

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
NOTIFICATION

New Delhi, the 7th January, 2008

Final Findings

Subject: Antidumping investigations involving imports of Phenol originating in or exported from USA, Korea-RP and Taiwan.

NO. 14/5/2006-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;

1. WHEREAS M/s Hindustan Organic Chemicals Ltd., Mumbai and M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited) (hereinafter referred to as the applicants) have jointly filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and the Rules, alleging dumping of Phenol (herein after also referred to as subject goods), originating in or exported from the USA, Korea-RP and Taiwan (herein after also referred to as subject countries) and requested for initiation of an investigations for levy of anti dumping duties on the subject goods.

2. WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicants on behalf of the domestic industry, issued a public notice dated 11th January 2007 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject countries, in accordance with the sub-Rule 5(5) of the Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

3. AND WHEREAS, the Designated Authority notified preliminary findings vide notification No. 14/5/2006-DGAD dated 29th August 2007 and recommended imposition of anti-dumping duty concerning imports of subject goods originating in or exported from **USA, Korea-RP and Taiwan.**

A. PROCEDURE:

4. The procedure described below has been followed:

(i) On 11th January 2007, the Designated Authority (hereinafter also referred to as Authority) issued a public notice published in The Gazette of India, Extraordinary, initiating an anti dumping investigation with regard to imports of Phenol originating in or exported from USA, Korea-RP and Taiwan, (hereinafter referred as subject countries). The Anti dumping proceeding was initiated following an application received from M/s Hindustan Organic Chemicals Ltd., Mumbai and M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited) (hereinafter referred as applicant) on behalf of the domestic industry representing a major proportion of the domestic production of said product. The application contained evidence of dumping of the said product from the subject countries and material injury resulting there from, which was considered sufficient to justify the initiation of the proceedings. The Authority while considering the petition excluded M/s SI Group-India Ltd., Mumbai (formerly known as Schenectady Herdillia Limited) as a part of the domestic industry as they had substantial imports during the Period of Investigation.

(ii) The Authority notified the Embassy of USA, Korea-RP and Taiwan in India about

the receipt of fully documented application made by the applicant before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.

(iii) According to sub rule (2) of the rule 6 supra, the Authority forwarded copy of the said initiation notification to the known exporters, importers, industry associations, embassy of the subject countries and to the applicant and gave them an opportunity to make their views known in writing.

(iv) According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of non-confidential version the application to all the known exporters in subject countries and Embassy of USA, Korea-RP and Taiwan in India. According Rule 6 supra, the Authority provided a copy of the relevant questionnaire to all the known exporters and

Embassy of USA, Korea-RP and Taiwan in India. The Embassy of USA, Korea-RP and Taiwan in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters and producers were also sent to the respective embassies along with the names and addresses of the known exporters.

(v) The Authority sent questionnaires, to elicit relevant information, to the following known exporters from USA, Korea-RP and Taiwan.

- a) M/s. Deckota Gasification Company

1600 East Interstate Avenue,

PO Box No. 5540, Bismarck Nd 58506-5540, USA.
- b) M/s. Dow Chemical Co.

(979) 238-2011

2301 N Brazosport Blvd

Freeport, Tx 77541, USA.

c) M/s. Georgia Gulf

Pasadena

3503, Pasadena Freeway

PO Box No. 1959 Zip 77501 Pasadena Texas, USA.

d) M/s. Shell Chemicals

Deer Park Chemical Plant & Refinery

5900 Highway 225

Deer Park Texas, USA.

e) M/s. Formas Chemicals & Fibre Corporation

Formosa Plastics Group

201 Tung Hwa North Road

Taipai (Taiwan Roc.)

f) M/s. Kumho P&B Chemicals Inc.

319, Hwachi- Dong,

Yeosu City, Cholla Nam-Do, Korea RP.

(vi) None of these exporters responded to the questionnaire in response to the above notification,

(vii) A copy of initiation notification along with the importers questionnaire was also sent to the following known importers and users of subject goods in India calling for necessary information in accordance with Rule 6(4).

1) M/s. C.J. Shah and Company

105, Bajaj Bhawan

10th Floor, Nariman Point

Mumbai- 400021

2) M/s. Haresh Kumar and Company

1212, Maker Chambers

5 Jammalal Bajaj Road,

Nariman Point Mumbai-400021.

3) M/s. PCL Industries

M-105, Connaught Place

New Delhi-110001

4) M/s. Kantilal Manilal and Company

16, Princess Street

Mumbai-400003.

5) Sonkamal Enterprises

- 10, Dev Darshan Apartment
Old Nagardas Road Andheri (East)
Mumbai-400 069
- 6) M/s. Khetan Brothers
C-17, Dalia Industrial Area
Off New Link Road,
Opposite Laxmi Industrial Estate
Andheri (West) Mumbai-400 058
- 7) M/s. Shubham Dyes & Chemicals Limited
1/26, Roop Nagar, Delhi-110 007
- 8) Acron Enterprises
Plot No. 218-219/3, G.I.D.C, Naroda, Ahmedabad
- 9) M/s. Naiknavare Chemicals Limited
1, Vidya Bhavan, 121, Keluskar Road
Shivaji Park, Dadar (West) Mumbai (Maharashtra)
- 10) M/s. Paras Dyes & Chemicals 12th Floor, Vijaya Building
17 Barakhamba Road, New Delhi-110001
- 11) M/s. Torrent Pharmaceuticals Limited,
Ashram Road,
Ahmedabad Road 380009 Gujrat
- 12) M/s. United Phosphorus Ltd.
Eadymoney Terrace, 167,
Dr. Annie Basant Road
Worli, Mumbai-400 018
- 13) M/s. Resins & Plastic Ltd.
Cross Rd. B, Mumbai-400093
- 14) M/s. Kailash Polymers
60, Krishna Market,
Kalkaji, New Delhi.
- 15) Centrum Metalics Pvt. Ltd.
6/221, Deodhar Road,
Matunga-400 019 Mumbai
- 16) M/s. Wonder Laminates Pvt. Ltd.
14, Bhasa, Diamond Harbor road, Kolkata.
- 17) M/s. Meghdev Enterprises
P.K. House, H/H M.J. Library,
Ellisbridg, Ahmedabad
- 18) M/s. Satguru International
204-D, Pocket-12, Jasola Vihar,
Opp. Appolo Hospital, New Delhi.
- 19) M/s. High Polymer Labs Ltd.

- 803, Vishal Bhavan,
95, Nehru Place, New Delhi.
- 20) M/s. Rainbow colours & Chemicals
14/A, Bhavik Complex
Ghod Dod Rd., Surat, Gujrat
- 21) M/s. M/s. Bleach Marketing Pvt. Ltd.
120, Bleach Chem Compound,
Nr. Chandola, Ahmedabad
- 22) M/s. Karmen International (P) Ltd.
31A/20, NP, Sidco Industrial Estate, Che, Chennai
- 23) M/s. Krishna Antioxidants Pvt. Ltd.
Lopes Maner, I C Colony,
Near Chandra Ho, Mumbai
- 24) M/s. NGP Industries Ltd.
M-13, Punj House, New Delhi
- 25) M/s. Farmson Pharmaceutical Gujrat Ltd. 5th Floor, Commerce Centre,
Sayajigunj, Baroda.
- 26) M/s. India Glycols Ltd.
C-124, Okhla Industrial Area, Phase-I, New Delhi.
- 27) M/s. Singh Plasticisers and Resins (I) Pvt.
B-316, 3rd Floor,
Somdutt Chamber-1 Bhika, New Delhi
- 28) M/s. National Plywood Industries Ltd.
5, Fancy Lane, 700 001 Kolkata.

(viii) In response to the above notification, none of the importers or users except M/s Century Ply Ltd. (one of the users of subject product), filed a response to the questionnaire in the form and manner prescribed. The information furnished is not reliable for the purpose of taking inputs that may have an impact on these findings. For e.g. in Annexure 2 rate per MT of the subject goods has been worked out as Rs. *** per MT. Therefore none of the information contained in this Questionnaire response has been considered for the purpose of these investigations. Laminate Manufacturers Association submitted arguments post oral hearing, opposing imposition of ADD. That apart, M/S Centuruy Ply, a part of the Laminate Manufacturers Association also submitted arguments post oral hearing, opposing the antidumping duty. Incidentally a representative of Century ply was also present in the oral hearing on behalf of Laminate Manufacturers Association which inter-alia would mean that Century Ply participated in the oral hearing. However, none of these parties have provided any type of information in the form of logistics / statistics to the Authority that would provide the authority a base for determining Dumping or Injury margin, different fro what has been claimed by the petitioner or the one determined by the authority based uupon available information. Instead, they have merely filed their objections, which have been considered to the extent they have been found relevant to the investigation.

(ix) The Authority notified Preliminary findings vide Notification no. 14/5/2006-DGAD dated the 29th August,2007 and requested the interested parties to make their views known in writing within forty days from the date of its publication.

(x) The Central Govt. imposed the provisional duties vide notification no.105/2007 dated 19.09.2007.

(xi) The Authority held a public hearing on 9th October 2007 to hear the interested parties orally, which was attended by interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. Authority in this finding has considered the written submissions thus received from interested parties. The parties were also asked to file rejoinder submissions on views expressed by other interested parties.

(xii) No arguments or submissions were made by other interested parties (other than the domestic industry) before notifying of preliminary findings. However, arguments that arose and have been put forth by various interested parties after the preliminary findings have been dealt in the present finding. Further, the comments

by the interested parties on the present disclosure statement have been appropriately dealt in the Final Findings.

(xiii) The Authority kept available non-confidential version of the evidences/submissions presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties.

(xiv) **** In this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

(xv) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings have been disclosed to known interested parties on 3rd December 2007 and comments received on the same have been considered in present Final Findings.

(xvi) The investigation of dumping covered the period from 1st July 2005 to 30th June 2006 (Also called the period of investigation or POI). The examination of trends in the context of injury analysis covered the period from 1st April 2003 to the end of period of investigation. (Also called Injury period)

(xvii) The Authority conducted on the spot investigation and verified all the information provided by the domestic industry. The cost of the production of the domestic industry was also analysed to work out the cost of the production and the cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the domestic industry so as to ascertain if anti Dumping duty lower than dumping margin would be sufficient to remove injury to the domestic Industry.

(xviii) 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 the period of investigation

(xix) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority shall record findings on the basis of the facts available.

(xx) The Authority has considered data relating to cost of production and selling price of all interested parties as confidential as it would give competitive advantage to their competitors. The other information has not been considered as confidential unless the responding party has given sufficient justification for keeping the information as confidential.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLES.

B.1 VIEWS OF THE DOMESTIC INDUSTRY

5. Following issues have been raised by the domestic industry with regard to product under consideration and like article:

- (i) Phenol is an organic chemical classified under chapter 27 and chapter 29 of the customs Tariff Act under the sub-heading 29071110, 27079900 respectively. The domestic industry has submitted that duty should be recommended on both the classification.
- (ii) Phenol produced by the domestic industry and imported from the USA, Korea RP and Taiwan are like product.
- (iii) Phenol 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.
- (iv) There is no difference in Phenol produced by the Indian industry and Phenol exported from the subject countries. Phenol produced by the Indian industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics
- (v) Phenol is used in the manufacture of Phenol Formaldehyde Resins, Laminates, Plywood, Particle Board, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl oxide etc.
- (vi) There is no difference in the Phenol produced by the domestic industry and imported from subject countries. Phenol produced by the domestic industry and imported from subject countries are

comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology (followed by most of the producers world over), functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used the two interchangeably. Phenol produced by the petitioners and imported from subject countries is like article.

B.2 VIEWS OF THE IMPORTERS, CONSUMERS, EXPORTERS AND OTHER INTERESTED PARTIES

6. 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.

B.3 EXAMINATION BY THE AUTHORITY

7. The product under consideration is Phenol originating in or exported from USA, Korea-RP and Taiwan. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms – bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide etc. This product is classified under Customs Tariff heading no. 2907.11 and 2707.99 as per Indian Trade Classification. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation

8. Rule 2(d) of the Anti-dumping Rule specifies that like articles mean an article, which is identical and alike in all respects to the product under investigation or in the absence of such an article, another article having characteristics closely resembling those of the articles under examination.

9. The petitioner claimed that the goods produced by him are like articles to the goods originating in or exported from subject countries. No other interested party has raised any objection to the claim of the Domestic Industry on this issue. In view of the above the Authority holds that phenol produced by the domestic industry and the one being imported from the subject countries as like articles within the meaning of the rules.

C. DOMESTIC INDUSTRY AND STANDING

C.1 VIEWS OF THE DOMESTIC INDUSTRY

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

(i) The petition was jointly filed by M/s. Hindustan Organic Chemicals Ltd. and SI Group (formerly known as Schenectady Herdillia Ltd.). There are three companies in India who created capacity for production of Phenol namely Hindustan Organic Chemicals Ltd., SI Group (formerly known as Schenectady Herdillia Ltd and Neyveli Lignite. However Neyveli Lignite has not produced/sold phenol in the last three years, as per the annual report of the company. The petitioners, therefore, 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.

C.2 VIEWS OF THE EXPORTER, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES

11. The Authority notes that none of the producers of the subject goods in Korea-RP, Taiwan or USA has responded to the Designated Authority. However M/S Century Ply Ltd., one of the users of the subject goods has raised certain objections as under;

C.2.1 Century Ply Ltd.

12. The authority is required to examine the performance of SI.Herdelia.

13. S.I. Herdilia has also imported subject goods and huge demand-supply gap has been overlooked by the Authority while recommending Preliminary Findings.

14. S.I. Herdilia has lower cost of production compared to HOCL.

C.3. EXAMINATION BY THE AUTHORITY

15. The Authority has examined the contention made by this user in this regard as well as the evidence available on record. 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

16. Authority notes that one petitioner SI Group (formerly known as Schenectady Herdillia Ltd.) has imported the subject goods during the POI from the subject countries. It is noted that the imports made by the company are in duty free category and in duty paid category, both substantial in volume. In view of the facts & circumstances of the present case, the Authority has considered it appropriate to exclude SI Group from the scope of Domestic Industry.

17. The petitioners were directed to provide injury information after excluding SI Group, which was provided by them. This information was sent to other interested parties participating in the investigations and they were advised to file their comments, if any, on the revised injury information.

18. There are three companies in India who created capacity for production of Phenol namely Hindustan Organic Chemicals Ltd., SI Group (formerly known as Schenectady Herdillia Ltd and Neyveli Lignite. It was however seen from annual reports of Neyveli Lignite that the company has not produced product under consideration in the period of investigation. Authority has considered it appropriate to exclude SI Group from the scope of Domestic Industry as detailed in para 16 and 17 above. M/s.

Hindustan Organic Chemicals Limited, therefore, accounts for a major proportion in Indian production and constitutes domestic industry within the meaning of the Rules.

19. It has been argued about imports having been made by SI Group. The Authority however notes that the fact of SI Group being an importer is relevant in determining scope of the domestic industry. While petitioners have argued for inclusion of SI Group within the scope of domestic industry, these interested parties have not argued that SI Group should be included within the scope of the domestic industry. The Authority has already excluded SI Group from the scope of the domestic industry.

D. OTHER ISSUES

D.1 VIEWS OF THE DOMESTIC INDUSTRY

20. Given the nature of product and the volatility in the input for the production, the benchmark form of duty is not an appropriate form of duty.

21. The Designated Authority, as a special case, had granted two weeks time to Laminates Association and its members to provide relevant information to the Designated Authority. However, no information has been provided either by the association or by the laminate manufacturers. On this account alone, their objection must be rejected.

D.2 VIEWS OF THE EXPORTER, IMPORTERS, CONSUMERS AND OTHER INTERESTED PARTIES

22. The Authority notes that none of the producers of the subject goods in Korea-RP, Taiwan or USA has responded to the Designated Authority.

D.2.1. Century Ply Ltd. and Laminate Manufacturers Association

23. The domestic industry has not disclosed any information about 'long term' plant shut down in their petition for imposition of anti-dumping duty. The authority has not examined the impact of shut down before initiation of the investigation. The exact period of shut down has also not been disclosed even in the Preliminary Findings. Before shut down of production, the performance of D.I. for 2004-05 has shown remarkable results in spite of imports from subject countries.

24. In spite of huge gap in demand and supply Domestic, Industry is exporting the subject goods and the export by D.I. and its effect of user industry do not bear a mention in the Preliminary Findings..

25. The Domestic Industry intentionally did not disclose names of major users of Phenol in India to avoid any kind of opposition.

26. Information with regard to imports made by SI Group has not been disclosed.

Petitioners have claimed excessive confidentiality on all the issues.

27. The petition filed does not appear to have been examined to ensure that the same justified initiation.

28. The petition filed is not complete as of sections of application as the Performa have not been fully answered, nor necessary evidence has been provided.

29. Domestic industry has been referred to the BIFR prior to the period of investigation. As the Authority may be aware that the reason for referring the matter to the BIFR is the fact that there has been a complete erosion of funds i.e., the accumulated losses exceeded the shareholders funds. We understand that domestic industry was registered as a sick industrial company by the BIFR as per provisions of SICA, vide Case No.501/2005. The Authority may please call for all the documents/submissions relating to the BIFR case including the order passed by the Board. In this connection, kind attention is invited to the Annual Report of 2004-05 of HOCL, the relevant excerpts of which are as follows:

"Your company had been incurring losses from the financial year 1997-98 to 2003-04 and was referred to BIFR as a sick unit after erosion of Net Worth at the end of the financial year 2003-04."

30. The fact that the company has been referred to BIFR makes it clear that the poor performance of the company is on account of their inherent difficulties, which have been acknowledged in several reports of the government. It is also important to note that even the BIFR application was made prior to the application for anti-dumping on phenol. Under the circumstances, it is apparent that the problems cannot be attributed to the alleged dumping from the subject countries.

31. The petition is deficient in many respects. Adequacy and accuracy of the evidence has not been examined by the Authority. Authority should not have initiated investigations based on such deficient petition.

32. The injury information in the petition is not consistent with the Trade Notice issued by the Authority. The petition should have contained data for one more preceding year.

33. There was no justification for issuance of preliminary findings.

34. The Authority has not disclosed the methodology followed for the determination of non-injurious price and calculations of injury margin.

35. Sudden shut down of M/s. HOCL plant for no plausible reasons, thus creating huge demand/supply gap to the tune of two and a half times of the total Indian capacity(the demands standing at 152415 M.T. with only 40,000 M.T. capacity of Domestic Industry. Domestic industry could not meet the demand in the country.

36. Claim of non-availability of raw material to be a reason for shut down is fanciful and SI Herdilia, supporter of the present petition has been regularly sourcing raw material from international market and has not faced any constrained in terms of availability of raw material.

37. The domestic industry deliberately chose July05 to June 06 as POI to project increased importation and decline in production to show the same as injury due to importation. Wrong period of investigation has been chosen.

38. The petition filed by Domestic Industry is a blatant example of abuse of process of law and legitimate trade remedy measures for own objectives of Petitioner Company for creating monopolistic situation in the domestic market for their own private profits at the expenses of entire user industry which is not only facing shortage of supply of Phenol in India but also has to face abrupt behavior of domestic producers who refuses to supply the requisite quantities whenever an order is placed upon them.

39. Authority should disclose the price undercutting individually for each of such country.

40. Authority has not disclosed landed value of imports for previous years in the Preliminary Findings to enable them to compare the price trends of previous years.

41. The Authority has erred in overlooking interests of consumer industry and Rule 6(5) of Anti Dumping Rules has not been followed as arguments submitted by the industrial users regarding their plights has not been examined in the Preliminary Findings.

42. Investigations should be terminated in accordance with the Rules 14 of Anti Dumping Rules as Domestic Industry has concealed vital facts from the Designated Authority, which have direct bearing on the case and presented staged injury.

D.2.2 EXAMINATION BY THE AUTHORITY:

43. Information related to long term plant shut down of domestic industry has been disclosed in 2005-06 annual report, which was available to interested parties for inspection and comments.

44. The export volume of the domestic industry is insignificant during POI. Therefore, exports could not have affected overall performance of the domestic industry.

45. The notice of initiation was issued in the Gazette and all parties were expected to be aware of the same. Moreover a copy of the same was also sent to leading Trade Associations including Assocham, FICCCI, CII, as also publishing houses Like Excise Law Times.

46. Imports by SI – Authority have excluded SI from the scope of the domestic industry and therefore any argument with regard to imports by SI is not relevant.

47. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, 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.

48. The information provided by the applicant showed sufficient prima facie justification to initiate investigation. On being satisfied, the Authority issued a public notice dated 11th January 2007, initiating antidumping investigation concerning imports of the subject goods originating in or exported from USA, Korea RP and Taiwan.

49. The petition filed by the domestic industry was examined in accordance with requirements under Rule 5 and the investigations were initiated only after satisfying with regard to adequacy and accuracy of the evidence contained in the petition.

50. The Authority notes that the status of the domestic industry is well within the knowledge and there is no suppression of information by the company in this regard. The issue has been examined earlier also by the Authority during the course of investigation relating to Acetone also, wherein the Authority has noted as follows -

“ The Authority has examined the issue of HOCL under the BIFR and noted that the reason cited by the applicant before the BIFR was that “the sales at Kochi unit of the company which in fact is profit making unit suffered in 2001-02 due to dumping of products by overseas manufacturers causing severe squeeze in the margins resulting in losses. The Authority further notes that Kochi unit of the company, which basically manufactures phenol and acetone, was making profits during 2002-06, however, the profit was considerably reduced during 2005-06. The Authority also notes that Rasayani unit of the company was making losses during 2000-06. The Authority, therefore, holds that mere registration of unit under SICA would not make it ineligible to seek relief under Anti-dumping Investigations, particularly, when the relevant unit of the company was not suffering losses because of any other reasons.”

51. Trade Notice requires injury information for the dumping period of investigation and three preceding years. Information for this period was contained in the petition and has been considered, examined and relied upon for injury determination.

52. The Authority has issued preliminary findings having satisfied itself with regard to the need for the same.

53. The Authority has followed the consistent practice with regard to determination of non-injurious price and injury margin. Methodology followed for non-injurious price determination is being separately disclosed in the disclosure. Injury margin has been determined as the difference between non-injurious price and landed price of imports.

54. The Authority notes that the purpose of anti dumping duties is not to prevent imports into the Country, but to restrict import at dumping prices. Imposition of anti dumping duties would not restrict availability of the product in the country.

55. The Authority notes that the reason for shut down has been mentioned in the annual report of 2005-06 of the company. Merely because other Indian producer did not face raw materials difficulties during this period, does not imply that HOCL (D.I) could not have faced such difficulty.

56. The Authority considers that fixation of the present POI has not in any manner vitiated the present determination because of shutdown faced by HOCL in 2005-06. Details to this effect have already been elaborately described in Para 31 of the Preliminary Findings. In fact, during POI there was no internal factor which would act as a constraint to operate the plant at full capacity, except adverse market conditions.

57. Authority notes that the present investigation is against dumping of the product causing injury to the domestic industry. Injury to the domestic industry is determined considering, inter-alia, profit earned by the domestic industry during the injury period. It cannot therefore be said the impact of imposition of ADD is to permit domestic industry to earn abnormal profits, particularly when India is following "lesser duty rule" where the quantum of ADD is restricted to injury margin.

58. The price undercutting has been determined in the disclosure statement separately for each country, as demanded by interested parties. Further, landed price of imports has also been appropriately determined and disclosed.

59. The Authority has provided sufficient opportunity to the interested parties as required under rule 6 (5). The fact is that these parties have failed to provide any information, except arguments opposing imposition of ADD.

E. De Minimis Import Volumes

60. As per the import data received by the Authority from the Directorate General of Commercial Intelligence and Statistics (DGCI&S), the imports of the subject goods from each of the subject countries are above the de minimis level.

F. DETERMINATION OF DUMPING MARGIN

61. The Authority notes that Rule 6.8 of the antidumping Rules provide that in a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it.

62. Article 6.8 of the Agreement, read with paragraph 1 of Annex II, provides that as soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

63. The Authority notes that the exporters and the governments of the subject countries have been adequately notified about the requirement of submission of information in the form and manner prescribed and adequate opportunity was also granted to the parties to make their submissions in this regard. Therefore, in the absence of cooperation from the subject country, the Authority has determined the dumping margins in respect of the subject country on the basis of facts available.

G. Normal Value and Export Price

G.1 Korea-RP

G.1.1 Normal Value for Korea-RP

64. No exporter has responded to the initiation notification and submitted any information. In absence of any data, the Authority has relied upon the facts available as per Rule 6(8) of the Anti-dumping Rules, to determine the normal value. The normal value has been constructed on the basis of facts available. For constructing normal value, the price of Benzene has been taken from the data of DGCIS and for Propylene from ICIS LOR Asia. The consumption norms of the domestic industry and also standard input output norms (SION) have been relied upon. For utilities, consumption norm and prices of the domestic industry has been taken, except for power. For power, the rate has been taken as per the available information of power rate in the exporting country. Conversion cost which includes labour, depreciation and manufacturing expenses have been taken as per domestic industry. SGA, including interest, has been taken as per domestic industry. The profit margin @ **** has been considered on the cost of production. By adopting this methodology, the constructed normal value for bulk phenol has been calculated as US\$ ****PMT. For packed material, the cost of packing material of the domestic industry has been added to calculate the normal value. By this method the normal value for packed phenol has been calculated as US\$ **** PMT.

G.1.2. Export price for Non-cooperating Exporters

65. The data reported by the DGCI&S for exports from Korea-RP has been relied upon to calculate the ex-factory export price. The DGCIS data shows import of both bulk and packed material during the POI. Adjustment on account

of ocean freight, marine insurance, commission, inland freight, port expenses, bank charges, and credit cost have been made to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price has been calculated as US\$ **** PMT for bulk material. For packed material, the ex-factory export price calculated as US\$ **** PMT.

G.2. Taiwan

G.2.1. Normal Value for Taiwan

66. No exporter from the Taiwan has responded to the Initiation Notification. In absence of any response, the Authority has relied on the facts available as per Rule 6(8) of the Anti-dumping Rules to determine the normal value. For constructing normal value, the price of Benzene has been taken from the data of DGCIS and for Propylene it has been taken from ICIS LOR Asia. The consumption norms of the domestic industry and SION have been relied upon. For utilities, consumption norm and prices of the domestic industry have been taken except for power for which the rate has been taken as per the available information of power rate in the exporting country. Conversion cost has been taken as per the domestic industry. SGA including interest has been taken as per domestic industry. The profit margin @ **** has been considered on the cost of production. By adopting this methodology, the constructed normal value for bulk phenol has been calculated as US\$****MT. For packed material, the cost of packing material of the domestic industry has been added to calculate the normal value. By this method the normal value for packed phenol has been calculated as US\$**** PMT.

G.2.2. Export price for Non-cooperating Exporters

67. The data reported by the DGCIS for exports from Taiwan has been relied upon to calculate the ex-factory export price. The DGCIS data shows export of both bulk and packed material during the POI. Adjustment on account of ocean freight, marine insurance, commission, inland freight, port expenses, bank charges, and credit cost have been made to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price has been calculated as US\$ **** PMT for bulk material. For packed material, the ex-factory export price calculated as US\$ **** PMT.

G.3. USA

G.3.1. Normal Value for USA

68. No exporter from USA has responded to the initiation notification and submitted any information. In absence of any data, the Authority has relied on the facts available as per Rule 6(8) of the Anti-dumping Rules to determine the normal value. For this purpose, average price for Benzene and Propylene reported in ICIS LOR (US Gulf) for the period of investigation has been taken as normal value. The consumption norms of the domestic industry and SION have been relied upon. For utilities, consumption norms and prices of domestic industry during POI have been considered, except for power, for which the rate has been taken as per the available information regarding power rate in the exporting country. The conversion cost has been taken as per the domestic industry. SGA, including interest has been taken as per domestic industry. The profit margin of **** has been considered on the cost of production. By adopting this methodology, the constructed normal value for bulk phenol has been calculated as US\$**** PMT. For packed material, the cost of packing material of the domestic industry has been added to calculate the normal value. By this method the normal value for packed phenol has been calculated as US\$ ****MT.

G.3.2. Export price for Non-cooperating Exporters

69. The data reported by the DGCIS for exports from USA has been relied upon to calculate the ex-factory export price. The DGCIS data shows export of both bulk and packed material during the POI. Adjustment on account of ocean freight, marine insurance, commission, inland freight, port expenses, bank charges and credit cost have been made to arrive at the ex-factory export price. By adopting the above method, the ex-factory export price has been calculated as US\$ **** PMT for bulk material. For packed material, the ex-factory export price calculated as US\$ **** PMT.

H. Dumping Margin

70. On the basis of normal values and export prices as determined above, the dumping margins for exporters are determined as per table below. As already detailed no exporter response was received and therefore all the exporters from subject countries have been treated as non-cooperating exporters:-

IN US\$ (PMT)

Exporter/Producer	Normal Value-	Normal Value-	Export Price-	Export Price-	Dumping Margin	Dumping Margin	Weighted Dumping
From	Bulk	Packed	Bulk	Packed	- Bulk	- Packed	Margin –
Korea-RP	***	***	***	***	***	***	27.28%
Taiwan	***	***	***	***	***	***	21.20%
USA	***	***	***	***	***	***	33.45%

71. The dumping margins so determined are significant and above de-minimus-level.

I. INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINKS

I.1. Views of the domestic industry

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

- a) Export price from the subject counties has remained at dumped level during POI. Further, these prices have not increase proportionate to increase in input prices from base period to POI.
- b) Production, sales volumes and capacity utilization of the domestic industry declined after showing improvements in 2004-05.
- c) Profit/Loss (PBT, PBIT and PBDIT) of the domestic industry have all shown significant decline after improvement up to 2004-05.

- d) Market share of the domestic industry declined. 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 has forced the domestic industry to reduce the price steeply during 2005-06 and proposed 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.
- h) Salary & wages: - Salary and wages with the domestic industry increased.
- 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. The exporters further reduced the selling price and as a result, the domestic industry reduced the selling price further and the process continued. 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.

- o) Petitioners conducted extensive analysis of exports from subject countries to world over in terms of its likely impact on the domestic industry. World exports of subject countries are showing increasing trends, clearly implying surplus unutilized capacities with the Foreign Producers which are likely to be offloaded to India at dumped prices.

I.2. Examination by the Authority

I.2.1 Cumulative assessment of injury

73. As per annexure-II (iii) of the Rules, in case, imports of a product from more than one country are being simultaneously subjected to Anti-dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that

- (a) The margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% and cumulatively account for more than 7% of the imports of like article, and,
- (b) Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

74. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.

75. With a view to assess the conditions of competition between imported products and the like domestic product, the Authority notes that -

- i) The subject goods have been imported from the subject countries under the same tariff classification;
- ii) The Authority has found that the imported subject goods are commercial substitutes of the domestically produced Phenol.
- iii) The information furnished to the Authority gives a reasonable indication that the exports made from the subject countries compete in the same market, as these are like products.

76. Therefore, the Authority notes that it is appropriate to, cumulatively assess the effect of imports of the subject goods on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.

77. The Authority has taken note of various arguments put forth by the Domestic Industry (There was no response from other interested parties).

78. Annexure II of the AD Rules requires that determination of injury shall involve an objective examination of both:

- (a) The volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and
- (b). Consequent impact of these imports on domestic producers of such Products.

79. The Authority while examining the volume of dumped imports is required to examine whether there has been a significant increase in the 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 prices to a significant degree, or prevent price increase which otherwise would have occurred to a significant degree.

80. For the purpose of injury analysis the Authority has examined cumulative effect of dumped imports of the subject goods on the domestic industry and its effect on all relevant Economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any.

81. Since significant dumping margins have been established for the exports from the subject countries, entire exports from the subject countries have been treated as dumped imports for the purpose of injury analysis and causal link examination.

I.2.2 Volume Effect of dumped imports and Impact on domestic Industry

82. The Authority collected transaction wise details of imports of subject goods from DGCI&S. As per the data, cumulative imports from subject countries have increased significantly in absolute terms and in relation to imports in India. Imports from Korea-RP, Taiwan and USA constitute 10.66%, 27.21% and 20.59% respectively in the POI. The imports from subject countries are more than de-minimis individually. The Authority notes that although the share of imports from USA has been on decline in POI compared to period of injury, (Down to 20.59% in POI as against 35.34% in 2003-04) the share of subject countries in imports, which was 35.34% in 2003-04 increased to 58.46% in POI.

I.2.2.1 Import Volumes and share of subject country

	Units	2003-04	2004-05	2005-06	POI
Korea RP	MT	***	***	***	***
Taiwan	MT	***	***	***	***
USA	MT	***	***	***	***
Subject Countries	MT	***	***	***	***
Trend	Indexed	100	75	240	232
Other countries	MT	***	***	***	***
Trend	Indexed	100	113	89	90
Total Imports	MT	***	***	***	***
Trend	Indexed	100.00	99.40	142.82	140

I.2.2.2. Market share in imports

Korea RP	%	***	***	***	***
Taiwan	%	***	***	***	***
USA	%	***	***	***	***
Subject Countries	%	***	***	***	***
Trend	Indexed	100.00	75.82	168.33	165.42
Other countries	%	***	***	***	***
Trend	Indexed	100.00	113.22	62.65	64.24
Production of DI	MT	***	***	***	***
Imports from subject countries	MT	***	***	***	***
Imports from subject countries as a percentage of production of DI	%	***	***	***	***

I.3 Demand, Output and Market shares

I.3.1 Growth In Demand

I.3.1.1 Growth in Demand including Captive Consumption

	Unit	2003-04	2004-05	2005-06	POI
Domestic Industry	Mt	***	***	***	***
Other Producers	Mt	***	***	***	***
Total Import	Mt	***	***	***	***
Total Demand	Mt	***	***	***	***
Trend	Indexed	100.00	104.79	108.66	110.36

I.3.1.2 Growth in Demand excluding Captive Consumption

	Unit	2003-04	2004-05	2005-06	POI
Domestic Industry	Mt	***	***	***	***
Other Producers	Mt	***	***	***	***
Total Import	Mt	***	***	***	***
Total Demand	Mt	***	***	***	***
Trend	Indexed	100.00	105.96	109.75	111.34

83. Demand of subject goods has been determined by addition of domestic sales (including captive sales) of domestic industry 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 10% during POI as compared to base year i.e. 2003-04.

84. The growth in demand of subject goods excluding captive sales also shows similar trends. As compared to base year it grew by 11%.

85. Imports from subject countries show a growing trend in relation to production of the domestic industry. The imports from subject countries was only 58% in relation to the production of the domestic industry in the base year 2003-04, which has gone up in percentage terms to 156.20% in POI.

I.4 Capacity, production and capacity utilization of the Domestic Industry

	Unit	2003-04	2004-05	2005-06	POI
Installed Capacity	Mt	***	***	***	***
Trend	Indexed	100.00	100.00	100.00	100.00
Production	Mt	***	***	***	***
Trend	Indexed	100.00	120.72	71.72	85.68
Capacity Utilization (%)	%	***	***	***	***
Trend	Indexed	100.00	120.72	71.72	85.68

86. Data of domestic industry on capacity, production and capacity utilisation reveals that the capacity of the domestic industry was *** MT during 2003-04 and had not changed during POI. The production of subject goods was *** MT during 2003-04 after rising in 2004-05 to the level of *** MT declined to *** MT during 2005-06 and was *** MT during POI. The capacity utilisation of domestic industry, which was 121% during 2004-05, declined to 86% during POI, as compared to 100% in the base year 2003-04. The Authority notes that production in 2005-06 suffered because of longer shutdown taken by the Company due to difficulties in procurement of major raw material. However, the company had resumed full production in POI and could have produced to the extent of the volumes achieved in 2003-04 and 2004-05. During POI, while plant was ready to produce up to its installed capacity, it could operate only up to 86% of the capacity.

I.4.1 Sales volume of Domestic Industry

	Unit	2003-04	2004-05	2005-06	Annualized POI
Domestic Industry	Mt	***	***	***	***
Trend	Indexed	100.00	117.78	74.88	86.60

87. The data on sales indicates that the domestic industry sold *** MT of subject goods during 2003-04 which declined to *** MT during POI. The sale of domestic industry thus fell to 87% during POI as compared to base year 2003-04. The Authority notes that the domestic industry could sell *** MT during 2004-05 and sales during POI were significantly lower than these levels achieved earlier.

88. 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 2003-04 though sales during POI were higher than the sales achieved in 2005-06. As noted above, production during 2005-06 suffered on account of longer shutdown taken by the company, so did the sales. It is also noted that during the year 2004-05, domestic industry could sell *** MT as against *** MT during POI.

I.4.2 Demand and Market Share including captive Consumption

	Unit	2003-04	2004-05	2005-06	POI
Domestic Industry	Mt	***	***	***	***
Other Producers	Mt	***	***	***	***
Total Import	Mt	***	***	***	***
Total Demand	Mt	***	***	***	***
Trend	Indexed	100.00	104.79	108.66	110.36
Market share in demand					
Domestic Industry	%	***	***	***	***
Trend	Indexed	100.00	112.40	68.91	78.46
Other Producers	%	***	***	***	***
Trend	Indexed	100.00	96.30	74.68	73.04
Korea RP	%	***	***	***	***
Taiwan	%	***	***	***	***
USA	%	***	***	***	***
Subject Countries	%	***	***	***	***
Trend	Indexed	100.00	71.92	221.25	209.86
Import from Other countries	%	***	***	***	***
Trend	Indexed	100.00	107.40	82.34	81.49

I.4.3. Demand and Market Share excluding captive Consumption

	Unit	2003-04	2004-05	2005-06	POI
Domestic Industry	Mt	***	***	***	***
Other Producers	Mt	***	***	***	***
Total Import	Mt	***	***	***	***
Total Demand	Mt	***	***	***	***
Trend	Indexed	100.00	105.96	109.75	111.34
Market share in demand					
Domestic Industry	%	***	***	***	***
Trend	Indexed	100.00	111.16	68.23	77.78
Other Producers	%	***	***	***	***
Trend	Indexed	100.00	99.55	75.96	73.80
Korea RP	%	***	***	***	***
Taiwan	%	***	***	***	***
USA	%	***	***	***	***
Subject Countries	%	***	***	***	***
Trend	Indexed	100.00	71.13	219.05	207.90
Import from Other countries	%	***	***	***	***
Trend	Indexed	100.00	106.21	81.52	80.74

89. Imports from subject countries have increased significantly in relation to consumption India from 16.74% in 2003-04 to 35.13% in POI.

90. There has been a steady growth in demand of the subject goods. Over the base year 2003-04, the demand in POI was higher by 10%. The share of domestic industry which was at 27.21% in 2003-04 declined to 21.35% during POI. During the same period the share of imports from subject countries which was 16.74% in 2003-04 went up to 35.13% during POI. It is noted that dumped imports have not only captured the growth in demand but also crowded out the domestic industry.

91. The demand (excluding captive sales) of subject goods shows similar trend. It grew by 11% during POI as compared to the base year. The trend indicates that the share of domestic industry which was at 28% in 2003-04 declined to 22% during POI. During the same period the share of subject countries which was 17% in 2003-04 rose to 36% during POI.

I.5 Price Effect of the Dumped imports on the Domestic Industry

92. 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.

93. 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 weighted average cost of production, weighted average Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries.

1.5.1. Evaluation of price over period under consideration

Unit	Unit	2003-04	2004-05	2005-06	POI
Cost of sales	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	132.62	133.22	136.21
Selling Price (NSR)	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	146.88	120.64	122.62

1.6. Price undercutting and underselling effects

POI	Unit	Bulk	Packed	Total Weighted Average (Bulk + Packed)
Net sales realization	Rs./Mt	***	***	***
Landed price		***	***	***
Korea RP	Rs./Mt	***	***	***
Taiwan	Rs./Mt	***	***	***
USA	Rs./Mt	***	***	***
Total subject countries	Rs./Mt	***	***	***
Price undercutting				
Korea RP	Rs./Mt	***	***	***
Taiwan	Rs./Mt	***	***	***
USA	Rs./Mt	***	***	***
Total subject countries	Rs./Mt	***	***	***
Price undercutting (%)				
Korea RP	%	***	***	***
Taiwan	%	***	***	***
USA	%	***	***	***
Total subject countries	%	***	***	***
Non Injurious Price	Rs./Mt	***	***	***
Price Underselling				
Korea RP	Rs./Mt	***	***	***
Taiwan	Rs./Mt	***	***	***
USA	Rs./Mt	***	***	***
Total subject countries	Rs./Mt	***	***	***
Price Underselling (%)				
Korea RP	%	***	***	***
Taiwan	%	***	***	***
USA	%	***	***	***
Total subject countries	%	***	***	***

1.6.1. Argument raised by interested parties

94. It has been argued by some interested parties that authority should disclose the price undercutting individually for each of such country. It has been further argued that Authority has not disclosed landed value of imports for previous years in the Preliminary Findings to enable them to compare the price trends of previous years.

1.6.2. Examination by the Authority.

95. Authority notes that the Rules do not require determination of price undercutting for the entire injury period. However, considering the argument, the Authority has determined price undercutting for the previous years as well as per details given below.

	Unit	2003-04	2004-05	2005-06	POI
Net Sales Realization	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	146.88	120.64	122.62
Landed Price					
Korea RP	Rs./Mt		***	***	***
Taiwan	Rs./Mt		***	***	***

USA	Rs./Mt	***	***	***	***
Total subject countries	Rs./Mt	***	***	***	***
Price undercutting					
Korea RP	Rs./Mt	-	***	***	***
Taiwan	Rs./Mt	-	***	***	***
USA	Rs./Mt	***	***	***	***
Total subject countries	Rs./Mt	***	***	***	***
Price undercutting (%)					
Korea RP	%	-	***	***	***
Taiwan	%	-	***	***	***
USA	%	***	***	***	***
Total subject countries	%	***	***	***	***

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

97. Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject countries over the entire period of investigation with the weighted average net sales realization of the domestic industry for the same period. For this purpose landed value of imports has been calculated by adding 1% landing charge and applicable basic customs duty to the value reported in the DGCI&S data of import prices from the subject countries. The price undercutting from subject countries was in the range of 4-10% during POI.

98. For the purpose of price underselling the weighted average landed prices of imports from subject countries have been compared with the Non-injurious price of the domestic industry determined for the POI. It shows that underselling was in the range of 12-17%.

J. Post Disclosure submissions

J.1. Submissions made by Domestic Industry.

99. Domestic Industry has confirmed that all their contentions have been taken on record and appropriately brought out in the Disclosure statement. They have further requested that duties in terms of fixed amount, expressed in Indian Rupees be recommended as it would not be appropriate to recommend a benchmark price / variable duty, in view of the fact that raw material prices keep fluctuating continuously and violently. They have further sought determination of Non-Injurious-Price considering Gross Fixed Assets on the premise that basic plant and equipment are now fully depreciated and domestic and the methodology followed by the Authority implies that that Domestic Industry should earn no profits from production and sale of the product only because the relevant fixed assets are now fully depreciated.

J.2. Submissions made by other interested parties apart from the Domestic Industry.

100. The Authority notes that none of the producers of the subject goods in Korea-RP, Taiwan or USA has responded to the Designated Authority. However Laminate Manufacturers Association and M/S Century Ply Ltd., users of the subject goods have requested for termination of investigation raising following issues.

101. Laminate Manufacturers Association has made following submissions:

(i) The fact that the imports of subject goods by SI Group were substantial in volume ought to have been considered at the time of initiation of the present case and not at such later state. Withholding of such facts from the authority itself should be a good ground for termination of the present proceedings. In any case, such imports can not be included in the analysis under Annexure-II. The whole exercise therefore is vitiated.

(ii) We are unable to respond to contents of Para 17 as we had made no submissions on benchmark form of duty. Under Para 18, the Designated Authority sought to reject the submission of the Association without stating which submission is sought to be rejected. In view, thereof we are unable to respond or offer any further comments on these issues.

(iii) The issue of shutdown and its impact on injury to domestic industry was required to be examined and the same has not been appreciated in its true context. The authority has not been provided adjusted data for the purposes of proper injury analysis.

(iv) Preliminary findings were issued by the designated authority after having satisfied itself with regard to the need of the same. It is our respectful submission that the reasons of findings in support of such conclusion are not apparent from the record. As a quasi-judicial authority, the Designated authority was required to state such reasons in the preliminary findings. In the absence of such reasons for reaching such conclusions, the preliminary findings are bad in law. Similarly, we find numerous instances where the Designated Authority has recorded conclusions without recording reason for such conclusions.

(v) From the disclosure statement we find that Century Ply Ltd. responded and filed their written submissions. They have not been made available to us despite our request. Further, the correspondence exchanged with interested parties including domestic industry is also not available in public file. In the absence of such information, serious prejudice has been caused to the rights of interested parties to make effective comments to data and information for reaching determinations as contemplated under the Rules behind the back of the interested parties would clearly be contrary to law on natural justice.

(vi) We are unable to comment on that data relied upon by the authority as the same was not made available in the public file despite our request in our earlier submissions. The same we are sure, was not provided to the authority on confidential basis and could not have been withheld as provisions of Rule 7 cannot be invoked by DGCI&S. The same is publicly available information and hence ought to have been provided to the interested parties.

(vii) The Designated Authority has indicated that**** in the disclosure statement represents information furnished by an interested party on confidential basis. However, there is nothing in the publicly available documents to show that the applicant had shown good cause to keep the said information confidential. In this connection, it was pointed out to the Authority right from the

beginning of the investigations that the provisions of confidentiality have been abused and are being used contrary to the letter and spirit of law. There is no indication in any public document to even suggest that the Designated Authority had indeed applied his mind on the confidentiality aspect. It is a first time that in the disclosure statement it has been cursorily mentioned that the information supplied by the interested parties have been considered confidential by the designated authority. The exporters and other interested parties are in no position to comment whether the description of the designated authority has been used in accordance with the legal provisions and principles of natural justice.

(viii) Excessive confidentiality has been claimed and allowed in the present proceedings. It has further been alleged that the public file does not have any document on record to show that the confidentiality treatment has consciously been allowed by the authority and there no proper indexation on the public file.

(ix) Reliance on ICISLOR data relating to benzene prices and data relating to propylene prices, power costs, commissions, freight, marine insurance, bank charges, freight costs as having been kept confidential has been contested. It has also been stated that justification for use of raw material prices from ICISLOR data when the price of Phenol itself was available, has not been given.

(x) Reliance on findings in acetone case on BIFR status has been challenged and it has been suggested that HOCL be called upon to provide latest status on their case before BIFR. It has also been stated that since every information from HOCL can be obtained under RTI, no information should have been allowed to be kept as confidential.

(xi) Additional information obtained during proceedings in the form of deficiency letters and responses thereof has not been made available in the public file for comments/objections.

(xii) Data which has been worked out on various inputs relating to calculation of normal value particularly DGCI&S data and propylene prices from ICISLOR and other inputs from other sources have been sought to be made public.

(xiii) Final export price worked out based upon DGCI&S data after adjustments worked out for freight, marine insurance, commissions, inland freight, freight expenses, bank charges, and credit costs has been sought to be made public.

(xiv) Actual dumping margin have been sought to be disclosed in terms of figures and thereafter fresh comments should be sought from interested parties afresh. Actual calculations of working out of NIP in actual number has been sought to be disclosed.

(xv) Revised injury information stated to have been filed by the domestic industry have been sought to be disclosed and it has further been sought that after disclosing the same the interested parties should be given a proper opportunity for hearing as the one granted earlier was not effective as contemplated under law and principles of natural justice. It has been alleged that HOCL seeking 22% return on capital employed in spite of never having made any profits in last 10 years is indicative that survival of HOCL is only dependent on external supports either by way of safe guard duties or anti-dumping duty or by way of protection through tariffs. They have sought reasons as to why information for financial year 2002-03 in terms of DGAD trade notice no. 2/2004 dated 12.5.2004 have not been provided

(xvi) They have raised an issue as to whether DA had called for entire record of BIFR proceedings. They have alleged that soft copy of the import data used in the investigation have not been supplied to them.

(xvii) It has been alleged that the rejoinder submissions filed by all the parties have not made available to them. It has also been alleged that non confidential versions of all responses filed by the DI have not been made available to them.

(xviii) It has been stated that the some new facts have been introduced in the disclosure statement for the first time and interested parties were never put on notice.

(xix) It has been alleged that several parts of detailed submissions made by them have not been recorded in the disclosure statement. Interestingly, while the disclosure statement records in detail even the unsubstantiated submissions of the DI, the rebuttal and the arguments submitted by the Association and others are conspicuous by the absence.

(xx) The statements in the disclosure statement that all the information was available in the public file, is not borne out from the face of the record.

(xxi) Request for inspection of public file and for copies of the rejoinder statements has not been responded to till date. In any case there is no page numbering, index etc. in the public file. Such an approach is contrary to the guidance laid down by the Hon'ble CESTAT in earlier cases.

(xxii) The DA has not allowed request for a fresh hearing after the data has been revised. Fresh hearing was mandated as per principles of natural justice and administrative law. Balance of convenience also requires that the request as made may be allowed as no prejudice would be caused to the interest of DI if the prayer for grant of fresh hearing is allowed. However, if the same is not allowed, grave and irreparable harm and injury would be caused to the interest of the importers/exporters and user industry.

(xxiii) It has been wrongly stated that the "this investigation was initiated in accordance with the provisions of Rule 5". The Association had made detailed submissions pointing out the deficiencies and the incurable defects in the initiation procedure and the non-adherence to the requirements of Rule 5 in its written communications from time to time. Surprisingly, these have not been considered as "essential facts" by the Authority."

(xxiv) The statement that "adequate opportunity was given to submit information and make comments on the initiation and thereafter at every state of the investigations" is totally contrary to the facts of the case. In support we rely upon the above submissions. We also draw your kind attention to our submissions that DI actually withheld names of interested parties with whom they had regular dealing in Phenol.

(xxv) It is further incorrect to state in Para 44 that "...the Authority proposes to conclude that the performance of the Domestic industry deteriorated in terms of production.....thus cumulatively showing that the domestic industry has suffered material injury". It is pertinent to note that serious submissions made by the Association has escaped the attention of the Authority and has not even been made a part of the disclosure statement.

(xxvi) The views expressed by Association have been selectively reproduced in the disclosure statement. Most of the crucial aspects reflected in our communications have not even been recorded in the disclosure statement.

102. Fair Trade Practices on behalf of Century Ply has made following submissions:

i) The Designated authority in the disclosure statement has rejected the information furnished by the Century Ply in the form of Importer Questionnaire response as the same is according to the authority is not reflecting true position. It is submitted that even it is assumed that the information filed by the company suffers from some typographical errors the authority has not issued any deficiency letter any clarification. Therefore to out rightly reject the information which is otherwise reliable and supported by back-up papers at the end of the investigation without offering any opportunity to the importer is highly improper on the part of the designated authority.

ii) It is an admitted fact that the petition for imposition of anti-dumping was jointly filed by the HOCL and SI Group but the non-confidential version of the combined data filed by the petitioners has not been available to the other interested parties. It is submitted that the authority has itself noted in the preliminary findings as well as under disclosure statement that the petitioner were directed to injury information after excluding information pertaining to SI Group, but information initially filed was not shared with the interested parties despite repeated requests for the same. The information pertaining to SI Group filed by the petitioners have not been provided despite repeated requests for the same.

iii) The Designated Authority has also not segregated the volume of imports made by the SI Group from the total volume of imports from the subject countries which has further inflated the total volume of imports. It is submitted that one of the reasons for increase in the total volume of imports from the subject countries is significant importation of subject goods by the SI Group from the subject countries as recorded by the authority in it findings as well and therefore for the purpose of injury analysis the imports made by Domestic producers/supporter of petition should have been excluded.

iv) It is submitted that the publication of notification in the gazette is not an issue but the actual issue is intentional concealment of names of the actual users/importers of the subject goods by the petitioner in order to ward off any kind of opposition. The fact that petitioner despite knowing the names of the actual users choose not to give the same to the authority raises serious questions about the intention of the petitioner and vitiates the right of the interested parties to make effective participation.

(v). The long term shut down/suspension of production by the petitioner has been deliberately concealed by the petitioner. The mere reproduction of the same in the annual report does not absolve the liability/obligation of the petitioner to provide full fact in the petition for imposition of anti-dumping duty.

(vi) Injury information filed by the petitioner is also does not discloses this fact and on the contrary no information for the period of shut down period has been provided along with the financial data for the POI and three preceding years for the obvious reason to conceal the same and to presented the injury information in the distorted way. Moreover the impact of shut down was not where analyzed either by petitioner or by the authority in the petition or in the preliminary findings/disclosure statement. The same was concealed by the petitioner can also be seen from the final findings of the mid term review, where the same was conspicuously missing.

(vii) On the issue of injury we once again reiterate our submission filed earlier during the course of investigation, which as a under:

(viii) The petitioner has deliberately filed petition targeting period of investigation, which is already marred by deliberate shut down of the plant by the HOCL. The petitioner in an endeavor to stage injury to the DI has chose period just after the period of its shutdown. The domestic Industry first shut down its plant for a very long period on a flimsy reason that the raw material was not available thereby putting already short supply market in to dire situation leaving all the users in lurch. The scarcity of phenol in the Indian market leads to import of goods from subject countries. It should be noted that all the economic indices prior to shut down were showing positive growth and the domestic industry was running in the pink. Shut down for the priod of Apr. 05- June 05 has affected the performance of the domestic industry. Further SI has imported subject goods for its own captive consumption. Imports by SI should be excluded while determining effect of volume of imports.

(ix) The domestic industry has been able to increase its selling price. The price undercutting is 5-10% only, as determined by the Authority. We request the Authority to disclose the price undercutting individually for each of the subject country. Further the landed value of imports for the previous years has not been disclosed in the preliminary findings to enable us to compare the price trend of the previous years.

(x) Further it is submitted that they hypothetical assumption taken by the authority in the relation of injury analysis keeping in view the shut down period is far away from the reality.

(xi) The disclosed statement states that:

"Domestic industry had faced plant shutdown in 2005-06. Domestic industry assuming it would have produced at the same rate during the shutdown period as it had produced in 2005-06 and sold all such production, has provided a detailed analysis, which is tabulated below:"

Assuming that there was no shut down, the domestic industry would have performed as it had performed during 2004-05. Moreover, it is unacceptable that the effect of shut down would have been limited to the period of shut down only as abrupt stoppage of complete supply from the domestic industry has forced the users to look outwards and enter long term supply contract to ensure uninterrupted supply of subject goods to keep their production facilities running. It is submitted that the share

of DI has fallen due to static production capacity and long term shut down. It is submitted that the demand for the subject goods has been increasing rapidly but the domestic industry or other Indian producer have not been adding capacities for meeting the same.

(xii) It is submitted that given the huge demand supply gap between the total demand in India and production capacity in Indian there is constant need for importation of subject goods from countries out side India. The capacities of the DI over the years have remain static as no expansions have been carried out by any of the producers in India but on the contrary the same has further declined due to non-production of subject goods by the Neyveli Lignite and abrupt long term suspension of subject goods by the petitioner company HOCL.

(xiii) The purpose of the imposition of anti-dumping duty is to provide a fair price level to the DI rather than to impose penalty upon the actual user/imports of the subject goods or to impose blanket ban upon the imports by making them unviable by imposing arbitrarily high rate of duty irrespective of the facts that the subject goods are coming an un-dumped prices. The export prices from the subject countries have increased significantly during post period of investigation.

J.3. EXAMINATION BY THE AUTHORITY

103. The Authority has examined the submissions made by the users as above and concludes that the issues raised are not supported by facts and figures.
104. Exclusion of SI group has already been dealt with in the initiation notification and the Preliminary Findings and need not be repeated a fresh.
105. The plant shut down and its impact has been properly examined and detailed in the Preliminary Findings.
106. It has been alleged that the Authority has recorded conclusions without recording reason of such conclusions. However no specific mention of these stated numerous instances has been pointed out.
107. DGCI&S data being publicly available as brought out in the submissions, there is no reason for the association to plead on this aspect as they were at liberty to procure the same from Public Domain.
108. It has not been specifically mentioned as to on which information has confidentiality been claimed which is available in public domain.
109. Costing information and other business sensitive information which has been allowed to remain confidential cannot be obtained under RTI.
110. Similarly ICISLOR data is a paid data and the users have the freedom to have access to the same.

111. To sum up the issues have been raised merely for the sake of raising an issue and are not substantiated. The confidentiality issue has been raised in a big way without reliance upon the facts. The mere fact that the consumer Industry woke up only once the preliminary findings were issued goes in a big way to support the decision of the Authority in relying on facts and figures available for concluding Findings. Even at this stage, including the stage of Oral hearing, pre-disclosure and post disclosure stages, the user industry has sought to raise issues in the form of a text without providing any data which could help the Authority determine dumping and injury margins. The user Industry was at liberty to have access to documents / data claimed to be available in public domain and therefore accusing the authority of giving confidential status to such data is misplaced. Denying access to public file, not maintaining it properly and not providing post hearing submissions to the users is denied. The Authority does not deem it necessary to respond to vague and uncalled for allegations , primarily because of the lack of proper response from the user industry and because whatever response is there is only in the form of vague submissions , those too when the investigations are nearing completion. The Authority is of the view that the submissions made by these users are only an alibi to delay the investigations and draw a mileage of having participated in the proceedings. The mere fact that Century Ply is a part of the Laminate Manufacturers Association and association accusing the authority of not having

made available the submissions made by Century ply is a clear indicator of this conclusion. To sum up, the Authority concludes that the submissions made by the association are nothing but a delaying tactics.

K.1. Price suppression and depression effects of the dumped imports:

112. The price suppression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject countries.

113. The Authority notes that there were upward trends in the cost of sales during the injury period. The cost of sales which was 100 (indexed) in the base year went up to 136.21 in the POI; mainly due to increase in input price of Benzene and LPG which are Petro based products. The Authority notes that though the increase in the selling price was more than the cost up to 2004-05, thereafter the increase in selling price was not proportionate to the increase in cost. The trend of cost of production shows that weighted average cost of production rose by 36% during POI as compared to base year whereas the selling price had increased only by 23% during POI indicating that the domestic industry could not realize the selling price commensurate with the increase in cost of production.

K.2. Examination of other Injury Parameters

114. 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:

K.3. Profits and actual and potential effects on the cash flow

	Unit	2003-04	2004-05	2005-06	POI
Cost of sales	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	132.62	133.22	136.21

Selling Price (NSR)	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	146.88	120.64	122.62
Profit/Loss	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	229.04	48.18	44.29
Profit/Loss before Tax	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	269.76	36.08	38.35
PBIT	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	252.73	39.14	41.36
Cash Profit	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	261.57	37.26	39.49

115. The data indicate that weighted average cost of production of the domestic industry went up by 36% during POI as compared to base year against which the weighted average selling price increased only by 23% during POI. The profit per unit which was 100 (indexed) in the base year increased by 129% during 2004-05 and declined in 2005-06 to 48% and 44% during POI. The profit of domestic industry on the domestic sales(PBIT) which was 100 (indexed) in 2003-04 increased by 154% in 2004-05 and declined in 2005-06 to 39% and 41% during POI. The Authority notes that there has been significant deterioration in the profitability of domestic industry during the POI as compared to base year 2003-04.

K.4 Return on investment and ability to raise capital

	Unit	2003-04	2004-05	2005-06	POI
PBIT	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	252.73	39.14	41.36
Net Fixed Assets	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	92.99	72.98	76.69
Working Capital	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	151.40	121.59	141.50
Capital Employed - NFA	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	131.39	104.94	119.30
Return on Capital Employed (NFA Basis)	%	***	***	***	***
Trend	Indexed	100.00	192.35	37.30	34.67

116. The Authority notes that there has been continued decline in the % age return on capital employed earned by the domestic industry. The return on capital employed, which was 100 (indexed) in the year 2003-04 declined sharply to 34.67 in POI.

K.5 Productivity

	Unit	2003-04	2004-05	2005-06	POI
Productivity per employee	Mt	***	***	***	***
Trend	Indexed	100.00	119.48	73.99	86.94

117. The data on production per employee shows that the productivity increased by 119% in 2004-05 before declining to 87% during POI as compared to base year.

K.6 Employment and wages

	Unit	2003-04	2004-05	2005-06	POI
Employment (Manpower strength)	Nos.	***	***	***	***
Trend	Indexed	100.00	101.04	96.93	98.33
Wages	Rs./Lacs	***	***	***	***
Trend	Indexed	100.00	116.86	120.49	124.10

118. The employment level does not show significant change. In indexed form it declined to 98% during POI as compared to base year. The wages increased by 24% during POI as compared to base year.

K.7 Inventories

	Unit	2003-04	2004-05	2005-06	POI
Opening Stock	Mt	***	***	***	***

Closing Stock	Mt	***	***	***	***
Average Stock	Mt	***	***	***	***
Trend	Indexed	100.00	142.25	133.76	53.55
Average Stock in terms of No. of Days' sales	Nos.	***	***	***	***
Trend	Indexed	100.00	120.77	178.63	61.83

119. The trends in the average inventory show that average inventory declined from 100 in the base year to 54 during POI. The Authority notes that at the beginning of POI the opening inventory was equal to about 2 days sales, which went up to about 19 days sales at the close of POI. In other words, during POI there has been accumulation of inventory as the closing inventory was nearly 8 times the opening inventory, which reflects an adverse off take.

K.8. Growth

120. The growth in demand shows positive trend from base year to POI on year to year basis. The growth in production and sales were positive in 2004-05, negative in 2005-06 and again positive during the POI. The cost of production shows rising trend in 2004-05, 2005-06 and in POI. Growth of selling price shows rising trend in 2004-05 and negative in 2005-06 and positive in POI. Growth of profits shows positive trend in 2004-05 and negative in 2005-06 and positive in POI.

K.9. Investment and Ability to raise capital Investment

121. 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 and there is no plan for further investment as submitted by them.

K.10. Magnitude of Dumping

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

K.11. Factors affecting prices

123. With regard to the effect of dumped imports on prices, the Authority is required to consider 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 prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree. In order to assess the effect of imports on the domestic market, the Designated Authority analyzed import prices over the injury period. It was found that the landed value per MT in POI was lower than both the net selling price and non-injurious price of bulk phenol in respect of all subject countries. It was also found that the landed value of import per MT in the POI is higher than the net selling price and the non-injurious price in respect of packed phenol from all subject countries excepting Korea RP. Out of total imports from subject countries during POI, the packed and bulk imports are 5% and 95% respectively. Change in cost structure if any, due to competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors that might be affecting the prices in the domestic market. The weighted average cost of production has increased by 36% during POI. The weighted average net selling prices increased only by 23% during the same period. The Authority notes that Landed values of imported material from subject countries are significantly below the selling price of the domestic industry, causing price undercutting in the Indian market. The undercutting during POI was in the range of 4-10% and underselling was in the range of 12-17% during POI.

K.12. Conclusion on injury

124. The examination of above injury parameters indicates that growth in demand was 10% (including captive sales) during POI as compared to base year. Despite overall growth in demand, both the production and sale of domestic industry declined to 85% and 87% respectively during POI as compared to base year 2003-04. During the same period, the imports of subject goods from subject countries increased significantly from 23123 MT in 2003-04 to 53538 MT during POI i.e. it increased by 132%. The share of the imports from subject countries in relation to demand increased from 17% in 2003-04 to 35% during POI whereas the share in demand of the domestic industry declined from 27% to 21% during the same period. The Authority notes that imports have crowded out domestic industry in domestic market. The capacity utilization of the domestic industry, despite growth in demand, declined from 100% to 86% during POI. Thus the installed capacity remained unutilized during POI. Profits (PBIT) declined to 41 during POI as compared to base of 100. The return on net capital employed declined to 21 during POI as compared to 100 of base year 2003-04.

125. Imports from subject countries have increased significantly and these had significant adverse price effect resulting in price suppression and price undercutting.

126. It was argued by interested parties that the domestic industry had faced plant shutdown in 2005-06. Domestic Industry, assuming it would have produced at the same rate during the shutdown period as it had produced in 2005-06 and sold all such production has provided a detailed analysis and the same is elaborated below.

	Unit	2003-04	2004-05	2005-06 adjusted	POI
Installed Capacity	Mt	***	***	***	***
Trend	Indexed	100	100	100	100
Production	Mt	***	***	***	***
Trend	Indexed	100	121	86	85
Capacity Utilization (%)	%	***	***	***	***

Trend	Indexed	100	121	86	85
Domestic Sales	Mt	***	***	***	***
Trend	Indexed	100	118	90	87
Cost of production	Rs./Mt	***	***	***	***
Trend	Indexed	100.00	132.62	131.40	136.21
Selling Price	Rs./Mt	***	***	***	***
Trend	Indexed	100	147	121	123
Profit/Loss	Rs./Mt	***	***	***	***
Trend	Indexed	100	229	59	44
Profit/Loss	Rs./Lacs	***	***	***	***
Trend	Indexed	100	270	53	38
PBIT	Rs./Lacs	***	***	***	***
Trend	Indexed	100	253	54	41
Cash profit	Rs./Lacs	***	***	***	***
Trend	Indexed	100	262	53	39
ROCE	%	***	***	***	***
Trend	Indexed	100	192	52	35
Productivity per employee	Mt	***	***	***	***
Trend	Indexed	100	119	88	87
Import from subject countries	Mt	***	***	***	***
Trend	Indexed	100	75	216	232
Import from other countries	Mt	***	***	***	***
Trend	Indexed	100	113	89	90
Total Import	Mt	***	***	***	***
Trend	Indexed	100	99	134	140
Sales of domestic industry	Mt	***	***	***	***
Sales of other producers	Mt	***	***	***	***
Total demand	Mt	***	***	***	***
Trend	Indexed	100	105	109	110
Market share in demand					
Domestic industry	%	***	***	***	***
Other producers	%	***	***	***	***
Subject countries	%	***	***	***	***
Other countries	%	***	***	***	***

127. On the basis of above analysis, the Authority concludes that the performance of the domestic industry deteriorated in terms of production, sales volumes, capacity utilization, market share, factors effecting prices, profits, return on investment, cash profits, thus collectively and cumulatively showing that the domestic industry has suffered material injury.

K.13. Causal Link

128. In order to reach its conclusions on the cause of the injury suffered by domestic industry and in accordance with article 3.5 of Agreement on Anti-Dumping and as per Para (v) of Annexure-II under Rule 11 under Customs Tariff Act as amended, the Authority examined the impact of all known factors and their consequences on the situation of the domestic industry. Known factors other than dumped imports, which could at the same time have injured the domestic industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports. The significant increase in volume of dumped imports from the subject countries (both in absolute terms as well as in relation to the share in demand) has resulted in significant decline in market share of the domestic industry. Decline in market share of domestic industry as a consequence of increase in market share of subject countries prevented the domestic industry from increasing their sales commensurate to increase in demand in the market. On the contrary, there was a decline, both in production and sale during POI as compared to base year 2003-04. As a result, domestic industry could not optimally utilize its capacity as capacity utilization during POI was only 86%. Consequently growth in production, sales and capacity utilization of the domestic industry suffered as a result of the decline in market share of domestic industry.

129. Significant price undercutting caused by imports prevented the domestic industry from increasing its prices to the extent of increase in costs. Consequently, profits, cash flow and return on investment deteriorated during POI after showing consistent improvement. While domestic industry was able to increase prices in 2003-04 and 2004-05, its performance deteriorated in the POI due to dumped imports which prevented it from effecting legitimate price increases.

130. It is thus concluded that the imports from the subject countries have caused material injury to the domestic industry.

L. Examination of Other Known Factors

L.1. Volume and prices of imports from other sources

131. The Authority notes that out of total imports, the volumes of imports from other countries are 42% during POI. The Authority notes that the imports from other countries also have been contributing to the injury of the domestic industry. It has been noted that the imports from other countries are already attracting anti-dumping duties.

L.2. Contraction in demand and / or change in pattern of consumption

132. The Authority notes that there is no contraction in the overall demand during POI. On the contrary; overall demand for subject goods has shown positive growth during the injury period. The total demands of subject goods have shown growth of 10% (including captive sales) during Period of Investigation as compared to the base year. There is also no significant change in consumption pattern of the product in the domestic market, which could be attributed to the injury to the domestic industry.

L.3. Trade restrictive practices of and competition between the foreign and domestic producers

133. 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 product is sold to meet the similar commercial grades and specifications as domestically produced subject goods and that the imported subject goods and domestically produced goods are like articles and are used for similar applications/ end uses.

134. The Authority notes that there is no restricted practice prevalent in the industry which could be attributed to the injury to the domestic industry.

L.4. Development of technology

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

L.5. Export performance

136. The Authority notes that the export volume of the domestic industry is insignificant during the POI. The performance with respect to various Economic indicators have determined with respect to domestic sales only. Hence, the Authority proposes to hold that material injury suffered by the domestic industry may not be as a result of the export performance of the domestic industry.

L.6. Productivity of the Domestic Industry

137. Productivity of the domestic industry in terms of production per employee has shown decline during POI as compared to base year 2003-04 because of the decline in total production during the same period.

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

M. Conclusion On Causation

139. Significant increase in the volume of dumped imports has resulted in significant decline in the market share of domestic industry. It is further seen that decline in market share of domestic industry as a consequence of increase in market share of subject imports from subject countries prevented the domestic industry from increasing their sales commensurate to growth in demand. As a result, sales of domestic industry during POI did not increase to such an extent that domestic industry could have optimally utilized its capacity. Consequently, production, sales and capacity utilization of the domestic industry suffered as a result of the decline in the market share of the domestic industry. Significant price undercutting caused by dumped imports prevented the domestic industry from increasing its prices to the extent of increase in costs. Resultantly, profit, cash flow and return on investment of the domestic industry deteriorated in the POI. Significant price-undercutting and substantial increase in the volume of dumped imports adversely affected the performance of the domestic industry in terms of profits, cash flow, and return on investment, which parameters deteriorated in POI after improving till 2004-05.

140. The Authority has therefore, concludes that the dumped imports originating in the subject countries have caused material injury to the domestic industry within the meaning of Rule 11 of Anti-dumping Rules and article 3.5 of Agreement of Anti-dumping.

N. Magnitude of Injury and injury margin

141. The non-injurious price determined by the Authority has been compared with the landed value of imports for determination of injury margin. The weighted average landed price of imports from each of the subject country and the injury margins have been determined as follows:

	USD/MT			
Name of company	Injury Margin (Bulk)	Injury Margin (Packed)	Injury Margin (Weighted Average)	Injury Margin (%)
Exporters from Korea-RP	***	***	***	***
Exporters from Taiwan	***	***	***	***
Exporters from USA	.	***	***	***

O. Conclusions

142. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:

- i) The subject goods have entered the Indian market from the subject countries at prices less than their normal values in the domestic markets of the exporting countries, resulting in dumping of the product in the Indian market;
- ii) The dumping margins of the subject goods imported from the subject countries are substantial and above de minimis;
- iii) The domestic industry has suffered material injury; and
- iv) The injury has been caused to the domestic industry, both in terms of volume and price effect by the dumped imports of the subject goods originating in or exported from the subject countries.

P. Indian industry's interest & other issues

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

Q. Recommendations

144. Having initiated and conducted 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 against the subject countries, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive duty is required to offset dumping and injury to the domestic industry. Therefore, Authority considers it necessary and recommends imposition of definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

145. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive 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, the Authority recommends that definitive anti dumping duties be imposed on all imports of the subject goods falling under chapter 27 and 29 of Custom Tariff Classification Act 1975, originating in or exported from USA, Korea-RP and Taiwan to be collected from the date of imposition of the provisional duty. The anti-dumping duty shall be the amount mentioned in Column No. 8 of the following 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 OR 2707.9900	PHENOL	USA	Any	Any	Any	181	MT.	USD
2.	DO	DO	Any other than Korea RP and Taiwan	USA	Any	Any	181	MT	USD
3	DO	DO	Taiwan	Any	Any	Any	137	MT	USD
4..	DO	DO	Any other than USA and Korea RP	Taiwan	Any	Any	137	MT	USD
5.	DO	DO	Korea RP.	Any	Any	Any	196	MT	USD
6.	DO	DO	Any other than Taiwan and USA	Korea RP	Any	Any	196	MT	USD

146. Subject to the above the provisional findings, notified vide notification dated 29th August 2007, are hereby confirmed

R. Further Procedures

147. 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.

148. 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.

R. Gopalan
Designated Authority