-09 have dropped to an all time low.
- m) Reduction of profitability during FY 2008-09 compared to FY 2007-08 cannot be attributed to dumping.
- n) Reduction in employment levels is a common feature of any organization.
- o) Wages have increased over the years and are highest in FY 2008-09.
- p) In spite of reduced demand during 2008-09, the production of DI has increased.

**54.** M/s. Sumitomo Corporation, Japan and M/s. Sumitomo Corporation Asia Pte. Ltd., Singapore has submitted as under:

- a) No material threat or injury is established :
  - (i) Import Volume: The preliminary findings show that exports from Japan has come down.
  - (ii) Price effect is absent: The NIP and the actual realization price of the product are more or less same.
- b) Causal Link is not established: The Authority is required to examine other known factors for assessing injury. The annual report of the domestic industry shows that the company's performance has deteriorated due to global recession.

**55.** M/s J Sagar and associates, representing Mitsubishi Chemicals Corporation Japan have made following submissions:

- a) The sales of DI have decreased only marginally and perhaps due to imports from Thailand and not from Japan and there is no volume effect for exports from Japan.
- b) Production of DI has not seen any significant change. They have been operating at full or over capacity.
- c) The profit / loss trend does not appear to be connected to dumped imports as there was huge increase in profits during 2007-08 in spite of increase in imports from Japan during this period.
- d) The selling price of DI has decreased in line with the decrease in demand by 8.9% during 2008-09 and not because of dumped imports.
- e) Market share of petitioner and supporter does not show any material change during POI though there is a marginal increase of market share of imports from Japan.

### **Examination by the Authority**

**56.** 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 verified data, facts available on record and the applicable law. However, the Authority, before proceeding with the injury analysis, sought the data from the supporter, who however did not furnish the same till date. As regards Injury analysis, the POI has been prescribed by the Authority and therefore for injury analysis has been carried out during injury period and POI as per practice and as mandated by the Rules.

### **Cumulative assessment of injury**

**57.** 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.

**58.** The Authority notes 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.

**59.** In view of the above, the Authority holds 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.

**60.** 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.

**61.** 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**

**62.** The Authority collected transaction wise details of imports of subject goods from DGCI&S as also from World Trade Atlas. 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 as Japan have reported a lower volume of imports during POI compared to DGCI&S and WTA as well as IBIS data source relied upon by the petitioner. Further the imports reported in DGCI&S data source and WTA are higher than 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	532	6,244	18,226	12,920	17,226
Thailand	MT	0	0	20,498	28,285	37,713
<b>Subject Countries</b>	<b>MT</b>	<b>532</b>	<b>6,244</b>	<b>38,724</b>	<b>41,205</b>	<b>54,939</b>
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>1,175</b>	<b>7,284</b>	<b>10,334</b>	<b>10,334</b>
Other country attracting ADD	MT	63,337	88,447	51,894	35,301	47,068
Other countries	MT	2,687	8,180	2,299	1,617	2,155
<b>Total Imports</b>	<b>MT</b>	<b>66,556</b>	<b>102,871</b>	<b>92,918</b>	<b>78,122</b>	<b>104,163</b>
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>155</b>	<b>140</b>	<b>157</b>	<b>157</b>

Market Share in Imports	Unit	2006-07	2007-08	2008-09	POI (9M)	POI Annualized
Japan	%	0.80	6.07	19.62	16.54	16.54
Thailand	%	0.00	0.00	22.06	36.21	36.21
<b>Subject Country</b>	<b>%</b>	<b>0.80</b>	<b>6.07</b>	<b>41.68</b>	<b>52.74</b>	<b>52.74</b>
Other country attracting ADD	%	95.16	85.98	55.85	45.19	45.19
<b>Other country</b>	<b>%</b>	<b>4.04</b>	<b>7.95</b>	<b>2.47</b>	<b>2.07</b>	<b>2.07</b>
Total Imports	%	100.00	100.00	100.00	100.00	100.00
Production of DI	MT	40,733	41,908	42,641	24,719	32,959
Production of Supporters	MT	30,550	33,027	33,149	24,538	32,718
Total Indian Production	MT	71,283	74,935	75,790	49,258	65,677

Imports from subject countries	MT	532	6,244	38,724	41,205	54,939
Imports from subject countries as a percentage of Indian production	%	0.75	8.33	51.09	83.65	83.65

### Market Share in Imports

63. 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 country 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 0.75% in relation to the Indian production in the base year which has gone up significantly in percentage terms to more than 83% in POI.

### Demand, Output and Market shares

Demand, Output & Market Share	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Domestic Industry	MT	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>107</b>	<b>100</b>	<b>87</b>	<b>87</b>
Supporter	MT	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>109</b>	<b>117</b>	<b>113</b>	<b>113</b>
Import – Subject Countries	MT	532	6,244	38,724	41,205	54,939
Import – Other Countries	MT	66,024	96,627	54,194	36,918	49,223
<b>Total Demand</b>	<b>MT</b>	<b>134,483</b>	<b>175,841</b>	<b>165,292</b>	<b>127,634</b>	<b>170,178</b>
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>131</b>	<b>123</b>	<b>127</b>	<b>127</b>
<b>Market share in demand</b>						
Domestic Industry	%	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>82</b>	<b>81</b>	<b>69</b>	<b>69</b>
Supporter	%	***	***	***	***	***
<b>Trend</b>	<b>Indexed</b>	<b>100</b>	<b>83</b>	<b>95</b>	<b>89</b>	<b>89</b>
Subject Countries	%	0.40	3.55	23.43	32.28	32.28
Other Countries Attracting ADD	%	47.10	50.30	31.40	27.66	27.66
Other Countries	%	2.00	4.65	1.39	1.27	1.27

64. 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 27% during POI as compared to base year. 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, which was at 100 (indexed) in 2006-07, declined to 69 (Indexed), a drop of 31% during POI. During the same period the share of imports from subject countries, which was 0.40% in 2006-07, went up to 32.28% 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	40,000	40,000	40,000	30,000	40,000
Production	MT	40,733	41,908	42,641	24,719	32,959
Capacity Utilization	%	101.83	104.77	106.60	82.40	82.40

65. Data of domestic industry on capacity, production and capacity utilization reveals that the capacity of the domestic industry remained unchanged at 40000 MT during the injury period. The production of subject goods that were increasing until 2008-09 declined significantly to 32,959 MT during POI. As a result, the capacity utilization of domestic industry, which was 101.83% during 2006-07, increased to 106.60% in 2008-09 and then declined significantly to 82.40% during the POI.

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

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Sales	MT	***	***	***	***	***
Trend	%	100	107	100	87	87

66. The above data on the sales of domestic industry shows that there was a fall in the sales during POI to the extent of 13% over the base year and also over the previous year 2008-09.

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

67. 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.

68. 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), 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:**

69. The price suppression and depression effect of the dumped imports has also been examined with reference to the cost of production and 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	84	88	77	77
Selling Price (NSR)	Rs./MT	***	***	***	***	***
Trend	Indexed	100	102	94	73	73

70. It is seen from the above table that the decline in selling prices of domestic industry is more than the decline in its cost of sales during POI compared to the base year. The trend shows that cost of sales decreased by 23% during POI as compared to base year whereas the selling price had decreased significantly by 27% during POI indicating that the domestic industry could not realize the

selling price commensurate with the cost of sales, thereby causing significant price depression. The position is seen to be exactly reversed when the comparison is made from Base year 2006-07 with the trends in 2007-08 and 2008-09 where the DI has been realizing a higher realization compared to the cost of sales. But this trend has reversed 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	***	***	***	15-20%
All other producers from Japan	All other exporters from Japan	***	***	***	20-25%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd Thailand	***	***	***	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	***	***	***	30-35%

71. While working out the weighted average 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 weighted average 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 has been taken into account for determination of Landed Value.

72. 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 Margins**

Producer	Exporter	NIP of DI (Rs./MT)	Landed Value (Rs./MT)	Injury Margin (Rs./MT)	Injury Margin (%)
Mitsui Chemicals Inc., Japan	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	50-60%

All other producers from Japan	All other exporters from Japan	***	***	***	70-80%
M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / PTT Public Company Ltd Thailand.	***	***	***	1-5%
M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) & Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	***	***	***	negative
All other exporters from Thailand	All other exporters from Thailand	***	***	***	25-30%

**73.** 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 NIP in respect of the month during which the exports to India have been made.

#### **Examination of other Economic Parameters of Domestic Industry**

**74.** 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>84</b>	<b>88</b>	<b>77</b>	<b>77</b>
Selling Price (NSR)	Rs./MT	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>102</b>	<b>94</b>	<b>73</b>	<b>73</b>
Profit/Loss	Rs./MT	(***)	***	***	(***)	(***)
Trend	Indexed	<b>(100)</b>	<b>1,233</b>	<b>335</b>	<b>(425)</b>	<b>(425)</b>
Profit/Loss before Tax	Rs.Lacs	(***)	***	***	(***)	(***)
Trend	Indexed	<b>(100)</b>	<b>1,315</b>	<b>335</b>	<b>(369)</b>	<b>(369)</b>
PBIT	Rs.Lacs	(***)	***	***	(***)	(***)
Trend	Indexed	<b>(100)</b>	<b>8,056</b>	<b>2,396</b>	<b>(1,727)</b>	<b>(1,727)</b>
Cash Profit	Rs.Lacs	(***)	***	***	(***)	(***)

**75.** The Authority notes that there has been significant deterioration in the profitability of domestic industry over the injury period. The domestic industry has been suffering financial losses in 2006-07. The profitability improved considerably in 2007-08 and the company earned profit on sale of the subject goods in that period. The financial position of the company deteriorated thereafter and profits declined considerably during 2008-09 and thereafter it suffered financial losses during the POI. The losses suffered in the POI were more than the losses in the base year. 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>8,056</b>	<b>2,396</b>	<b>(1,727)</b>	<b>(1,727)</b>
Net Fixed Assets	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>88</b>	<b>79</b>	<b>79</b>	<b>79</b>
Working Capital	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>103</b>	<b>103</b>	<b>80</b>	<b>80</b>
Capital Employed	Rs.Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>100</b>	<b>98</b>	<b>80</b>	<b>80</b>
Return on Capital Employed(NFA basis)	%	(***)	***	***	(***)	(***)

76. 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>100</b>	<b>108</b>	<b>83</b>	<b>83</b>

77. The data on productivity per employee shows that it decreased by 17% in POI from the base year.

### **Employment and wages**

	Unit	2006-07	2007-08	2008-09	POI(9M)	POI Annualized
Employment (Manpower strength)	Nos.	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>103</b>	<b>97</b>	<b>97</b>	<b>97</b>
Wages	Rs./Lacs	***	***	***	***	***
Trend	Indexed	<b>100</b>	<b>101</b>	<b>104</b>	<b>87</b>	<b>87</b>

78. The employment level does not show significant change. In indexed form it declined by 3% during POI from base year. The wages that increased by 4% in 2008-09 as compared to base year, declined considerably during POI.

### **Inventories**

	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	<b>100</b>	<b>53</b>	<b>55</b>	<b>68</b>	<b>68</b>

**79.** The information about the inventory levels of subject goods is contained in the above table. It is seen that the inventory levels for the subject goods have declined as compared to the base year but there is a marginal increase seen in POI compared to 2008-09.

### **Growth**

**80.** 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 selling price have declined more than the decline in the cost of sales during POI, thereby causing significant price depression. Besides, the imports of subject goods are significantly undercutting the prices of the domestic industry. The price underselling was also significant.

### **Ability to make Investment**

**81.** 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**

**82.** 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**

**83.** 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 phenol 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**

**84.** 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 the financial performance of domestic industry declined significantly in POI.

**85.** 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 depress the prices of the domestic industry in the market. The domestic selling prices have declined more than the decline in cost of sales. 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 to 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. On the basis of above it is concluded that the DI has suffered material injury within the scope of AD Rules.

### **Causal Link and other factors**

**86.** 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:

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

**87.** It is noted from import data that about 53% imports are from subject countries during POI and the 45% from other countries already attracting anti-dumping duties. The imports from other countries, not attracting ADD are just 2%. Therefore, the imports from other countries do not affect the prices in the domestic market;

### **Contraction in demand and / or change in pattern of consumption**

**88.** 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.

### **Trade restrictive practice and competition between the foreign and domestic producers**

**89.** 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.

### **Development of technology**

90. 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 domestic industry.

### **Export performance**

91. 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.

### **Productivity of the Domestic Industry**

92. 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.

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

### **Conclusion on Causation**

94. 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, thus 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 depression 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. Significant deterioration in performance of the domestic industry in the period of investigation is apparently due to presence of dumped imports in the market.

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

95. 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**

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

- a.to d. The Authority takes note of these submissions and concludes that NIP has been correctly worked out in line with the consistent practice being followed by the authority in all AD Cases.
- e. This aspect has already been considered and addressed while computing the NEP etc.
- f & g. The Authority follows the imposition of combination duty consistently in all AD Investigations and has followed this principle in the present investigation as well.

**Mitsui and Co. Limited, Japan (MBK), Mitsui & Co. (Asia Pacific) Pte. Limited, Singapore, PTT Phenol company Ltd Thailand**

97. They have made following comments to the disclosure statement

- a. They have alleged that DGAD's has ignored Mitsui's injury submission filed with DGAD as well as its Comments to the Preliminary Findings and Written Submission post public hearing, Rejoinder, and Comments to Verification Report. It has been further stated that in these submissions, Mitsui developed a number of arguments on flawed procedure, and provided information important for DGAD's analysis on dumping, injury, and causation. Mitsui would like to request to the DGAD to kindly refer to these submissions before making the final finding in the present investigation.
- b. The basis for calculating the injury margin is critical to this case. However, the disclosure statement provides no such opportunity for the exporter and this inadequate information goes to the route of the exporter's ability to defend itself.
- c. The data as procured from the DGCI&S has not been shared with Mitsui.
- d. It has been alleged that the initiation itself is flawed as the Authority initiated the investigation on 11.8.2009 based upon an investigation period of 6 months and the period was arbitrarily increased to 9 months without following the Rule of Law. There are a number of other allegations related to the flawed procedure of initiation.
- e. Para 37 of the Disclosure Statement states that Mitsui's sales of "Mitsui Chemical Inc. > Mitsui & Co., Limited > Mitsui & Co. (Asia Pacific) Pte. Limited > \*\*\*Trader, USA" link cannot be considered for the individual dumping margin as Vinmar is a US entity and not the final importer into India. However, in the nature of present transactions, Mitsui has considered \*\*\* as an importer from India. \*\*\* has its own distributing facilities in India. Moreover, \*\*\* was merely opening \*\*\* through its \*\*\* office. It is submitted that this sale should be included as a valid transaction and dumping margin should be duly re-calculated. In the facts of the case the Interested Parties at the time of filing the questionnaire have disclosed the shipments physically made to India through \*\*\*. While the goods have been shipped to India, the transaction has been routed through \*\*\*. In any case, the Hon'ble Designated Authority has the DGCI&S data from which it can verify the shipments made to India and at the price at which it ultimately landed in India. Based on this information, the Hon'ble Designated Authority should consider the same for the purposes of landed value.
- f. Para 53 states that "For the purposes of determination of NEP, the sale proceeds against invoice Nos. \*\*\* dated \*\*\* and \*\*\* dated \*\*\* are deemed not to have been realized as during verification they failed to provide individual realization certificates. The copies of documents claiming to be realization certificates in respect of these two shipments were filed subsequent to verification. However the Authority notes that these form a part of un-verified record and therefore cannot be considered".As per the DGAD requests, Mitsui has submitted these records (bank statements) along with the verification documents submitted at the time of on-site verification which is part of the Verification documents, and these documents clearly indicate the party and date of clearance and are identical to all the rest of the records they reviewed during the verification process. We reiterate our submissions made to the comments to the verification report filed with the office of the Hon'ble Designated Authority.
- g. In spite DGAD verifying the data filed and conducting on-site verification, the DGAD has self-calculated the dumping margin which is clearly erroneous and inflated. Mitsui clearly submits that they are not dumping the said product to India. Mitsui supports the submissions made by PTT Phenol Co. Limited on start-up cost adjustment and pleads the Authority to calculate the normal value after giving effect to the start-up cost adjustment

in consonance with provisions of Article 2.2.1.1 of the AD Agreement. If the DGAD allow the start-up adjustment on cost as per the law, it would have been abundantly clear that Mitsui are neither dumping the product nor injuring the Applicant.

- h. It is highly irregular and unclear as to how the dumping margin of the 'Mitsui Chemical Inc. > Mitsui & Co., Limited > Mitsui & Co. (Asia Pacific) Pte. Limited > Indian customer' link has shown a whopping increase. It is incumbent upon the Authority to provide reasonable basis for the calculations.
- i. The Hon'ble Designated Authority has considered providing 22% return on capital employed while calculating the Return on Capital Employed. In this behalf the Hon'ble Designated Authority should consider the judgment passed by the CESTAT in Indian Spinners Association vs. Designated Authority reported in 2004 (170) ELT 144 should consider the same based upon historical profitability and adopt the same. The Hon'ble Supreme Court in Reliance Industries Limited vs Designated Authority 2006 (202) ELT 23 (SC), held that the injury has to be worked out for the "domestic industry as a whole". The selective participation and constitution of the Domestic Industry clearly shows the intention of the Petitioner i.e. HOCL which culminates from the transparency of divulging the true affairs of the affected industry as a whole. The absence of the other producer i.e. Schenectady Herdillia Limited is limited to supporting the Petitioner without providing its data to the Hon'ble Designated Authority in view of its impressive operations is clear indication of the affairs of the Domestic Industry as a whole.
- j. It is also requested that the Hon'ble Designated Authority should re-verify the calculation of the injury margin. Based on the market intelligence, the landed costs of the interested parties is much higher as compared to other cooperating exporter from Thailand. In view of the same, the injury margin, if any, should be lowest for the interested parties and accordingly the anti-dumping duty should be recommended if any.
- k. It is submitted that as per the calculations received from the Authority, the landed value of imports made on behalf of Mitsui Chemical Inc. is extremely high. In fact, the landed value of exports made on behalf of Mitsui Chemicals Inc. is higher than landed value of exports made on behalf of PTT Phenol Co. Limited. It is extremely ambiguous why the injury margin, which is a comparison of landed value and non injurious price of Petitioner, is higher for 'Mitsui Chemical Inc. > Mitsui & Co., Limited > Mitsui & Co. (Asia Pacific) Pte. Limited > Indian customer' link, despite higher landed value through this link.

### **Examination by the Authority**

**98.** The Authority has examined the comments as above seeks to address each individual issue raised, as follows.

- a. The Authority has taken into consideration all the submissions made by all the interested parties during the course of investigation and considered and addressed the same adequately before issue of the Disclosure statement. In case any specific issue has not been addressed, the onus is on the interested party to point out the same. However no specific issue has been highlighted which, according to them, the Authority has not addressed before issue of the disclosure statement.
- b. Injury margin is calculated as the difference between the NIP of DI and LP of the Exporter. Calculations for working of LP have been provided to them. Further the

methodology for determination of NIP has elaborately been explained. It has further been clearly explained in the disclosure statement that NIP has been worked out on a monthly basis at par with the LP, NEP and NV for a fair comparison. Therefore these comments are uncalled for.

- c. It is not the practice of the Authority to place DGCI&S data in public domain considering the fact that Transaction by Transaction data available with the Authority contains confidential information with regard to importers and exporters. However, the Authority makes available such data on demand by withholding only the confidential part of the information. Moreover, the details have already been provided in the volume analysis.
- d. In this context the Authority refers to the e-mail exchange with the legal representative of the responding exporter when they were asked to quote the relevant provision of AD Rules which was violated in the instant case. The said legal counsel vide the e-mail response had referred to Rule 6 of Ad Rules. While concluding his arguments the legal representative stated as under:

*In terms of the aforesaid Rule, the term "adequate information" relates to the data concerning dumping, injury and the casual link which has been considered sufficiently adequate and accurate based on which the investigation has been initiated for the Period of Investigation. The Period of Investigation is October 08 to June 09, therefore the adequate information to this extent has not been furnished to the interested parties as stated under Rule 6(2) reproduced above.*

*In light of the same, the Hon'ble Designated Authority should provide the interested parties access to all non-confidential information which formed the basis of the initiation including the additional information for the new extended period of investigation i.e. April to June 09.*

*In other words (a) the information which forms part of the initiation remains inaccessible to the interested parties; (b) extended data which forms part of the Period of Investigation cannot be kept confidential, therefore the analysis of both dumping and injury remains deficient; (c) the Hon'ble Designated Authority cannot request the interested parties to file the data for the Period of Investigation when the Petitioners themselves have not provided this data which has been considered in the new Period of Investigation as accurate and adequate.*

The requisite information was subsequently provided to all the interested parties. Therefore the matter ends there. However for the sake of clarity and transparency, the Authority seeks to bring it to the notice of all concerned that while submitting the petition the DI had sought initiation of investigation based upon the 6 months investigation period. The Authority examined the same and was convinced that prima facie, dumping is established, so is the injury to the Domestic Industry as also the causal link between the two. The Authority was however of the view that for final determination, 6 months may be too short a period and prescribed a period of 9 months, by specifying a revised POI, extending the same by another three months. The analysis of revised POI is made in PF document, Disclosure statement as also the FF document being issued now. The Authority re-iterates that there has been no violation of Rule 6, as contended by the interested party above.

- e. The details have been adequately addressed in the Verification report as also in disclosure statement and need no further detailing.
- f. Their submissions on this score have been accepted and suitably addressed in these final findings.
- g. The details of not-allowing any adjustments on startup cost have been addressed in detail in the disclosure statement and need no further detailing.
- h. Calculation sheets of NEP have already been provided to them and therefore the allegation is vague and uncalled for. They are privy to NEP and calculations for the same have been provided to them.
- i. Return on investment has been allowed as per consistent practice followed by the Authority in all cases. There is no selective participation. The Authority fulfilled its obligation to seek details from the supporter who however only sought to support the petition without providing data. Further the Authority has conducted the investigation based upon data provided by the Domestic industry within the scope of AD Rules.
- j. Needs no comments as the Authority need not rely upon market intelligence when the verified data submitted by the responding exporters is available.
- k. They may refer to determination of month to month DM and IM as was requested by them and accepted by the Authority considering huge price variation in inputs on month to month basis during POI and adequately explained in the disclosure statement.

#### **Comments of Mitsui Chemical Inc Japan**

**99.** This producer, who had participated in the investigation by providing data on Cost of production and domestic sale in Japan and had made no direct export sales to India, has made following comments to the disclosure statement.

- a. It is reiterated that the normal value for the producer ought to be determined on the basis of the spot prices but not on the basis of the contract prices.
- b. In the disclosure statement, it has been mentioned that as no response was filed by the trader M/s Haresh Petrochem Singapore Pte Ltd., determination of individual dumping margin for the chain comprising of M/s Mitsui Chemicals Inc (MCI), Mitsui & Co. Ltd., Japan (MBK), Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore was not made. It is submitted that the methodology adopted in this case is contrary to the practice followed by the Authority in FDY from Indonesia, Korea, Malaysia and Taiwan and Polypropylene from Oman, Saudi Arabia and Singapore where under the similar circumstances, the individual dumping margin for the cooperative producer-exporter chain was determined even when one of the trader has not submitted any response. The producer also does not find any reason as to why the individual dumping margin for the cooperative producer-exporter chain can be denied in the present case. The producer, therefore, requests the Hon'ble Authority for the determination of individual dumping margin for cooperative producer-exporter chain as mentioned above.
- c. It is submitted that there is no analysis in the disclosure statement with respect to increase in the cost of sales due to increase in fixed cost and low production. There is also no analysis for the analysis of the fact of global meltdown as a cause of injury to the domestic industry. We request the Authority to kindly analyze these factors in the final

findings. There is also no analysis of the fact that the imports from countries already attracting ADD are almost 75% in POI which is more than imports from subject countries. We request the Authority to kindly analyze this factor in the final findings.

- d. There is no analysis of the market share of the other domestic producer as the same has increased over the injury investigation period. It clearly indicates that the decline in the market share of the domestic industry is due to the fact that the same has been taken over by the other domestic producer but not because of the dumped imports.
- e. It is submitted that the volume related figures of the domestic industry and of the supporting producer have been kept confidential whereas the same have been invariably disclosed in various other investigations.
- f. It has been mentioned in the disclosure statement that the landed value for the subject goods has been determined 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. It is submitted that while computing the landed value, the Custom Education Cess (CEC) has not been considered whereas CEC is also a part of the Basic Custom Duty and therefore, ought to be included in the landed value.

### **Examination by the Authority**

**100.** The Authority has examined the comments as above seeks to address each individual issue raised, as follows

- a. Normal value has been determined by taking the actual domestic selling price as indicated in the response, which is consistent with the practice followed by the Authority. Further all the adjustments have been allowed as claimed.
- b. The submissions on this score have been accepted and suitably addressed in this FF document.
- c & d Injury analysis within the requisite parameters as prescribed in AD Rules has been carried out.
- e. The information on production, capacity and capacity utilization has already been disclosed. The sale volumes have been declared in a proper indexed format.
- f. It is confirmed that education cess has been included for landed value calculations

### **Comments Sumitomo Corporation**

**101.** They have claimed that they were not allowed reasonable time to submit the comments to Disclosure statement. That apart they have sought individual dumping margin and their comments to the Disclosure statement can be summed up as follows

- i. Rule 17(3) requires DGAD to determine an individual dumping margin for every known 'exporter'
- ii. Export price can be the price in a sale to India or in a sale for exportation to India
- iii. Normal value determined for Japan is illegal as domestic sales reported by Sumitomo have been ignored

- iv. Sumitomo who has fully cooperated with DGAD shall not be clubbed together with other 'non-cooperating' exporters
- v. Action of DGAD is not consistent with the past practices of DGAD

### **Examination by the Authority**

102. The Authority takes note of above comments. It is denied that they were not given a reasonable time for providing to the Disclosure statement. Further it is concluded that it is the normal practice of the Authority to consider the export price of a co-operating exporter provided the complete chain is available and all the exporters / traders either respond or provide the data so that final value at which the goods landed in India can be determined. The calculation will start backwards from this landed value for determination of Net Export Price for comparison with Normal value and that of Landed Price with NIP, for determination of Dumping Margin and Injury Margin respectively. The Authority does not force the exporters to deal through agents or traders. It is the Business decision of each company. As already detailed in the disclosure statement, Sumitomo did not export to India directly but through a trader. The trader did not respond, nor did Sumitomo provide the details as to at what price the ultimate trader sold the PUC in India. In fact Sumitomo has also been acting as a trader and not a manufacturer. In such a case where the complete chain is not available, the onus is on the responding interested party to provide details so as to enable the Authority consider the same for individual determination. The submissions of Sumitomo therefore are without basis. As regards illegal Normal value, the subject interested party has used an uncalled for terminology. Further Sumitomo has sold in the domestic market after buying it from producers and the Authority has consistently followed the Rationale of going back to producer to determine the normal value and not to an exporter, so long as he is not stand alone and this rationale has been followed in the present case as well. In the earlier case of Sumitomo, of import of Acetone from Chinese Taipei etc. the Authority was required to determine country wise Normal Value. In the light of Amendment in the Act prescribing Individual Normal Value for all exporters, the same has to be worked out at the producer level as already been explained above, which in the instant case cannot be done as Mitsubishi failed to provide the data. Regarding Landed Price, the same has been calculated after taking into account the education Cess.

### **Recommendations**

103. 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 countries in the form and manner described hereunder.

104. 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.	2907.1110 and 2707.9900	PHENOL	Thailand	Thailand	M/s PTT Phenol Company Limited, Thailand	M/s PTT Phenol Company Limited, Thailand / M/s PTT Public Company Ltd.	10.03	MT.	USD
2.	Do	Do	Thailand	Thailand	M/s PTT Phenol Company Limited, Thailand	Mitsui & Co. Ltd., Japan (MBK) OR Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	Nil	MT.	USD
3.	Do	Do	Thailand	Thailand	Any combination other than at Sl. no. 1, and 2 above		172.53	MT	USD
4.	Do	Do	Thailand	Any other than Singapore, USA, South Africa, EU, Korea RP, Japan	Any	Any	172.53	MT.	USD
5.	Do	Do	Any other than Singapore, USA, South Africa, EU, Korea RP, Japan	Thailand	Any	Any	172.53	MT.	USD
6.	Do	Do	Japan	Japan	M/s Mitsui Chemical Inc., Japan (MCI)	Mitsui & Co. Ltd., Japan (MBK) OR Mitsui & Co. (Asia Pacific) Pte. Ltd., Singapore	468.17	MT.	USD

7.	Do	Do	Japan	Japan	Any combination other than at Sl. no. 6 above		547.03	MT	USD
8.	Do	Do	Japan	Any other than Singapore, USA, South Africa, EU, Korea RP, Thailand	Any	Any	547.03	MT.	USD
9.	Do	Do	Any other than Singapore, USA, South Africa, EU, Korea RP, Thailand	Japan	Any	Any	547.03	MT.	USD

105. Subject to the above the provisional findings, notified vide notification dated 3<sup>rd</sup> February, 2010, are hereby confirmed

#### **Further Procedures**

106. 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.

107. 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. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

P.K.Chaudhery  
The Designated Authority